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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2015-0934; Directorate Identifier 2014-NM-030-AD; Amendment 39-18287; AD 2015-20-08]

RIN 2120-AA64

#### Airworthiness Directives; Dassault Aviation Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE-FALCON 200 airplanes; and Model MYSTERE-FALCON 20-C5, 20-D5, 20-E5, and 20-F5 airplanes. This AD was prompted by reports of defective fire extinguisher tubes. It was determined the defects were caused by corrosion. This AD requires repetitive general visual inspections of the fire extinguisher tubes for cracking and corrosion, and replacement of any cracked tube with a serviceable tube, if necessary. We are issuing this AD to detect and correct cracking and corrosion in the fire extinguisher tubes, which could impact the capability to extinguish an engine fire, and possibly result in damage to the airplane and injury to the passengers.

**DATES:** This AD becomes effective November 12, 2015.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov/#/documentDetail;D=FAA-2015-0934>; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE-FALCON 200 airplanes; and Model MYSTERE-FALCON 20-C5, 20-D5, 20-E5, and 20-F5 airplanes. The NPRM published in the *Federal Register* on May 4, 2015 (80 FR 25254).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued Airworthiness Directive 2013-0299, dated December 19, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE-FALCON 200 airplanes; and Model MYSTERE-FALCON 20-C5, 20-D5, 20-E5, and 20-F5 airplanes. The MCAI states:

Several defective extinguisher tubes have been reported on certain Dassault Aviation Fan Jet Falcon aeroplanes. The results of the investigations concluded that these occurrences were caused by corrosion.

This condition, if not detected and corrected, could impact the capability to extinguish an engine fire, possibly resulting in damage to the aeroplane and injury to the occupants.

For the reason described above, this [EASA] AD requires repetitive [general visual] inspections [for cracking and corrosion] of the fire extinguisher tubes and, depending on findings, the replacement of an affected part with a serviceable part (improved fire extinguisher tube). It also proposes the replacement of those tubes with the “old Part Number” (P/N) with a serviceable part with the new P/N as a terminating action. In addition, this [EASA] AD prohibits installation of an affected tube on an aeroplane.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#/documentDetail;D=FAA-2015-0934-0002>.

#### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 25254, May 4, 2015) or on the determination of the cost to the public.

#### Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (80 FR 25254, May 4, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 25254, May 4, 2015).

#### Costs of Compliance

We estimate that this AD affects 170 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$57,800, or \$340 per product.

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

#### Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for



safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that this AD:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the ADDRESSES section.

**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 FAA amends 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2015–20–08 Dassault Aviation:**

Amendment 39–18287. Docket No. FAA–2015–0934; Directorate Identifier 2014–NM–030–AD.

**(a) Effective Date**

This AD becomes effective November 12, 2015.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes; Model MYSTERE–FALCON 200 airplanes; and Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category, all manufacturer serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 26, Fire protection.

**(e) Reason**

This AD was prompted by reports of defective fire extinguisher tubes. It was

determined the defects were caused by corrosion. We are issuing this AD to detect and correct cracking and corrosion in the fire extinguisher tubes, which could impact the capability to extinguish an engine fire, and possibly result in damage to the airplane and injury to the passengers.

**(f) Compliance**

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

**(g) Inspection**

For airplanes identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Within 13 months or 450 flight hours, whichever occurs first after the effective date of this AD, do a general visual inspection of the fire extinguisher tubes for cracking and corrosion, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation’s EASA Design Organization Approval (DOA). Repeat the inspection thereafter at intervals not to exceed 13 months.

(1) Model FAN JET FALCON airplanes and Model FAN JET FALCON SERIES C, D, E, F, and G airplanes, equipped with any fire extinguisher tubes having part numbers MY20791–101, MY20791–101–1, MY20791–102, MY20791–102–1, MY20791–117, and MY20791–112.

(2) Model MYSTERE–FALCON 200 airplanes equipped with any fire extinguisher tubes having part numbers M20H791000210B1 and M20H791000240B1.

(3) Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes equipped with any fire extinguisher tubes having part numbers M20R791101, M20R791101A1, and M20R791102.

**(h) Corrective Action**

If, during any inspection required by paragraph (g) of this AD, any cracking or corrosion is found, before further flight, replace the tube with a serviceable tube having a part number specified in Table 1 to paragraph (h) of this AD, as applicable.

TABLE 1 TO PARAGRAPH (H) OF THIS AD—SERVICEABLE FIRE EXTINGUISHER TUBES

For model—	Equipped with affected pin—	Replace with serviceable pin—
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes ..	MY20791–101 .....	MY20791–101–2.
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes ..	MY20791–101–1 .....	MY20791–101–2.
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes ..	MY20791–102 .....	MY20791–102–2.
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes ..	MY20791–102–1 .....	MY20791–102–2.
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes ..	MY20791–117 .....	MY20791–117n–1.
FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes ..	MY20791–112 .....	MY20791–112–1.
MYSTERE–FALCON 200 airplanes .....	M20H791000210B1 .....	M20H791000210B2.
MYSTERE–FALCON 200 airplanes .....	M20H791000240B1 .....	M20H791000240B2.
MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes .....	M20R791101 .....	M20R791101A2.
MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes .....	M20R791101A1 .....	M20R791101A3.
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**(i) Terminating Action for the Repetitive Inspections**

Replacement of an affected tube with a serviceable tube, as required by paragraph (h) of this AD, constitutes a terminating action for the repetitive inspections required by paragraph (g) of this AD.

**(j) Parts Installation Prohibition**

As of the effective date of this AD, no person may install a tube having a part number identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, on any airplane.

**(k) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(l) Related Information**

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013-0299, dated December 19, 2013, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov/>#!documentDetail;D=FAA-2015-0934-0002.

**(m) Material Incorporated by Reference**

None.

Issued in Renton, Washington, on September 29, 2015.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015-25492 Filed 10-7-15; 8:45 am]

**BILLING CODE 4910-13-P**

**FEDERAL TRADE COMMISSION****16 CFR Part 4****Miscellaneous Rules**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rules; technical correction.

**SUMMARY:** The Federal Trade Commission published final rules on May 6, 2015, revising certain of its rules of practice. This document makes a technical correction to those final rules.

**DATES:** Effective October 8, 2015.

**FOR FURTHER INFORMATION CONTACT:** Josephine Liu, Attorney, (202) 326-2170, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** This document makes a technical correction to two cross-references in Rule 4.4(a)(3).

**List of Subjects in 16 CFR Part 4**

Administrative practice and procedure, Freedom of information, Public record.

Accordingly, 16 CFR part 4 is corrected by making the following correcting amendment:

**PART 4—MISCELLANEOUS RULES**

- 1. The authority citation for part 4 continues to read as follows:

**Authority:** 15 U.S.C. 46, unless otherwise noted.

**§ 4.4 [Amended]**

- 2. In § 4.4, amend the first sentence of paragraph (a)(3) by removing “section 20(c)(7) of the FTC Act” and adding in its place “section 20(c)(8) of the FTC Act” and by removing “section 20(c)(8) of the FTC Act” and adding in its place “section 20(c)(9) of the FTC Act”.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 2015-25605 Filed 10-7-15; 8:45 am]

**BILLING CODE 6750-01-P**

**DEPARTMENT OF LABOR****Office of the Secretary****29 CFR Part 20****RIN 1290-AA27****Administrative Wage Garnishment Procedures**

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule will allow the U.S. Department of Labor (Department) to garnish the disposable wages of non-federal workers who are indebted to the Department without first obtaining a court order. It implements the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA) in accordance with the regulations issued by the Secretary of the Treasury.

**DATES:** This rule is effective October 8, 2015. Comments must be received within 30 days of publication, which is on or before November 9, 2015.

**ADDRESSES:** You may submit written comments to the docket using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Mail:* Address comments concerning this interim rule to Shelia Alexander, Office of Chief Financial Officer, U.S. Department of Labor, Frances Perkins Building, Room S4030, 200 Constitution Avenue NW., Washington, DC 20210.

(3) *Email:* Comments may also be submitted by electronic mail to [alexander.shelia@dol.gov](mailto:alexander.shelia@dol.gov).

Additionally, any comments that concern information collection may be sent to the Office of Information and Regulatory Affairs, Attention OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shelia Alexander, Office of the Chief Financial Officer, (202) 693-4472; or Rachel Rikleen, Office of the Solicitor, (202) 693-5702.

**SUPPLEMENTARY INFORMATION:****I. Background**

Section 31001(o) of the Debt Collection Improvement Act of 1996 (DCIA), which is codified at 31 U.S.C. 3720D, authorizes federal agencies to use administrative procedure to garnish the disposable pay of an individual to collect delinquent non-tax debt owed to the United States in accordance with regulations promulgated by the Secretary of the Treasury. Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor pursuant to a withholding order. Under the DCIA, agencies may garnish up to 15% of a delinquent non-tax debtor's disposable wages. Prior to the enactment of the DCIA, agencies were generally required to obtain a court

judgment before garnishing the wages of non-Federal employees.

The DCIA requires the Secretary of the Treasury to issue regulations implementing the administrative wage garnishment requirements. These implementing regulations, which are at 31 CFR 285.11, provide for due process for nontax debtors and require agencies to publish regulations for administrative wage garnishment hearings. Pursuant to 31 CFR 285.11(f), federal agencies must either prescribe regulations for the conduct of an administrative wage garnishment hearing consistent with the procedures set forth in section 285.11 or adopt section 285.11 without change by reference. Through this rule, the Department has decided to issue its own regulations consistent with the procedural requirements of section 285.11.

This interim rule governs only administrative wage garnishment. Nothing in this regulation precludes the use of collection remedies not contained in the regulation. The Department and other federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

The Department may, but is not required to, promulgate additional policies, procedures, and understandings consistent with this regulation and other applicable Federal laws, policies, and procedures, subject to the approval of the Department's Chief Financial Officer or their delegate. The Department does not intend for its components, agencies, and entities to be able to adopt different policies, procedures, or understandings.

## II. Public Participation

The Department is issuing this interim final rule to provide the public with an opportunity to comment. The Department must receive comments by the deadline stated above, which is no later than 30 days after this notice appears in the **Federal Register**.

## III. Compliance With the Administrative Procedure Act; The Paperwork Reduction Act; The Regulatory Flexibility Act; The Unfunded Mandates Reform Act; and Executive Orders 12866, 12988, and 13132

For purposes of the Administrative Procedure Act, 5 U.S.C. 551–559, this rule involves an agency procedure or practice, and therefore no notice of proposed rulemaking is required under section 553. Nonetheless, this is an interim rulemaking, with a provision for a 30-day public comment period. The Department will review all comments received during the comment period

and will consider any modifications that appear appropriate in adopting these rules as final.

The Department has determined that this rule contains no collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3521. However, the Department specifically invites comments on this determination. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications of the proposed regulations may be addressed to the Office of Management and Budget (OMB). Comments to the OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the DOL, Office of Management and Budget, Room 10235, Washington, DC 20503; Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers). You can also submit comments to the OMB by email at [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). The OMB will consider all written comments that agency receives within 30 days of publication of this rule. (Commenters are encouraged, but not required, to send a courtesy copy of any comments submitted to the OMB regarding the information collections by mail or courier to: U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).) As previously indicated, written comments directed to the Department may be submitted within 30 days of publication of this notice. Should a commenter believe this rule contains a covered information collection, then the Department and OMB seek comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. Because no notice of proposed rulemaking is required for procedural rules, the requirements of the RFA pertaining to regulatory flexibility analysis do not apply. However, even if the RFA were to apply, the Department certifies that this interim rule will not have a significant impact on a substantial number of small entities. Although the employer of a delinquent debtor would have to certify certain information about the debtor such as the debtor's employment status and earnings, that information is normally in the employer's payroll records. It would not take a significant amount of time or result in a significant cost for an employer to make this certification. An employer is not required to vary its normal pay cycle to comply with a garnishment order issued under these regulations.

For purposes of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501–1516, the Department has determined that the rule contains no Federal mandates, as defined in Title II of UMRA. Therefore the rule is not subject to the requirements of section 202 and 205 of UMRA.

Executive Orders 12866 and 12988 require that each agency write regulations that are easy to understand and specify how individual civil litigation rights will be affected. The Department has determined that this rule is drafted, to the extent practicable, under the standards established in those orders. However, the Secretary invites comments on how to make these proposed regulations easier to understand.

Executive Order 13132 requires us to ensure meaningful and timely input by state and local elected officials in the development of regulatory policies that have federalism implications. The interim rule 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.

## IV. Summary of Key Aspects of the Rule

This rule applies to debts owed to the Department or in connection with any program administered by the Department. The administrative wage garnishment process will be applied consistently throughout the Department.

The Department can enter into agreements, such as memoranda of understanding, with other Federal agencies permitting that agency to administer part or all of the Department's administrative wage garnishment process. Nothing in this regulation requires the Department to duplicate notices or administrative proceedings required by contract, this regulation, or other laws or regulations. Thus, for example, the Department is not required to provide a debtor with two hearings on the same issue merely because two different collection tools are used, each of which requires that the debtor be provided with a hearing.

Section 20.205 lists the notice requirements, which includes an explanation of the debtor's rights. The debtor is allowed to inspect Department records related to the debt, enter into a written repayment agreement, and have a hearing. A debtor can request one of two types of available hearings—a paper hearing or an oral hearing. The format of oral hearings is not limited to in-person and telephone hearings and may include new forms of technology. The hearing official has the authority to determine the kind of hearing and the amount of time allotted each hearing.

If a hearing is held, the Department can meet its initial burden by offering documentation, including a copy of the debt adjudication, which demonstrates the existence of the debt and its amount. Once the Department has established its prima facie case, the debtor can dispute the existence or amount of the debt. For example, the debtor can meet his or her burden by demonstrating that he or she is not the person who owes a debt to the Department, that he or she has not received payments from the Department or has not been fined by the Department, or that he or she has already paid the debt.

Additionally, the Federal Employees Compensation Act (FECA), 5 U.S.C. 8101–8193, contains a provision that precludes administrative and judicial review of agency determinations, which normally includes a repayment schedule. As a result, for hearings related to FECA debts, once the Department has made its prima facie case, the debtor has only two limited grounds on which he or she can demonstrate that an administrative wage garnishment is not appropriate. The debtor may not challenge the underlying merits of the determination that created the debt.

Section 20.209 describes how much the Department can withhold through administrative wage garnishment, which is up to 15%, and the employer's administrative wage garnishment duties.

A withholding order for family support would always have priority over an administrative wage garnishment order. If there are multiple federal garnishment orders, priority depends on which garnishment order was first obtained. When a debtor's disposable pay is already subject to one or more withholding orders with higher or equal priority with the Department's administrative wage garnishment order, the amount that the employer must withhold and remit to the Department would not be more than an amount calculated by subtracting the amount(s) withheld under the other withholding order(s) from 25% of the debtor's disposable pay. For example, if the employer is withholding 20% of a debtor's disposable pay for a family support or prior withholding order, the amount withheld for the subsequent withholding order issued under this section is limited to 5% of the debtor's disposable pay. When the family support or prior withholding order terminates, the amount withheld for the subsequent withholding order issued under this section may be increased to 15%.

#### List of Subjects in 29 CFR Part 20

Administrative wage garnishment, debt collection, Labor.

Signed at Washington, DC, on this 29th day of September, 2015.

**Thomas E. Perez,**  
*U.S. Secretary of Labor.*

For the reasons set forth in the preamble, the Department of Labor amends part 20 of title 29 of the Code of Federal Regulations as follows:

#### PART 20—FEDERAL CLAIMS COLLECTION

- 1. The authority citation for part 20 is revised to read as follows:

**Authority:** 31 U.S.C. 3711 *et seq.*; Subpart D is also issued under 5 U.S.C. 5514; Subpart E is also issued under 31 U.S.C. 3720A; Subpart F is also issued under 31 U.S.C. 3720D.

- 2. Add subpart F to read as follows:

#### Subpart F—Administrative Wage Garnishment

Sec.	
20.201	Purpose.
20.202	Scope.
20.203	Definitions.
20.204	General rule.
20.205	Notice requirements.
20.206	Hearing.
20.207	Wage garnishment order.
20.208	Certification by employer.
20.209	Amounts withheld.
20.210	Exclusions from garnishment.
20.211	Financial hardship.

20.212	Ending garnishment.
20.213	Actions prohibited by employer.
20.214	Refunds.
20.215	Right of Action.

#### § 20.201 Purpose.

This section provides procedures the U.S. Department of Labor may use to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent nontax debt owed to the Department. In accordance with the procedures set forth in 31 U.S.C. 3720D and 31 CFR 285.11, the Department may request that a non-Federal employer garnish the disposable pay of an individual to collect delinquent non-tax debt owed to the Department or in connection with any program administered by the Department.

#### § 20.202 Scope.

(a) This subpart applies to any non-tax debt owed to the U.S. Department of Labor or in connection with any program administered by the Department and to any entity that pursues recovery of such debt. The Department can enter into arrangements with other federal agencies to carry out its responsibilities under this part.

(b) This subpart shall apply notwithstanding any provision of State law.

(c) Nothing in this subpart precludes the compromise of a debt or the suspension or termination of a collection action in accordance with applicable law. See, for example, the Federal Claims Collection Standards (FCCS), 31 CFR parts 900–904.

(d) The receipt of payments pursuant to this subpart does not preclude the Department from pursuing other debt collection remedies separately or in conjunction with administrative wage garnishment, including the offset of Federal payments, to satisfy delinquent nontax debt owed to the Department.

(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the Federal salary offset procedures set forth in 5 U.S.C. 5514 and other applicable laws.

(f) Nothing in this subpart requires the Department to duplicate notices or administrative proceedings required by contract, this subpart, or other laws, regulations, or procedures.

#### § 20.203 Definitions.

As used in this section the following definitions shall apply:

(a) The term *business day* means Monday through Friday, not including Federal legal holidays. For purposes of

computation, the last day of the period will be included unless it is a Federal legal holiday.

(b) The term *day* means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, a Sunday, or a Federal legal holiday.

(c) The term *debt or claim* means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the Department by an individual, including debt administered by a third party as an agent for the Federal Government.

(d) The term *debtor* means an individual who owes a delinquent nontax debt to the Department.

(e) The term *delinquent nontax debt* means any nontax debt that has not been paid by the date specified in the initial written demand for payment, or applicable agreement, unless other satisfactory payment arrangements have been made. For purposes of this section, the terms “debt” and “claim” are synonymous and refer to delinquent nontax debt.

(f) The term *Department* means the United States Department of Labor.

(g) The term *disposable pay* means that part of the debtor’s compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this subpart, “amounts required by law to be withheld” include amounts for deductions such as social security taxes and withholding taxes but do not include any amount withheld pursuant to a court order.

(h) The term *employer* means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local Governments but does not include an agency of the Federal Government.

(i) The term *evidence of service* means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and to whom the document is being sent. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

(j) The term *garnishment* means the process of withholding amounts from an employee’s disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

(k) The term *hearing official* means any qualified individual, as determined by the Department.

(l) The term *withholding order* means any order for withholding or garnishment of pay issued by the Department. For purposes of this section, the terms “wage garnishment order” and “garnishment order” have the same meaning as “withholding order.”

#### § 20.204 General rule.

Whenever the Department determines that a delinquent debt is owed by an individual, to the Department or in connection with any program administered by the Department, the Department may initiate proceedings administratively to garnish the wages of the delinquent debtor.

#### § 20.205 Notice requirements.

(a) At least 30 days before the initiation of garnishment proceedings, the Department shall mail, by first class mail to the debtor’s last known address a written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The intention of the Department to initiate proceedings to collect the debt through deductions from pay until the debt and all accumulated interest, penalties and administrative costs are paid in full; and

(3) An explanation of the debtor’s rights, including those set forth in paragraph (b) of this section, and the time frame within which the debtor may exercise his or her rights.

(b) The debtor shall be afforded the opportunity:

(1) To inspect and copy the Department’s records related to the debt;

(2) To enter into a written repayment agreement with the Department under terms agreeable to the Department; and

(3) For a hearing in accordance with § 20.206 before a hearing official. The debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under 20.206(b)(2).

(c) The Department will retain evidence of service indicating the date of mailing of the notice.

#### § 20.206 Hearing.

(a) *Request for hearing.* If the debtor submits a written request for a hearing concerning the existence or amount of the debt or the terms of the repayment schedule, the Department shall provide a written or oral hearing in accordance with 31 CFR 285.11(f) before a hearing official.

(b) *Type of hearing or review.* (1) For purposes of this subpart, whenever the Department is required to afford a debtor a hearing, the Department shall

provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.

(2) If a hearing official determines that an oral hearing is appropriate, the time and location of the hearing, including the amount of time allotted for the hearing, shall be at the discretion of the hearing official. An oral hearing may, at the discretion of the hearing official, be conducted either in-person, by telephone conference, or by other electronic means. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All charges incurred during the hearing as a result of the use of telephone conference or other electronic means will be the responsibility of the Department.

(3) In those cases when an oral hearing is not required by this section, a hearing official shall nevertheless accord the debtor a “paper hearing,” that is, a hearing official will decide the issues in dispute based upon a review of the written record. The hearing official will establish a reasonable deadline for the submission of evidence.

(c) *Effect of timely request.* Subject to § 20.206(k), if the debtor’s written request is received by the Department on or before the 15th business day following the mailing of the notice described in § 20.205(a), the Department shall not issue a withholding order under § 20.207 until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (h) and (i) of this section has been rendered.

(d) *Failure to timely request a hearing.* If the debtor’s written request is received by the Department after the 15th business day following the mailing of the notice described in § 20.205(a), the Department shall provide the debtor with a hearing before a hearing official. However, the Department will not delay issuance of a withholding order unless the Department determines that the delay in filing the request was caused by factors beyond the debtor’s control or the Department receives information that the Department believes justifies a delay or cancellation of the withholding order.

(e) *Procedure.* After the debtor requests a hearing, the hearing official shall notify the debtor of:

(1) The date and time of a hearing conducted by telephone conference or other electronic means;

(2) The date, time, and location of an in-person oral hearing; or  
 (3) The deadline for the submission of evidence for a written hearing.

(f) *Burden of proof.* (1) The agency will have the burden of going forward to prove the existence or amount of the debt. The Department can satisfy this burden by submitting a certified copy of the adjudication or other document that establishes the existence of the debt and the amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that:

- (i) The terms of the repayment schedule are unlawful;
- (ii) The terms would cause a financial hardship to the debtor; or
- (iii) The collection of the debt may not be pursued due to operation of law.

(3) Debts that arise under the Federal Employees Compensation Act, 5 U.S.C. 8101–8193, are subject to preclusion of administrative and judicial review, as described at 5 U.S.C. 8128(b). As a result, once the Department meets its burden of showing the existence and amount of a debt under this statute, the debtor must prove by a preponderance of the evidence that:

- (i) The documentation put forward by the agency to establish the debt was not authentic; or
- (ii) The debt was incurred by someone other than the debtor as a result of identity theft.

(g) *Record.* The hearing official must maintain a summary record of any hearing provided under this section.

(h) *Hearing procedure.* A hearing is an informal process and the hearing official is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure. However, witnesses who testify in oral hearings must do so under affirmation, so that 18 U.S.C. 1001 applies.

(i) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, as soon as practicable, but not later than 60 days after the date on which the request for such hearing was received. If a hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

- (1) The Department may not issue a withholding order until the hearing is held and a decision rendered; or
- (2) If the Department had previously issued a withholding order to the debtor's employer, the Department must suspend the withholding order

beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(j) *Content of decision.* The written decision shall include:

- (1) A summary of the facts presented;
- (2) The hearing official's findings, analysis, and conclusions; and
- (3) The terms of any repayment schedules, if applicable.

(k) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act, 5 U.S.C. 701–706.

(l) *Failure to appear.* In the absence of good cause shown to the hearing official, a debtor who fails to appear at a hearing scheduled pursuant to this section will be deemed as not having timely filed a request for a hearing.

#### § 20.207 Wage garnishment order.

(a) Unless the Department receives information that the Department believes justifies a delay or cancellation of the withholding order, the Department shall send, by first class mail, a withholding order to the debtor's employer:

(1) Within 30 days after the debtor fails to make a timely request for a hearing (*i.e.*, within 15 business days after the mailing of the notice described in § 20.205(a), or,

(2) If a timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the hearing official, or,

(3) As soon as reasonably possible thereafter.

(b) The withholding order sent to the employer under paragraph (a) of this section shall be in the form prescribed by the Secretary of the Treasury. The withholding order shall contain the signature of, or the image of the signature of, the Secretary of Labor or his or her delegatee. The order shall contain only the information necessary for the employer to comply with the withholding order. Such information includes the debtor's name, address, and Employee Identification Number, as well as instructions for withholding and information as to where payments should be sent.

(c) The Department will retain evidence of service indicating the date of mailing of the order.

#### § 20.208 Certification by employer.

Along with the withholding order, the agency shall send to the employer a certification in the form prescribed by the Secretary of the Treasury. The employer shall complete and return the

certification to the Department within the time frame prescribed in the instructions to the form. The certification will address matters such as information about the debtor's employment status and disposable pay available for withholding.

#### § 20.209 Amounts withheld.

(a) After an employer receives a garnishment order, the employer must deduct from all disposable pay paid to the applicable debtor during each pay period the amount of garnishment described in paragraph (b) of this section.

(b) Subject to the provisions in paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of:

- (1) The amount indicated on the garnishment order up to 15 percent of the debtor's disposable pay; or
- (2) The amount set forth in 15 U.S.C. 1673(a)(2) (Restriction on Garnishment). The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage. See 29 CFR 870.10.

(c) When a debtor's pay is subject to withholding orders with priority the following shall apply:

(1) Unless otherwise provided by Federal law, withholding orders issued under this subpart shall be paid in the amounts set forth under paragraph (b) of this section and shall have priority over other withholding orders which are served later in time. However, withholding orders for family support shall have priority over withholding orders issued under this subpart.

(2) If amounts are being withheld from a debtor's pay pursuant to a withholding order served on an employer before a withholding order issued pursuant to this subpart, or if a withholding order for family support is served on an employer at any time, the amounts withheld pursuant to the withholding order issued under this subpart shall be the lesser of:

- (i) The amount calculated under paragraph (b) of this section, or
- (ii) An amount equal to 25 percent of the debtor's disposable pay less the amount(s) withheld under the withholding order(s) with priority.

(3) If a debtor owes more than one debt to the Department, the Department may issue multiple withholding orders provided that the total amount garnished from the debtor's pay for such orders does not exceed the amount set forth in paragraph (b) of this section.

(d) An amount greater than that set forth in paragraphs (b) and (c) of this

section may be withheld upon the written consent of the debtor.

(e) The employer shall promptly pay to the Department all amounts withheld in accordance with the withholding order issued pursuant to this subpart.

(f) An employer shall not be required to vary its normal pay and disbursement cycles in order to comply with the withholding order.

(g) Any assignment or allotment by an employee of his earnings shall be void to the extent it interferes with or prohibits execution of the withholding order issued under this subpart, except for any assignment or allotment made pursuant to a family support judgment or earlier withholding order.

(h) The employer shall withhold the appropriate amount from the debtor's wages for each pay period until the employer receives notification from the Department to discontinue wage withholding. The garnishment order shall indicate a reasonable period of time within which the employer is required to commence wage withholding.

#### **§ 20.210 Exclusions from garnishment.**

The Department may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months. The debtor has the burden of informing the Department (or any other federal agency exercising the Department's authority under this subpart) of the circumstances surrounding an involuntary separation from employment.

#### **§ 20.211 Financial hardship.**

(a) A debtor whose wages are subject to a wage withholding order under this subpart, may, at any time, request a review by the Department of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.

(b) A debtor requesting a review under paragraph (a) of this section shall submit the basis for claiming that the current amount of garnishment results in a financial hardship to the debtor, along with supporting documentation. The Department shall consider any information submitted in accordance with procedures and standards established by the agency.

(c) If a financial hardship is found, the Department shall downwardly and temporarily adjust the amount garnished to reflect the debtor's financial condition. The Department will notify the employer of any

adjustments to the amounts to be withheld.

#### **§ 20.212 Ending garnishment.**

(a) Once the Department has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs consistent with the FCCS, the Department shall send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the Department shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

#### **§ 20.213 Actions prohibited by employer.**

An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this subpart.

#### **§ 20.214 Refunds.**

(a) If a hearing official, at a hearing held pursuant to § 20.206, determines that a debt is not legally due and owing to the Department, the Department shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this section shall not bear interest.

#### **§ 20.215 Right of action.**

The Department may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with §§ 20.207 and 20.209. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this subpart, "termination of the collection action" occurs when the agency has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if the agency has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of 1 year.

[FR Doc. 2015-25427 Filed 10-7-15; 8:45 am]

**BILLING CODE 4510-7C-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[Docket No. USCG-2013-0320]

RIN 1625-AA00

#### **Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Navy Pier Southeast Safety Zone within the Chicago Harbor during specified periods on from September 12, 2015 through October 31, 2015. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after multiple firework events. During the enforcement periods listed below, no person or vessel may enter the safety zone without permission of the Captain of the Port Lake Michigan.

**DATES:** The regulations in 33 CFR 165.931 will be enforced at specified times between 8:00 p.m. on September 12, 2015 through 10:00 p.m. on October 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call or email LT Lindsay Cook, Waterways Management Division, Marine Safety Unit Chicago, telephone 630-986-2155, email address *D09-DG-MSUChicago-Waterways@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931, on September 12, 2015 at 8:00 p.m. until 9:00 p.m., September 27, 2015 at 7:45 p.m. until 8:30 p.m., and on October 31, 2015 at 9:15 p.m. until 10:00 p.m.

This safety zone encompasses the waters of Lake Michigan within Chicago Harbor bounded by coordinates beginning at 41°53'26.5" N., 087°35'26.5" W.; then south to 41°53'7.6" N., 087°35'26.3" W.; then west to 41°53'7.6" N., 087°36'23.2" W.; then north to 41°53'26.5" N., 087°36'24.6" W. then east back to the point of origin (NAD 83). All vessels must obtain permission from the Captain of the Port Lake Michigan, or an on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the

Port Lake Michigan, or an on-scene representative.

This document is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Lake Michigan determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may suspend enforcement and provide notice via a Broadcast Notice to Mariners. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16.

Dated: September 9, 2015.

**K.M. Moser,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Lake Michigan.*

[FR Doc. 2015-25728 Filed 10-7-15; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2015-0880]

RIN 1625-AA87

#### Security Zone: Escorted Vessels, Los Angeles-Long Beach, CA, Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** The Coast Guard is establishing a security zone around any vessel escorted by one or more Coast Guard, State, or local law enforcement assets on the navigable waters of the Captain of the Port (COTP) Zone, Los Angeles-Long Beach, California. This action is necessary to protect personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature. No vessel or person is allowed in this zone unless authorized by the Captain of the Port or a designated representative.

**DATES:** This rule is effective without actual notice from October 8, 2015. For the purposes of enforcement, actual notice will be used from September 18, 2015, until October 8, 2015.

Comments and related material must be received by the Coast Guard on or before December 17, 2015. Requests for public meetings must be received by the

Coast Guard on or before November 18, 2015.

**ADDRESSES:** You may submit comments identified by docket number USCG-2015-0880 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Jevon James, Waterways Management, U.S. Coast Guard; telephone (310)521-3860, email [Jevon.L.James2@uscg.mil](mailto:Jevon.L.James2@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Acronyms**

DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking

##### **A. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086). Documents mentioned in this rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

##### **B. Regulatory History and Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM and delaying the effective date would be impracticable, as publication of an NPRM would delay the effective date of this rule past the time where it was needed. To ensure safe boating and the appropriate distance away from the escorted vessel is maintained, it is imperative that a standard exclusionary zone be broadcast and safe speeds be followed for all escorted vessels.

For the same reason above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

##### **C. Basis and Purpose**

The terrorist attacks of September 2001 heightened the need for development of various security measures throughout the seaports of the United States, particularly around vessels and facilities whose presence or movement creates a heightened vulnerability to terrorist acts; or those for which the consequences of terrorist acts represent a threat to national security. The President of the United States has found that the security of the United States is and continues to be endangered following the attacks of September 11 (E.O. 13,273, 67 FR 56215, Sep. 3, 2002 and 79 FR 56475, Sep. 19, 2014).

The Captain of the Port Los Angeles-Long Beach, California conducts port security operations involving vessels that require additional security, including, but not limited to, high capacity passenger vessels, vessels carrying sensitive Department of Defense cargoes, vessels carrying dangerous cargoes, and foreign naval vessels. The Captain of the Port has determined that these vessels have a significant vulnerability to subversive activity by other vessels or persons, or, in some cases, themselves pose a risk to a port and the public within the Captain of the Port Zone, as described in 33 CFR 3.55-10. This rule enables the COTP Los Angeles-Long Beach to provide effective port security, while minimizing the public's confusion and easing the administrative burden of implementing separate temporary security zone rules for each escorted vessel.

##### **D. Discussion of the Interim Rule**

This rule establishes a security zone that prohibits persons and vessels from coming within 500 yards of all escorted



vessels within navigable waters, as defined in 33 CFR 2.36, of the Captain of the Port Zone Los Angeles-Long Beach, CA, as described in 33 CFR 3.55–10. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed, at a safe distance from the escorted vessel as directed by the on scene Coast Guard, State, or local law enforcement agency, and must comply with all orders issued by the COTP or a designated representative. Outside of this arrangement, no vessel or person may enter within a 500-yard radius of an escorted vessel.

An escorted vessel is defined as a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as listed below:

- (1) Coast Guard surface or air asset displaying the Coast Guard insignia.
- (2) State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used. In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

#### E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Ports within the Captain of the Port Zone Los Angeles-Long Beach.

##### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in the vicinity of escorted vessels. This rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, in most cases leaving ample space for vessels to navigate around them. The zones will not significantly impact commercial and passenger vessel traffic patterns, and mariners will be notified of the zones via Broadcast Notice to Mariners. Where such space is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels to transit through the zones as needed.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

##### 3. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

##### 4. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

##### 5. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

##### 6. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

##### 7. Protest Activities

The Coast Guard respects the First Amendment rights of protesters.

Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.11731 to read as follows:

#### § 165.11731 Security Zone: Escorted Vessels, Los Angeles-Long Beach, CA, Captain of the Port Zone.

(a) *Definitions.* The following definitions apply to this section:

*COTP* means Captain of the Port Los Angeles-Long Beach, CA (LALB).

*Designated representatives* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the COTP, in the enforcement of the security zone.

*Escorted vessel* means a vessel, other than a large U.S. naval vessel as defined in § 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as listed below:

- (1) Coast Guard surface or air asset displaying the Coast Guard insignia.
- (2) State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

(3) When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used. In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

*Minimum safe speed* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and

configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

- (1) On a plane;
- (2) In the process of coming up onto or coming off a plane; or
- (3) Creating an excessive wake.

(b) *Regulated area.* All navigable waters, as defined in 33 CFR 2.36, within the Captain of the Port Zone, Los Angeles-Long Beach, California 33 CFR 3.55–10.

(c) *Security zone.* A 500-yard security zone is established around each escorted vessel within the regulated area described in paragraph (b) of this section. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the regulated area in this section.

(d) *Regulations.* (1) The general regulations for security zones contained in § 165.33 apply to this section.

(2) A vessel may request the permission of the COTP LALB or a designated representative to enter the security zone described in paragraph (c) of this section. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the orders of the COTP or a designated representative.

(e) *Notice of security zone.* The COTP will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by Broadcast Notice to Mariners. Coast Guard assets or other Federal, State or local law enforcement agency assets will be clearly identified by lights, vessel markings, or with agency insignia. When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used.

(f) *Contact information.* The COTP LALB may be reached via phone at (310) 521–3801. Any on scene Coast Guard or designated representative assets may be reached via VHF-FM channel 16.

Dated: September 15, 2015.

**J. F. Williams,**

*Captain, U.S. Coast Guard, Captain of the Port Los Angeles-Long Beach.*

[FR Doc. 2015–25557 Filed 10–7–15; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2015-0384; FRL-9935-22-Region 4]

### Approval and Promulgation of Implementation Plans; Kentucky: New Sources in or Impacting Nonattainment Areas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve the Commonwealth of Kentucky's September 23, 2011, State Implementation Plan (SIP) revision, submitted through the Kentucky Division for Air Quality (KY DAQ), which modifies the SIP by making changes to Kentucky regulation, "Review of new sources in or impacting upon nonattainment areas." EPA has determined that Kentucky's requested SIP revision meets the applicable provisions of the Clean Air Act (CAA or Act) and EPA regulations regarding Nonattainment New Source Review (NNSR) permitting.

**DATES:** This rule is effective November 9, 2015.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0384. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays. **FOR FURTHER INFORMATION CONTACT:** Zuri Farnagalo, Air Regulatory Management

Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Farnago can be reached by telephone at (404) 562–9152 and via electronic mail at [farnago.zuri@epa.gov](mailto:farnago.zuri@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On September 23, 2011, KY DAQ submitted a SIP revision to EPA for approval that makes several changes to Kentucky's regulations at 401 Kentucky Administrative Regulations (KAR) 51:052, *Review of new sources in or impacting nonattainment areas*. These regulations establish air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting upon, areas designated nonattainment for any primary national ambient air quality standard. To ensure improvement of air quality in those areas, the emissions resulting from construction or modification of a major stationary source must be offset with compensating emission reductions.

Kentucky's requested SIP revision would revise 401 KAR 51:052 by: (1) Changing Section 5, paragraph (6)(b) to authorize new or modified sources to offset their emission increases with emission reductions achieved by shutting down an existing unit or curtailing production or operating hours prior to the new source application date (if specified conditions are met), (2) adding new and more comprehensive language to Section 5, paragraph (6)(b) describing how to calculate offsetting emission reductions obtained from a source shutdown or curtailment (3) amending Section 4, paragraph (3)(a) to establish an offset ratio of at least 1:1 for pollutants other than volatile organic compounds and nitrogen oxides, and (4) making changes to the introductory paragraph to 401 KAR 51:052 and Section 5, paragraph (3)(e) that update and clarify these provisions.

In a notice of proposed rulemaking (NPR) published on August 11, 2015, EPA proposed to approve Kentucky's revisions to 401 KAR 51:052, *Review of new sources in or impacting nonattainment areas* revisions. See 80 FR 48051. The details of Kentucky's submittal and the rationale for EPA's action are provided in the NPR. EPA did not receive any relevant comments on the proposed action.

##### II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes

incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Kentucky Rule 401 KAR 51:052 entitled "*Review of new sources in or impacting nonattainment areas*," which became effective in the Commonwealth of Kentucky on August 4, 2011. EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the Region 4 office (see the ADDRESSES section of this preamble for more information).

##### III. Final Action

EPA is taking final action to approve the Commonwealth of Kentucky's September 23, 2011, SIP revision. EPA has determined that the changes to Kentucky's Rule 401 KAR 51:052, *Review of new sources in or impacting nonattainment areas*, are approvable because they are consistent with CAA section 110 and EPA's regulations regarding NNSR permitting at 40 CFR 51.165.

##### IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 7, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

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

Dated: September 24, 2015.  
**Heather McTeer Toney,**  
*Regional Administrator, Region 4.*  
 40 CFR parts 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart S—Kentucky**

■ 2. In § 52.920, table 1 in paragraph (c) is amended under Chapter 51 by revising the entry for “401 KAR 51:052” to read of follows:

**§ 52.920 Identification of plan.**

\* \* \* \* \*  
 (c) \* \* \*

TABLE 1—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards</b>				
401 KAR 51:052 .....	Review of new sources in or impacting nonattainment areas.	8/4/2011	10/8/2015 [Insert <b>Federal Register</b> citation]	*
*	*	*	*	*

\* \* \* \* \*  
 [FR Doc. 2015–25575 Filed 10–7–15; 8:45 am]  
**BILLING CODE 6560–50–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 141021887–5172–02]

RIN 0648–XE224

**Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Atka Mackerel in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of the 2015 Atka mackerel incidental catch allowance (ICA) for the Bering Sea

subarea and Eastern Aleutian district (BS/EAI) to the Amendment 80 cooperative allocations in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2015 total allowable catch of Atka mackerel in the BSAI to be fully harvested.

**DATES:** Effective 12 hrs Alaska local time (A.l.t.), October 5, 2015 through 2400 hrs, A.l.t., December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2015 Atka mackerel ICA for the BS/EAI is 1,000 metric tons (mt) and

2015 Atka mackerel total allowable catch allocated to the Amendment 80 cooperatives is 20,696 mt as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015).

The Administrator, Alaska Region, NMFS, has determined that 700 mt of the Atka mackerel ICA for the BS/EAI will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 700 mt of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated Atka mackerel following the procedures set forth in § 679.91(f)(3).

The harvest specifications for Atka mackerel included in the harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) are revised as follows: 300 mt of Atka mackerel for the BS/EAI ICA and 21,395 mt of Atka mackerel for the Amendment 80 cooperative allocations in the BS/EAI. Table 6 is revised and republished in its entirety as follows:

TABLE 6—FINAL 2015 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC  
[Amounts are in metric tons]

Sector <sup>1</sup>	Season <sup>2,3,4</sup>	2015 Allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District <sup>5</sup>	Western Aleutian District
TAC .....	n/a .....	27,000	17,000	10,500
CDQ reserve .....	Total .....	2,889	1,819	1,124
	A .....	1,445	910	562
	Critical Habitat .....	n/a	546	337
	B .....	1,445	910	562
	Critical Habitat .....	n/a	546	337
ICA .....	Total .....	300	75	40
Jig <sup>6</sup> .....	Total .....	116	0	0
BSAI trawl limited access .....	Total .....	2,301	1,511	0
	A .....	1,150	755	0
	Critical Habitat .....	n/a	453	0
	B .....	1,150	755	0
	Critical Habitat .....	n/a	453	0
Amendment 80 sectors .....	Total .....	21,395	13,595	9,337
	A .....	10,697	6,798	4,668
	B .....	10,697	6,798	4,668
Alaska Groundfish Cooperative .....	Total <sup>6</sup> .....	12,030	8,111	5,741
	A .....	6,015	4,056	2,871
	Critical Habitat .....	n/a	2,433	1,722
	B .....	6,015	4,056	2,871
	Critical Habitat .....	n/a	2,433	1,722
Alaska Seafood Cooperative .....	Total <sup>6</sup> .....	9,365	5,484	3,595
	A .....	4,683	2,742	1,798
	Critical Habitat .....	n/a	1,645	1,079
	B .....	4,683	2,742	1,798
	Critical Habitat .....	n/a	1,645	1,079

<sup>1</sup> Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

<sup>2</sup> Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

<sup>3</sup> The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

<sup>4</sup> Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

<sup>5</sup> Section 679.20(a)(8)(ii)(C)(1)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of critical habitat; (a)(ii)(C)(1)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and (a)(8)(ii)(C)(2) requires the TAC in Area 543 shall be no more than 65 percent of ABC.

<sup>6</sup> Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters dependent upon Atka mackerel in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of Atka mackerel ICA in the BS/EAI, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperatives that participate in this BS/EAI fishery.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public

interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Atka mackerel from the BS/EAI ICA to the Amendment 80 cooperatives in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 25, 2015.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: October 5, 2015

**Emily H. Menashes,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015-25676 Filed 10-5-15; 4:15 pm]

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# Proposed Rules

Federal Register

Vol. 80, No. 195

Thursday, October 8, 2015

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

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 880

[Docket No. FDA-2015-N-0701]

#### General Hospital and Personal Use Devices: Renaming of Pediatric Hospital Bed Classification and Designation of Special Controls for Pediatric Medical Crib; Classification of Medical Bassinet

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to rename pediatric hospital beds as pediatric medical cribs and establish special controls for these devices. FDA is also proposing to establish a separate classification regulation for medical bassinets, previously under the pediatric hospital bed classification regulation, as a class II (special controls) device. The proposed regulation for both pediatric medical cribs and medical bassinets would also include the Consumer Product Safety Commission's (CPSC) mattress flammability standards for the mattresses intended for use with these devices. In addition, this proposed rule would require prescription use of pediatric medical cribs and bassinets.

**DATES:** Submit either electronic or written comments by December 7, 2015. See section VII of this document for the proposed effective date of a final rule based on this proposed rule.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket No. FDA-2015-N-0701 for "General Hospital and Personal Use Devices: Renaming of Pediatric Hospital Bed Classification and Designation of Special Controls for Pediatric Medical Crib; Classification of Medical Bassinet." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Ryan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993-0002, 301-796-6283.

#### SUPPLEMENTARY INFORMATION:

##### I. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94-295), the Safe Medical Device Amendments of 1990 (SMDA) (Pub. L. 101-629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110-85), and the FDA Safety and Innovation Act (Pub. L. 112-

144), among other amendments, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) establishes three categories (classes) of devices, based on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Most generic types of devices that were on the market before May 28, 1976, the date of the 1976 amendments (generally referred to as preamendments devices), have been classified by FDA through the issuance of regulations in accordance with the procedures set forth in section 513(c) and (d) of the FD&C Act into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as post-amendments devices), are classified automatically by statute (section 513(f) of the FD&C Act) into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless FDA initiates one of the following procedures: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the FD&C Act; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i), to a predicate device that is already legally marketed. The Agency determines whether new devices are substantially equivalent to predicate devices through review of premarket notifications under section 510(k) of the FD&C Act (21 U.S.C. 360(k)). Section 510(k) of the FD&C Act and its implementing regulations, codified in Title 21 of the Code of Federal Regulations (21 CFR part 807, subpart E), require persons who intend to market a new device that does not require a premarket approval application under section 515 of the FD&C Act (21 U.S.C. 360e) to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is “substantially equivalent” within the meaning of section 513(i) of the FD&C Act to a legally marketed device that does not require premarket approval.

Section 513(a)(1)(B) of the FD&C Act defines class II devices as those devices for which the general controls in section 513(a)(1)(A) by themselves are insufficient to provide reasonable assurance of safety and effectiveness,

but for which there is sufficient information to establish special controls to provide such assurance, including the issuance of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the Agency deems necessary to provide such assurance (see also 21 CFR 860.3(c)(2)).

Section 510(m)(2) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. Devices under the pediatric hospital bed classification regulation were exempted from premarket notification, subject to certain limitations, in accordance with section 510(m) of the FD&C Act (63 FR 59222 at 59229, November 3, 1998).

## II. Regulatory History and Description of the Devices

FDA classified pediatric hospital beds (21 CFR 880.5140) as class II devices (45 FR 69678 at 69694, October 21, 1980), and later exempted them from premarket notification (510(k)), in a final rule published in the **Federal Register** of November 3, 1998 (63 FR 59222 at 59229). In § 880.5140, a pediatric hospital bed is defined as “a device intended for medical purposes that consists of a bed or crib designed for the use of a pediatric patient, with fixed end rails and movable and latchable side rails. The contour of the bed surface may be adjustable.”

A medical bassinet is a non-powered device that consists of two components: (1) A basket, the sleep or bed component, which is typically made of plastic and (2) a durable frame with wheels, which holds the basket or bed component (FDA refers to this component as a “basket or bed component” in this proposed rule). The basket or bed component is a box-like structure, generally made of a clear, high-impact resistant plastic material, with an open top and four stationary walls to keep the baby in place. Medical bassinets are typically used in hospital settings for infants up to 5 months in age. Medical bassinets currently fall under the pediatric hospital bed classification regulation.

## III. Proposed Regulation

Pediatric medical cribs that meet the definition of a device in section 201(h) of the FD&C Act (21 U.S.C. 321(h)) are regulated by FDA (referred to as

pediatric medical cribs or cribs intended for medical purposes) (product code FMS) and, if this rule is finalized, will have to comply with the special controls identified in the final regulation for pediatric medical cribs. Cribs outside of the device definition (referred to as cribs for non-medical purposes) must meet the CPSC’s regulations and guidelines. A crib designed for the use of a pediatric patient may meet the medical device definition if it is intended for use in the cure, mitigation or treatment of disease (see section 201(h) of the FD&C Act).

In the **Federal Register** of December 28, 2010 (75 FR 81766), the CPSC issued a final rule prohibiting the use of the drop-side rail design for non-medical cribs in consumer households as of June 28, 2011. Child care facilities, family child care homes, and places of public accommodation (e.g., hotels and motels) had to comply with the rule as of December 28, 2012. CPSC’s rule establishes new standards for full-size and non-full-size cribs used for non-medical purposes, which effectively prohibit the manufacture or sale of cribs for non-medical purposes with a drop-side rail design in households, child care facilities, family child care homes, and places of public accommodation. This rule did not affect pediatric medical cribs regulated by FDA, which may contain a drop-side rail design that includes movable and latchable side and end rails.

Because drop-side rail cribs for non-medical purposes and pediatric medical cribs are regulated by different agencies, CPSC consulted with FDA about the impact their final rule could have on settings, such as nursery schools and day care centers, where pediatric medical cribs with drop-side rails are often used for pediatric patients after they have been discharged from a health care facility. CPSC, which regulates consumer products, including drop-side rail cribs not intended for medical purposes, received reports of deaths of children attributable to entrapment and/or strangulation caused by the malfunctioning of drop-side rail cribs.

Although drop-side cribs for non-medical purposes are now prohibited, there is still a need for pediatric medical cribs with drop-side rails inside and outside of traditional health care settings. CPSC and FDA have heard from medical device consumers and health care providers that pediatric medical cribs with drop-side rails are extremely helpful for patient care in hospital settings and even outside of traditional health care settings, such as day care centers caring for infants and children with disabilities, because they allow parents and care givers easy

access to children to perform routine and emergency medical procedures, including, but not limited to, CPR, blood collection, IV insertion, respiratory care, and skin care. These drop-side rail cribs also make it easier for hospital staff to facilitate safe patient transport and reduce the chance of caregiver injury. Health care workers have stated that they need to have continued access to these medical cribs with drop-side rails (Ref. 1). Therefore, FDA is proposing to permit manufacturers to continue to manufacture and sell medical cribs with the drop-side rail design in traditional health care settings and to permit the use of pediatric medical cribs with drop-side rail designs outside of traditional health care settings through prescription use only (it is noted that State child care licensing agencies are generally responsible for overseeing day care providers while FDA is responsible for medical devices).

FDA is proposing to revise the identification in § 880.5140 to include only pediatric medical cribs, establish special controls for this device, and change the name of the classification regulation from “pediatric hospital bed” to “pediatric medical crib.” The Agency is taking these actions to clarify the devices that fall under this particular classification regulation and establish special controls the Agency believes are necessary for a reasonable assurance of safety and effectiveness. In addition, FDA is proposing that use of a pediatric medical crib be restricted to prescription use in accordance with 21 CFR 801.109. In order to use or administer use of pediatric medical cribs, authorization must be made by a practitioner licensed by law through a prescription for the device.

This rule also proposes to create a separate regulation for medical bassinets and establish special controls for this device type to provide a reasonable assurance of safety and effectiveness. In addition, FDA is proposing that use of medical bassinets be restricted to prescription use in accordance with 21 CFR 801.109. In order to use or administer use of medical bassinets, authorization must be made by a practitioner licensed by law through a prescription for the device. FDA proposes not to change the 510(k) exempt status of pediatric medical cribs and medical bassinets.

Devices currently under the pediatric hospital bed classification regulation include: Open pediatric medical cribs, medical bassinets, pediatric cribs with integrated air mattresses, youth beds, pediatric stretchers, crib enclosure beds, and cuddle-carrier infant beds. If this

proposed rule is finalized, devices that do not meet the definition of “pediatric medical crib” will be administratively moved to more appropriate class II regulations, and no longer be under the revised pediatric hospital bed classification regulation. At that time, FDA proposes to send manufacturers of the remaining pediatric hospital beds notices identifying the new classification regulation and product code under which the device will be classified.

If this proposed rule is finalized, FDA intends to move the following medical devices listed under § 880.5140 to devices with similar intended uses and class II regulations: Pediatric cribs with integrated air mattresses to 21 CFR 890.5170, “Powered flotation therapy bed;” youth beds to either 21 CFR 880.5100, “AC powered adjustable hospital bed,” or 21 CFR 880.5120, “Manual adjustable hospital bed,” depending on whether they are powered or not; pediatric stretchers to 21 CFR 880.6910, “Wheeled stretchers;” and crib enclosure beds to 21 CFR 880.6760, “Protective restraint.” This action would not have any substantive effect on the current marketing status of the devices. However, manufacturers of these devices would need to refer to the new regulation classification and product code provided by the Agency in future interactions with FDA.

As discussed in section IV, an analysis of Medical Device Reports (MDRs) submitted to the Manufacturer and User Facility Device Experience (MAUDE) database from January 1, 2005, to September 1, 2015, indicated 516 adverse events associated with pediatric medical cribs including 15 serious injuries. The adverse events associated with pediatric medical cribs were assessed to better understand the risks and establish the proposed special controls for this device. FDA believes that sufficient information is available to establish special controls to provide a reasonable assurance of the safety and effectiveness of the device.

As discussed further in section VI, FDA believes risks to health resulting from use of these cribs would be effectively mitigated by the special controls proposed in this rule, and that these controls, in combination with the general controls, would provide a reasonable assurance of safety and effectiveness for pediatric medical cribs for their intended use. Therefore, FDA is proposing new safety requirements and allowing medical cribs in homes and day cares only when medically necessary.

FDA is also taking this opportunity to address adverse event reports pertaining

to medical bassinets by proposing to establish special controls for these devices to provide a reasonable assurance of safety and effectiveness. FDA has received adverse events from hospitals regarding incidents of medical bassinet tipping and improper cleaning of the basket or bed component that caused cracks and crazing, which have resulted in patient injury. The Agency is proposing to separate medical bassinets from other types of pediatric hospital beds to allow for more targeted postmarket surveillance of these devices. FDA believes the special controls it is proposing here, in combination with the general controls, would provide a reasonable assurance of safety and effectiveness for medical bassinets.

#### IV. Risks to Health

##### A. Pediatric Medical Crib

Between January 1, 2005, and September 1, 2015, FDA received 516 adverse event reports, or MDRs, associated with open pediatric medical cribs, through the Agency’s MAUDE database. There were 15 adverse event reports of serious injuries including 6 reports of entrapment, which were predominantly extremity entrapments of legs or arms. The majority of MDRs for medical cribs were for malfunctions such as drop-side rails not latching or lowering, brakes not holding, wheels or casters breaking, and where applicable, scales not reading correct weights. These malfunctions (501 reports) were not associated with any adverse health effects. After considering available information, FDA determined that the following risks to health are associated with the use of pediatric medical cribs:

- *Injury resulting from mechanical or structural failure of the device—*

Mechanical or structural failure of the crib can result in failure of load-bearing components such as the wheels or casters, or failure of the latches or other locking mechanisms that secure the sides of the crib. These failures can result in injuries, as demonstrated by the MDRs received in FDA’s database.

- *Pinching, laceration, splinters, and foreign body ingestion—*Depending on the material of the pediatric crib, certain cribs may peel or crack and may expose pediatric patients to substances or materials that may be toxic or may cause abrasions or lacerations if the surface of the crib material is compromised.

- *Entrapment, falls, and strangulation—*Pediatric medical cribs may cause entrapment of patient limbs if the width of the side rails are not correct and if there are gaps between the mattress and crib frame that are larger



than the width of two fingers. Depending on the height requirements of the rails a pediatric patient may escape or fall from the crib. The term “entrapment” refers to circumstances where a patient is caught, trapped, or entangled in the space in or about the bed rail, mattress, or hospital bed frame.

- **Burns**—Certain flammable materials used in the construction of pediatric medical cribs may allow for the spread of fire, which may result in serious injuries. Fires can spread easily in hospital rooms with a patient using oxygen. The free-flowing oxygen can intensify a fire, which can rapidly spread to flammable objects in the room, including crib mattresses.

- **Use error**—Use error may contribute to or exacerbate any of the previously mentioned adverse events. For example, a user may be unaware that a side rail did not latch, or may fail to properly maintain a pediatric medical crib. Therefore, adequate instructions for use and user education are essential to safe device operation.

**B. Medical Bassinet**

Between January 1, 2005, and September 1, 2015, FDA received 40 adverse event reports associated with this device type. The most common MDRs for medical bassinets include reports of malfunctions such as casters or wheels not working, which have caused tipping, and broken bassinet base components, such as doors and drawers, or collapse or breakage of utility shelves or chart holders. There are also reports of the plastic sleep basket or bed component crazing (cracking), resulting in sharp edges and cuts to hospital personnel.

FDA has considered the available information and determined that the following risks to health are associated with medical bassinets:

- **Injury resulting from mechanical or structural failure of the device**—Mechanical or structural failure of the bassinet can result in failure of load-bearing components such as the wheels

or casters, or failure of the latches or other locking mechanisms that secure the drawers of the bassinet. These failures can result in injuries, particularly if the bassinet tips over, as demonstrated by the MDRs received in FDA’s database.

- **Burns**—Certain flammable materials used in the construction of pediatric medical bassinets may allow for the spread of fire, which may result in serious injuries. Fires can spread easily in hospital rooms with a patient using oxygen. The free-flowing oxygen can intensify a fire, which can rapidly spread to flammable objects in the room, including bassinet mattresses.

- **Crazing or cracking of basket or bed component**—The basket or bed component of the bassinet that the pediatric patient is placed in may craze or crack due to improper care or handling, such as cleaning the plastic material of the basket or bed component with inappropriate cleaning solutions. Crazing or cracking may result in injuries such as cuts.

- **Use error**—Use error may contribute to, or exacerbate, any of the previously mentioned risks. For example, a user may accidentally leave a door or drawer in the base component of the bassinet open or place too much weight in a drawer or on a shelf, which may present a tipping hazard. Also, a user may fail to properly maintain a medical bassinet.

**V. Establishment of Special Controls**

Under section 513(a)(1)(B) of the FD&C Act, as amended by the SMDA, class II devices are defined as devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance. Special controls may include the issuance of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines,

recommendations, and other appropriate actions the Agency deems necessary to provide such assurance (see also § 860.3(c)(2)).

Under this authority, FDA is proposing to establish special controls for pediatric medical cribs (§ 880.5140) and pediatric medical bassinets (§ 880.5145). The Agency believes that the applicable special controls, together with the general controls, would provide reasonable assurance of the safety and effectiveness of these devices.

**VI. Proposed Special Controls**

**A. Pediatric Medical Crib**

FDA consulted with health care providers in children’s hospitals, registered nurses in pediatric units, biomedical engineers, and technicians, and analyzed the associated adverse events with pediatric medical cribs. Specifically, FDA consulted with MedSun hospitals regarding their 2011 survey on clinicians’ experiences with pediatric medical cribs with drop-side rails used in MedSun’s hospitals (Ref. 1). The MedSun survey summary highlights the clinical perspective and the importance of this device in medical and health care settings. The most common issues and concerns in the survey were the lack of understanding of side rail operation and the need for reinforcing patient safety when the side rails are raised or lowered. Many respondents of the survey suggested further improvements for pediatric medical cribs, for instance, improved labeling, specific distance between slats and emergency releases on side rails for faster access to pediatric patients. The adverse events identified in the MedSun survey are similar to the MDRs FDA has received on this device. FDA believes that the special controls proposed in this proposed rule, in combination with the general controls, would provide a reasonable assurance of safety and effectiveness for pediatric medical cribs their intended use.

TABLE 1—HEALTH RISKS AND MITIGATION MEASURES FOR PEDIATRIC MEDICAL CRIB

Identified risks to health	Mitigation measures
Injury Resulting from Mechanical or Structural Failure of the Device .....	Performance Testing. Design Testing.
Pinching, Lacerations, Splinters, and Foreign Body Ingestion .....	Appropriate Materials Free From Surface Defects. Labeling.
Entrapment, Falls, and Strangulation .....	Performance Testing. Rail and End Panel Design. Side Rail Spacing and Safety Features. Appropriate Fitting of Mattress.
Burns .....	CPSC’s Mattress Flammability Standard.
Use Error .....	Labeling.

As provided in Table 1, the Agency believes the following special controls, in combination with the general controls, would effectively mitigate the identified risks to health and provide reasonable assurance of the safety and effectiveness of the device:

1. Design and performance testing must be conducted to ensure the mechanical and structural stability of the crib under expected conditions of use, including the security of latches and other locking mechanisms when engaged. These requirements are derived from sections 6.2 and 6.3 of ASTM (formerly the American Society for Testing and Materials) International Standard F1169–13, entitled “Standard Consumer Safety Specification for Full-Size Baby Cribs” (Ref. 2) and sections 5.7 and 6.3 of ASTM International Standard F2710–13, entitled “Standard Consumer Safety Performance Specification for Commercial Cribs” (Ref. 3), which was developed with input from crib manufacturers.

2. To reduce possible injury of pinching, lacerations, and crushing, the crib shall be designed and constructed in a manner that eliminates hardware accessible to a child within the crib. This requirement is derived from section 5.10 of ASTM International Standard F1169–13, entitled “Standard Consumer Safety Specification for Full-Size Baby Cribs” (Ref. 2), which was developed with input from crib manufacturers. Also, materials used shall be appropriate for the conditions of use, allow for proper sanitation, and free from surface defects of the device that could result in injuries.

3. To reduce the risk of head and limb entrapment, the distance between side rail components (such as slats, spindles, corner posts, and rods) shall be designed to reduce potential entrapment of pediatric patients and the distance between such components shall not exceed 2 3/8 inches (6 centimeters) apart. In addition, the rails and end panels of a crib must be of a height to mitigate the possibility of falls and/or escapes by the patient. These requirements are derived from sections 5.7.2 and 5.8.1 of ASTM International Standard F1169–13, entitled “Standard Consumer Safety Specification for Full-Size Baby Cribs” (Ref. 2), which was developed with input from crib manufacturers.

4. To reduce the risk of head and limb entrapment, no gap shall exist between the edge of the bottom rail and the top of the mattress surface and the mattress must fit tightly around all four sides of the crib. These requirements are derived from section 5.9 of ASTM International Standard F1169–13, entitled “Standard Consumer Safety Specification for Full-Size Baby Cribs” (Ref. 2), which was developed with input from crib manufacturers.

5. To reduce flammability and the risk of burns, the mattress for the crib shall meet the CPSC Standard for the Flammability of Mattresses and Mattress Pads and its Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR parts 1632 and 1633, respectively. This proposed special control would clarify for manufacturers the standards necessary for mattresses intended to be used with pediatric medical cribs to prevent the spread of fires that can easily occur in hospital rooms with a patient using oxygen. The free-flowing oxygen can intensify a fire, which can rapidly spread to most of the flammable objects in the room especially mattresses. The consumer standards for flammability of mattresses in 16 CFR parts 1632 and 1633 are also accepted by the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations). CPSC’s mattress and mattress pad flammability standard under 16 CFR part 1632 addresses mattress fires ignited by open flame sources, including matches, candles, lighters, and other related scenarios. It prescribes a test to determine the ignition resistance of a mattress or a mattress pad when exposed to a lighted cigarette. CPSC’s standard for the flammability of mattress sets under 16 CFR part 1633 is a broader standard designed to reduce deaths and injuries caused by mattress fires, particularly those fires ignited by, among others things, oxygen use or electrical equipment sources that may occur in a patient’s room. In addition, CPSC’s regulations require that manufacturers meet an established fire safety performance standard, based on ASTM E2187–09, entitled “International’s Standard Test Method for Measuring the Ignition Strength of Cigarettes” (Ref. 4), which was developed with input from crib manufacturers.

6. To reduce flammability and the risk of burns, the labeling must bear all information required pursuant to the CPSC Standard for the Flammability of Mattresses and Mattress Pads and its Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR parts 1632 and 1633, respectively.

7. To reduce the risk of use error, which may result in mechanical or structural failure of the crib due to inadequate care or maintenance, pediatric medical crib labeling must include adequate instructions for users to care for and maintain their crib. These requirements are derived from sections 5.18 of ASTM International Standard F1169–13, entitled “Standard Consumer Safety Specification for Full-Size Baby Cribs” (Ref. 2).

FDA believes that the special controls proposed in this rule would provide a reasonable assurance of safety and effectiveness of pediatric medical cribs in their intended use. The ASTM and CPSC standards noted above apply to all mattresses and mattress pads intended or promoted for sleeping upon, as defined in 16 CFR 1632.1(a), including medical mattresses that are regulated by FDA as an accessory to medical beds. Therefore, FDA anticipates that manufacturers would be able to meet the requirements imposed by the proposed special controls in this proposed rule without undue burden. FDA invites comments on this conclusion, including comments regarding the types of performance testing manufacturers conduct for pediatric medical cribs, particularly to ensure the performance of medical crib latches on drop-side rails.

In addition, FDA is proposing to restrict these devices to prescription use under section 520(e) of the FD&C Act (see § 801.109 (prescription devices)). In order to use or administer use of pediatric medical cribs, authorization must be made by a practitioner licensed by law.

*B. Medical Bassinet*

Table 2 lists the risks to health FDA has identified for Medical Bassinets, as described in the Risks to Health, section IV of this proposed rule, along with the corresponding proposed mitigation measures for each risk.

TABLE 2—HEALTH RISKS AND MITIGATION MEASURES FOR MEDICAL BASSINET

Identified risks to health	Mitigation measures
Injury Resulting from Mechanical or Structural Failure of the Device .....	Performance Testing. Labeling.
Burns .....	CPSC’s Mattress Flammability Standard.

TABLE 2—HEALTH RISKS AND MITIGATION MEASURES FOR MEDICAL BASSINET—Continued

Identified risks to health	Mitigation measures
Crazing or Cracking of Basket or Bed Component .....	Performance Testing.
Use Error .....	Labeling. Labeling.

The Agency believes the following special controls, in combination with the general controls, would effectively mitigate the identified risks to health and provide reasonable assurance of the safety and effectiveness of medical bassinets:

1. To mitigate crazing, cracking, and deterioration of the basket or bed component of the device, the manufacturer must conduct performance testing to determine material compatibility with cleansing products labeled to clean the device.
2. To reduce flammability and the risk of burns, the bassinet shall meet CPSC’s Standard for the Flammability of Mattresses and Mattress Pads and its Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR parts 1632 and 1633, respectively.
3. To reduce the risk of injury resulting from mechanical or structural failure of the device, and particularly, device tipping that can result from those failures; manufacturers shall conduct performance testing to ensure the mechanical and structural stability of the bassinet under expected use conditions, including transport of patients in the bassinet.
4. To reduce the risk of use error, specifically error that may result in bassinet tipping, FDA proposes that manufacturers shall have a label on the front of the bassinet cabinet with the following warning statement:

WARNING: To avoid tipping hazards of this device, make sure that the basket or bed component sits firmly in the base and that all doors, drawers, and casters are secure.

The label must be affixed to the front of the bassinet base cabinet and the text shall be in letters not less than 10 millimeters in height.

FDA believes this warning is necessary because even if performance testing demonstrates that a bassinet does not present a tipping hazard under expected use conditions, users may exceed these expected use conditions, particularly during transport of a patient in the bassinet.

5. To reduce the risk of use error, which may result in mechanical or structural failure of the bassinet due to inadequate care or maintenance, medical bassinet labeling must include adequate instructions for users to care for and maintain the bassinet.

FDA believes that the special controls proposed in this rule would provide a reasonable assurance of safety and effectiveness of medical bassinets in their intended use. The CPSC standards noted previously apply to all mattresses and mattress pads intended or promoted for sleeping upon, as defined in 16 CFR 1632.1(a), including medical mattresses that are regulated by FDA as an accessory to medical beds. Therefore, FDA believes most manufacturers are already complying with the proposed special control for mattress flammability set forth in this proposed rule. FDA invites comments on the types of performance testing manufacturers conduct for medical bassinets.

In addition, FDA is proposing to restrict these devices to prescription use under section 520(e) of the FD&C Act (see § 801.109 (Prescription devices)). In order to use or administer use of medical bassinets, authorization must be made by a practitioner licensed by law.

**VII. Proposed Effective Date**

FDA proposes that any final rule based on this proposal become effective 60 days after its publication in the **Federal Register**.

**VIII. Environmental Impact, No Significant Impact**

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**IX. Economic Analysis of Impacts**

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive

impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the expected costs associated with this rule are expected to be modest, we propose to certify that this rule would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$144 million, using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. We do not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

*A. Objective of the Rule*

Pediatric hospital beds are classified as class II, 510(k) exempt medical devices intended for the treatment, care, or diagnosis of diseases or illnesses of pediatric patients. In this proposed rule, FDA proposes to amend § 880.5140 by revising the identification and establishing special controls for pediatric medical cribs. This rule would also change the name of the classification regulation from “pediatric hospital bed” to “pediatric medical crib,” and place medical bassinets, previously under the pediatric hospital beds classification regulation, as a separate class II, 510(k) exempt device, subject to its own special controls.

Pediatric medical cribs used in health care settings contain a drop-side rail design that includes movable and latchable side and end rails. As stated previously, the CPSC issued a final rule prohibiting the use of the drop-side rail design for non-medical cribs in consumer households as of June 28,

2011 (December 28, 2010, 75 FR 81766). CPSC's rule establishes new standards for full-size and non-full-size cribs used for non-medical purposes, which effectively prohibit the manufacture or sale of cribs for non-medical purposes with a drop-side rail design in households, child care facilities, family child care homes, and places of public accommodation. The compliance date for this same rule for child care facilities, family child care homes, and places of public accommodation was December 28, 2012 (75 FR 81766). CPSC's rule was established in response to infant deaths that occurred when the side rail of a crib used for non-medical purposes detached or disengaged. In contrast, there have been no deaths and a few serious injuries reported to FDA associated with pediatric medical cribs, which are made of more durable materials and construction in comparison to cribs used for non-medical purposes. Additionally, FDA has determined that drop-side rails are essential for patient care in hospital settings and even outside of traditional health care settings to allow parents and care givers easy access to their patients in order to perform both routine and emergency medical procedures. To address concerns raised by CPSC's reports on consumer drop-side rail cribs and account for the medical need of this device, FDA is proposing to establish special controls and require a prescription for this device when used outside of traditional health care setting. Thus, FDA has determined that cribs with drop-side rail designs may remain on the market when intended for medical use, and can be used outside of traditional health care settings through prescription use only. In addition, this proposed rule adds specific special controls for medical bassinets to mitigate health risks such as tipping of the device and crazing of the plastic basket or bed component. Regulation of this device under a separate regulation would also allow for more targeted post market surveillance for this device.

#### *B. Benefits*

FDA's Registration and Listing database identifies 38 manufacturers of medical cribs and bassinets. FDA has reviewed the safety standards of several large pediatric crib and bassinet manufacturers in order to determine the compliance burden associated with the proposed special controls. The Agency concludes that many of the special controls proposed by this rule are consistent with current industry practice among many medical crib and bassinet manufacturers. The proposed special control that is not currently

practiced is the warning labeling requirements for medical bassinets. For new pediatric medical crib and bassinet manufacturers entering the market or manufacturers that may not be currently following the practices required by the proposed special controls, if this proposed rule is finalized, its special controls will clarify safety standards and minimize the risk of injury to pediatric patients.

The beneficial features of medical bassinets are portability, ease of cleaning, and, when it is made of a clear material, the ability to see the baby from all sides. The proposed special controls would require bassinet manufacturers to place labels on their devices warning against device tipping. This requirement would apply to new bassinets; bassinets that have already been sold would not be required to add the new labels to their devices. The warning label is intended to prevent tipping of the device, which may be caused by unlatched drawers, dislodged wheels, or too much weight on the shelves. The Agency has not received any reports of death or serious injury related to medical bassinets, although there have been a small number of reports of malfunctioning casters, which may cause device tipping. The benefits of the new warning label are not readily quantifiable, but it is expected to reduce the risk of the bassinet from tipping and thus, reduce potential injury to pediatric patients.

The provision allowing for the medical cribs outside of traditional health care settings would benefit pediatric patients who require the specialized care provided by these devices outside of traditional health care settings. Due to the CPSC rule regarding cribs used for non-medical purposes, discussed previously, consumers and child care facilities are restricted from using cribs with a drop-side rail design. If this proposed rule is finalized, it will allow consumers and child care facilities to utilize the pediatric medical cribs if they are prescribed by a health care professional.

The special controls regarding the mechanical structure of pediatric medical cribs are intended to minimize the risk of injury, including entrapment or strangulation of pediatric patients. The spacing specifications of the side rail components are designed to prevent head or neck entrapment and strangulation incidents in which infants may slip between the openings of the slats, and the performance testing requirements are designed to ensure the side rail latches of pediatric medical cribs will perform as intended and remain secure when the latches are

engaged. The special control requiring specific height of the rails and end panels may prevent falls and/or escapes by the patient. Also, by having pediatric medical crib manufacturers use materials that are appropriate for the conditions of use and allow for proper sanitation, these special controls may help mitigate surface defects that can cause injury to the patient.

Additionally, the mattress size standards for cribs and bassinets are intended to reduce the risk of significant gaps between the mattress and the device structure, which could potentially create an entrapment hazard. The flammability standard is intended to reduce deaths and injuries related to mattress fires, particularly those initially ignited by open flame sources such as lighters, candles, and matches. Although the practices proposed in these special controls are believed to be followed by almost all manufacturers of products currently on the market, the proposed special controls would reinforce safety standards for such manufacturers and ensure that other manufacturers and manufacturers of new products adhere to the same safety standards.

#### *C. Costs*

The economic impact of the proposed regulation is determined primarily by whether manufacturers currently comply with the proposed special controls. As stated previously, the special controls that are not currently practiced by industry, of which FDA is aware, are the bassinet warning labeling and the performance testing requirements. FDA is also aware that many manufacturers of pediatric medical cribs and medical bassinets registered with the FDA currently conform to the risk mitigations and structural requirements that are being proposed as special controls, and thus conforming to these special controls, if finalized, would not result in an increase in cost to pediatric medical crib manufacturers and only cause a small increase in cost for medical bassinet manufacturers. Additionally, the renaming of pediatric medical cribs and redesignation in the CFR for medical bassinets and the remaining devices under the pediatric hospital bed classification are administrative in nature, and are not expected to result in any cost burdens.

The new warning labeling requirements for medical bassinets will apply to manufacturers of new bassinets only. FDA does not expect bassinets that are currently on the market to be relabeled. If manufacturers of new bassinets add labels to the devices at the

time of production, the cost burden to manufacturers would be minimized. Although we do not have direct estimates of labeling costs for these devices, the best estimate of these costs is derived from FDA's labeling cost model. Because FDA would require specific language and format of the labels, we consider this to be a minor labeling change that would not require label design, market tests, or analytical tests. Labeling costs would include labor and material, and are estimated to be, on average, approximately \$140 per unit. Then we use the number of live births per year as reported by the Center for Disease Control and Prevention in order to determine the number of bassinets produced per year for medical use (Ref. 5). Using an estimate of 4 million births per year and 11,000 births per day, we estimate that each birth requires an average hospital stay of 3 days. This yields a total supply of approximately 33,000 medical bassinets in the United States. Given an average yearly replacement rate of 20 percent for all medical bassinets, we estimate that approximately 6,600 new bassinets will be produced annually. Applying the \$140 per unit labeling cost yields a total yearly cost of \$924,000 associated with the new bassinet warning label requirement.

The special controls require performance testing for medical bassinets to reduce the risk of crazing of the plastic basket or bed component. We assume that the performance testing may be conducted as an extension to current product testing and may be performed at the same testing facilities currently utilized by bassinet manufacturers. FDA projects that a maximum of an additional week of testing would be required. The costs associated with the performance testing include the labor costs of mechanical engineers, who typically perform these tests. The mean 2012 hourly wage for mechanical engineers is \$40.75, as reported by the Occupational Employment Statistics provided by the Bureau of Labor Statistics (Ref. 6). Applying a multiplier of 1.45 to adjust for benefits, hourly labor costs are estimated to be approximately \$59. Assuming a 40-hour work week, the total maximum estimated cost for each manufacturer to perform these additional tests is approximately \$2,360. It is uncertain the exact number of manufacturers that do not currently conduct performance testing and would therefore be required to extend current testing practices. However, given the relatively small number of medical bassinet manufacturers, FDA anticipates

that even the upper-bound total cost would be modest.

The prescription use of pediatric medical cribs outside of traditional health care settings may potentially increase Medicaid spending for eligible pediatric patients. According to our review of Healthcare Common Procedure Coding System billing codes for the Medicaid program, currently, States typically offer Medicaid coverage for prescribed rental or purchase of hospital beds and pediatric cribs (Ref. 7). We estimate the number of additional prescriptions for pediatric medical cribs to be filled annually as a result of this proposed rule would be less than 100. Medicaid expenditure on pediatric medical cribs is estimated to be on average \$2,500 per device. This yields a maximum annual total cost of \$250,000.

Although it is unlikely that these devices would require physical modification to meet the standards proposed by the special controls in this proposed rule, there may be manufacturers on the market of which we are unaware that do not conform to the requirements proposed in the special controls. The proposed special controls could have a significant impact on firms that are not currently in compliance with the special controls, as their products may require modifications. The special control that may cause additional costs for manufacturers is the special control concerning the mechanical structure of pediatric medical cribs. We are not able to estimate the actual compliance costs for manufacturers of pediatric medical cribs because such costs may vary by firm size and the amount of modification required. Alternatively, we provide an estimate of the modification cost by using aggregate industry market price information and cost data. The costs associated with these modifications may include the costs associated with product design and testing, labor, material, and production. We use data from the Annual Survey of Manufacturers to calculate aggregate labor and materials costs as a percentage of total sales for manufacturers represented by North American Industry Classification System code 339113 (Ref. 8). The data indicate that labor and materials represent approximately 45 percent of total sales. Allowing market price to represent per unit revenue at the firm level, we estimate the cost of modification to be approximately 45 percent of the average price of a pediatric medical crib. After surveying market prices of pediatric medical cribs, we estimate an average per unit price of \$2,500. This yields an average cost of

approximately \$1,125 to modify a pediatric medical crib to be in compliance with the proposed special controls.

FDA invites comments on the compliance of manufacturers with the special controls, including the performance testing, mechanical structure, flammability requirements, and bassinet labeling requirements, as well as cost information if modifications are required.

#### X. Paperwork Reduction Act of 1995

The proposed rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management Budget (OMB) and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information, regarding premarket notification submissions (21 CFR part 807, subpart E), are approved under OMB control number 0910–0120. The collections of information, regarding labeling (21 CFR part 801), including prescription device labeling and adequate directions for use, are approved under OMB control number 0910–0485. The collections of information regarding current good manufacturing practice quality systems (21 CFR part 820), including design controls (as referenced in proposed § 880.5140(b)(1) and proposed § 880.5145(b)(1) and (b)(3) of this document), are approved under OMB control number 0910–0073. The collections of information in 16 CFR 1632 and 1633, regarding mattress flammability, are approved under OMB control number 3041–0014.

In addition, FDA concludes that the warning label for bassinets does not constitute a “collection of information” under the PRA. Rather, the labeling statement is “public disclosure(s) of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.” (5 CFR 1320.3(c)(2)).

#### XI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at <http://www.regulations.gov>. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. MedSun: Newsletter #66: “Pediatric Hospital Cribs: MedSun Small Sample Survey Summary” (November 2011),

- available at <http://www.fda.gov/downloads/MedicalDevices/Safety/MedSunMedicalProductSafetyNetwork/Newsletters/UCM422131.pdf>.
2. ASTM International (formerly the American Society for Testing and Materials), "Standard Consumer Safety Specifications for Full-Size Baby Cribs," Designation: F1169-13, available at <http://www.astm.org/Standards/F1169.htm>, 2013.
  3. ASTM International (formerly the American Society for Testing and Materials), "Standard Consumer Safety Performance Specification for Commercial Cribs," Designation: F2710-13, available at <http://www.astm.org/Standards/F2710.htm>, 2013.
  4. ASTM International, "Standard Test Method for Measuring the Ignition Strength of Cigarettes," Designation: E2187-09 Standard, available at <http://www.astm.org/Standards/E2187.htm>.
  5. Centers for Disease Control and Prevention (CDC), National Vital Statistics System, Birth Data, available at <http://www.cdc.gov/nchs/births.htm>.
  6. Occupational Employment Statistics provided by the Bureau of Labor Statistics, May 2012 Occupational Employment Statistics, available at [http://www.bls.gov/oes/2012/may/oes\\_stru.htm](http://www.bls.gov/oes/2012/may/oes_stru.htm).
  7. Centers for Medicare & Medicaid Services, HCPCS 2015 Code: E0300, available at <http://www.cms.gov/Medicare/Coding/MedHCPCSGenInfo/index.html?redirect=/medhcpcsgeninfo/>.
  8. U.S. Census Bureau, 2013 Annual Survey of Manufacturers, available at <http://www.census.gov/manufacturing/asm/index.html>.

#### List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 880 be amended as follows:

#### PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

- 1. The authority citation for 21 CFR part 880 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

- 2. Revise § 880.5140 to read as follows:

##### § 880.5140 Pediatric medical crib.

(a) *Identification.* A pediatric medical crib is a prescription device intended for medical purposes for use with a pediatric patient that consists of an open crib, fixed-end rails, movable and latchable side rail components, and possibly an accompanying mattress. The contour of the crib surface may be adjustable.

(b) *Classification.* Class II (special controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9. The special controls for this device are:

(1) Crib design and performance testing shall demonstrate the mechanical and structural stability of the crib under expected conditions of use, including the security of latches and other locking mechanisms when engaged;

(2) Materials used shall be appropriate for the conditions of use, allow for proper sanitation and free from surface defects that could result in injuries;

(3) Rails and end panels shall be designed taking into account the crib's height at its lowest point to the top of the mattress to prevent patient falls and/or escape. Hardware and fasteners shall be designed and constructed to eliminate mechanical hazards to the patient;

(4) The distance between components of the side rail (such as slats, spindles, and corner posts) shall not be greater than  $2\frac{3}{8}$  inches (6 centimeters (cm)) apart at any point. Side rails shall contain safety features for locking and adjust the lowest position of the crib to a height that shall be 20 inches (51 cm) above the top of the mattress;

(5) The device shall not have a gap between the bottom of the rail and the top surface of the mattress and the mattress pad must fit tightly around all four sides of the crib;

(6) The mattress for the crib shall meet the Consumer Product Safety Commission (CPSC) Standard for the Flammability of Mattresses and Mattress Pads and Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR parts 1632 and 1633, respectively;

(7) The labeling must bear all information required pursuant to the CPSC Standard for the Flammability of Mattresses and Mattress Pads and Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR parts 1632 and 1633, respectively; and

(8) Pediatric medical crib labeling must include adequate instructions for users to care for and maintain their crib.

- 3. Add § 880.5145 to subpart F to read as follows:

##### § 880.5145 Medical bassinet.

(a) *Identification.* A medical bassinet is a prescription device that is a small bed intended for use with pediatric patients, generally from birth to approximately 5 months of age. It is intended for medical purposes for use in a nursery, labor and delivery unit, or patient room, but may also be used outside of traditional health care settings. A medical bassinet is a non-powered device that consists of two

components: The plastic basket or bed component and a durable frame with wheels, which holds the basket or bed component. The basket or bed component is a box-like structure, generally made of a clear, high impact-resistant plastic material, with an open top and four stationary walls to hold the pediatric patient. The frame can include drawers, shelving or cabinetry that provides space to hold baby care items. The wheels or casters allow the bassinet to transport the baby throughout the care setting.

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9. The special controls for this device are:

(1) The manufacturer must conduct performance testing to determine material compatibility with cleansing products labeled to clean the device. Testing must demonstrate that the cleaning instructions provided by the manufacturer do not cause crazing, cracking, or deterioration of the device;

(2) The mattress for the device shall meet the Consumer Product Safety Commission Standard for the Flammability of Mattresses and Mattress Pads and Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR parts 1632 and 1633, respectively;

(3) Manufacturers shall conduct performance testing to ensure the mechanical and structural stability of the bassinet under expected use conditions, including transport of patients in the bassinet. Testing must demonstrate that failures such as wheel or caster breakage do not occur, and that the device does not present a tipping hazard due to any mechanical failures, under expected use conditions;

(4) Each device must have affixed a label on the front of the bassinet cabinet with the following language in text of at least 10 millimeters in height:

WARNING: To avoid tipping hazards of this device, make sure that the basket or bed component sits firmly in the base and that all doors, drawers, and casters are secure.

(5) Labeling must include adequate instructions for users to care for and maintain their bassinet.

Dated: October 2, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-25627 Filed 10-7-15; 8:45 a.m.]

**BILLING CODE 4164-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 372**

[EPA-HQ-TRI-2015-0352; FRL 9935-38-OEI]

**Ethylene Glycol Monobutyl Ether; Community Right-To-Know Toxic Chemical Release Reporting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of petition.

**SUMMARY:** Environmental Protection Agency (EPA) is denying a petition to remove ethylene glycol monobutyl ether (EGBE) from the category Certain Glycol Ethers under the list of chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA)

of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. EPA has reviewed the available data on this chemical and has determined that EGBE does not meet the deletion criterion of EPCRA section 313(d)(3). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that EGBE meets the listing criterion of EPCRA section 313(d)(2)(B) due to its potential to cause serious or irreversible chronic health effects in humans, specifically, liver toxicity and concerns for hematological effects.

**DATES:** EPA denied this petition on September 24, 2015.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200

Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0677; email: [bushman.daniel@epa.gov](mailto:bushman.daniel@epa.gov), for specific information on this notice. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424-9346 (select menu option 3) or (703) 412-9810 in Virginia and Alaska or toll free, TDD (800) 553-7672, <http://www.epa.gov/superfund/contacts/infocenter/>.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this notice apply to me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use EGBE. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry .....	<p>Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311,* 312,* 313,* 314,* 315,* 316, 321, 322, 323,* 324, 325,* 326,* 327, 331, 332, 333, 334,* 335,* 336, 337,* 339,* 111998,* 211112,* 212324,* 212325,* 212393,* 212399,* 488390,* 511110, 511120, 511130, 511140,* 511191, 511199, 512220, 512230,* 519130,* 541712,* or 811490.*</p> <p>*Exceptions and/or limitations exist for these NAICS codes.</p> <p>Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 et seq.) (correspond to SIC 4953, Refuse Systems).</p>
Federal Government .....	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How can I get copies of this document and other related information?*

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA-HQ-TRI-2015-0352. Publicly available docket materials are available either electronically in

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically from the Government Printing Office under the "**Federal Register**" listings at FDSys (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>).

**II. Introduction**

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such

chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised more than 300 chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in Section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. EPCRA section 313(d)(3) states that a chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in EPCRA section 313(d)(2)(A)-(C). The EPCRA section 313(d)(2)(A)-(C) criteria are:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans:
  - Cancer or teratogenic effects, or
  - serious or irreversible—
    - reproductive dysfunctions,
    - neurological disorders,
    - heritable genetic mutations, or
    - other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of:
  - its toxicity,
  - its toxicity and persistence in the environment, or
  - its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the section 313(d)(2)(A) criterion as the “acute human health effects criterion;” the section 313(d)(2)(B) criterion as the “chronic human health effects criterion;” and the section 313(d)(2)(C) criterion as the “environmental effects criterion.”

Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compounds categories. EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) a statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals.

### III. What is the description of the petition?

On January 23, 2015, EPA received a petition from American Chemistry Council (ACC) Ethylene Glycol Ethers Panel requesting EPA to delete EGBE (Chemical Abstracts Service Registry Number (CASRN) 111-76-2) from the list of chemicals subject to reporting under EPCRA section 313 and PPA section 6607 (Reference (Ref. 1)). EGBE

is not individually listed under EPCRA section 313 but rather is reportable under the Certain Glycol Ethers category. The petitioner contends that the available scientific data show that EGBE has low potential hazard to human health and the environment. Therefore, the petitioner believes that under EPA’s policy for listing decisions under EPCRA section 313, potential exposures should be considered. The petitioner believes that their analysis shows that exposure levels are well below the concern levels for human health and ecological effects.

### IV. What is EPA’s evaluation of the toxicity of EGBE?

EPA’s evaluation of the toxicity of EGBE included a review of the human health and ecological effects data. EPA’s Integrated Risk Information System (IRIS) toxicological review of EGBE (Ref. 2) was the primary source used to determine the human health effects of EGBE. EPA also prepared an assessment of the chemistry, fate, and ecological effects for EGBE (Ref. 3).

#### A. What is EPA’s review of the human health toxicity data for EGBE?

EPA’s evaluation of the toxicity of EGBE included a review (Ref. 4) of the IRIS toxicological review of EGBE (Ref. 2). EPA also reviewed the findings of studies published since the IRIS toxicological review of EGBE, but found no data relevant to include in this evaluation. This Unit outlines the evidence of human health toxicity from the 2010 IRIS toxicological review of EGBE. Unit IV.B. below discusses the conclusions regarding EGBE’s potential human health toxicity.

1. *Toxicokinetics.* In humans, EGBE is absorbed and rapidly distributed following inhalation, ingestion, or dermal exposure (Refs. 5, 6, 7, and 8). Several reviews have described the metabolism of EGBE in detail (Refs. 9, 10, and 11). The principal products from EGBE metabolism are butoxyacetic acid (BAA) (rats and humans) and the glutamine or glycine conjugate of BAA (humans). BAA is excreted in the urine of both rats and humans, which suggests that the creation of BAA through the formation of butoxyacetaldehyde by alcohol dehydrogenase is applicable to rats and humans (Refs. 8, 12, and 13). The other proposed metabolic pathways, however, may only be applicable to rats since the metabolites of these pathways (*i.e.*, ethylene glycol, EGBE glucuronide, and EGBE sulfate) have been observed in the urine of rats (Refs. 14 and 15), but not in humans (Ref. 8). In addition, Corley et al. (Ref. 8) confirmed the finding from

Rettenmeier et al. (Ref. 16) that approximately two-thirds of the BAA formed in humans is conjugated with glutamine and glycine. These pathways, however, have not been observed in the rat.

Several experimental studies have measured the concentration of BAA in human serum and urine following exposure to EGBE. For humans, the elimination kinetics of EGBE and BAA appear to be independent of the route of exposure with an approximate half-life of around one hour for EGBE and an approximate half-life of BAA of 3–4 hours (Refs. 17, 18, and 19).

Several physiologically based pharmacokinetic models for EGBE have been developed. Some older models have described the kinetics of EGBE for acute human exposure and exposure to rats via the ingestion, inhalation, and dermal routes (Refs. 17 and 20 based on data from Refs. 13, 21, and 22). Newer models, however, have extended upon the work of these previous models. Corley et al. (Ref. 7) described the kinetics of EGBE and BAA in both rats and humans. These authors later validated the human dermal exposure model (Ref. 8). Lee et al. (Ref. 23) modeled the kinetics of EGBE and BAA in mice and rats from a National Toxicology Program (NTP) 2-year inhalation bioassay (based on data from Dill et al. (Ref. 24)). Species, gender, age, and exposure concentration-dependent differences in the kinetics of BAA were observed. Corley et al. (Ref. 12) built on the Lee et al. (Ref. 23) model by replacing some model assumptions with experimental data (Note: The Corley et al. (Ref. 12) model, along with the Lee et al. (Ref. 23) rat and mouse model and Corley et al. (Ref. 8) human model were used by EPA to calculate internal doses of EGBE in the 2010 IRIS toxicological review of EGBE (Ref. 2)).

2. *Effects of Acute and Short-Term Exposure.* Hematologic and other effects have been observed in several acute and short-term oral studies of EGBE in rats and mice (Refs. 15, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34). Varying degrees of hematotoxicity have also been observed in rats and rabbits following dermal application of EGBE (Refs. 14 and 35). Guinea pigs, however, have not demonstrated sensitivity to the hematologic effects of EGBE in acute studies (Refs. 36 and 37). EGBE has also been found to be an ocular irritant when instilled in rabbits (Refs. 38 and 39).

A few *in vitro* studies have investigated EGBE’s potential hemolytic effects in human red blood cells after acute exposures. Bartnik et al. (Ref. 14) reported no hemolysis of human red



blood cells exposed for three hours to BAA levels up to 15 millimolar (mM). Hemolysis was observed in rat red blood cells, however, at BAA levels as low as 1.25 mM. Udden (Ref. 40) incubated human red blood cells with up to 2.0 mM BAA for four hours, and the authors observed none of the morphological changes observed in rat red blood cells at the same concentration. Udden (Ref. 41) reported a significant change in human red blood cell deformability at exposure to 7.5 and 10 mM BAA for 4 hours, whereas deformability in rat red blood cells was significantly increased at 0.05 mM BAA. Mean cellular volume in human blood samples was significantly increased at 10 mM BAA while mean cellular volume in rats was significantly increased at 0.05 mM BAA.

There are a number of case reports of acute ingestion of EGBE with little or no hematologic effects observed (Refs. 42, 43, 44, 45, 46, 47, 48, and 49). Some other observed effects were likely not directly related to hemolysis; however, the cause of the effects cannot be explained based on the limited data available. Also, hemodialysis was employed to remove un-metabolized EGBE in many of the cases.

One experimental study in humans (Ref. 50), observed no effects on red blood cell fragility after exposure of two males and one female to up to 195 part per million (ppm) EGBE for 8 hours.

3. *Carcinogenicity and Mutagenicity.* Under the Guidelines for Carcinogen Risk Assessment (Ref. 51), there is suggestive evidence of EGBE's carcinogenic potential based on a 2-year NTP bioassay in mice and rats (Ref. 52). EGBE has been tested for its potential for genotoxicity both *in vitro* and *in vivo*, and the available data do not demonstrate that EGBE is mutagenic or clastogenic (Refs. 53, 54, 55, 56, 57, and 58).

4. *Reproductive and Developmental Toxicity.* The reproductive and developmental toxicity of EGBE has been investigated in a number of oral and inhalation studies in rats, mice, and rabbits. In a two-generation reproductive toxicity study, fertility was reduced in mice at very high maternally toxic doses ( $\leq 1,000$  milligrams/kilogram (mg/kg)) (Ref. 59), but no other significant reproductive effects were reported in any study (Refs. 26, 52, 60, 61, 62, 63, 64, 65, and 66). Maternal toxicity related to the hematologic effects of EGBE and relatively minor developmental effects have been reported in developmental studies (Refs. 67, 68, 69, and 70). No teratogenic effects were noted in any of the studies. As such, EGBE is not reasonably anticipated to be a reproductive or

developmental toxicant at moderately low to low doses.

5. *Neurotoxicity.* There is no evidence of neurotoxicity in any animal studies of EGBE. One case study patient demonstrated neurologic deficits after ingesting a product with a high dose of EGBE and other chemicals (Ref. 47). Given the general limitations of case studies and the presence of other chemicals, however, EPA cannot draw conclusions about EGBE's potential neurotoxicity from this particular study.

6. *Other Subchronic and Chronic Toxicity.* Hematologic effects and liver toxicity have been observed at low doses of EGBE in several animal studies.

The NTP (Ref. 66) conducted a 13-week study in F344 rats and B6C3F1 mice in which groups of 10 animals/gender/species received EGBE in drinking water at doses of 0, 750, 1,500, 3,000, 4,500, and 6,000 ppm. The corresponding doses based on measured drinking water consumption were: 0, 69, 129, 281, 367, or 452 milligrams/kilogram/day (mg/kg/day) in male rats; 0, 82, 151, 304, 363, or 470 mg/kg/day in female rats; 0, 118, 223, 553, 676, or 694 mg/kg/day in male mice; and 0, 185, 370, 676, 861, or 1,306 mg/kg/day in female mice.

Indications of mild to moderate anemia were observed in both genders. Statistically significant hematologic effects in female rats included reduced red blood cell counts and hemoglobin concentrations at  $\geq 750$  ppm and increased reticulocytes, decreased platelets, and increased bone marrow cellularity at 3,000 ppm. Liver effects including cytoplasmic alterations, hepatocellular degeneration, and pigmentation were reported in the mid- and high-dose groups ( $\geq 1,500$  ppm for males and females; statistics not reported). Additionally, cytoplasmic alterations of liver hepatocytes were observed in the lowest-dose groups (750 ppm for males and females). The lack of cytoplasmic granularity of the hepatocytes indicates that this response was not due to enzyme induction (Ref. 71). The NTP (Ref. 66) identified a lowest-observed-adverse-effect level (LOAEL) for rats of 750 ppm (approximately 58.6 mg/kg/day calculated using water consumption rates and body weights measured during the last week of exposure and, therefore, slightly different from those reported by the study authors (Ref. 2)) based on decreased red blood cell count and hemoglobin in female rats. A NOAEL was not identified.

A reduction in body weight gain at  $\geq 3,000$  ppm was observed in male and female mice. An increase in relative kidney weight was also observed at all

doses in female mice. Body weight reductions followed decreased water consumption. No histopathologic changes were noted at any dose level, however, relative kidney weights showed a statistically significant increase at 750 and 1,500 ppm in the absence of reduction in body weight gain. The NTP (Ref. 66) identified a LOAEL for mice of 3,000 ppm (approximately, 553–676 mg/kg/day calculated using water consumption rates and body weights measured during the last week of exposure and, therefore, slightly different from those reported by the study authors (Ref. 2)) based on reduced body weight and body weight gain.

Dodd et al. (Ref. 62) conducted a 90-day subchronic inhalation study using F344 rats (16/gender/group) exposed to EGBE for 6 hours/day, 5 days/week at concentrations of 0, 5, 25, and 77 ppm. After 6 weeks, the 77 ppm female rats had statistically significant decreases in red blood cell counts (13%) and hemoglobin concentrations, accompanied by an 11% increase in mean corpuscular hemoglobin. Similar results were observed in males. However, many of these effects had lessened by the end of the study. The authors reported a LOAEL of 77 ppm based on decreases in red blood cell count and hemoglobin concentrations, accompanied by an increase in mean corpuscular hemoglobin in both genders.

The NTP (Ref. 52) conducted a subchronic inhalation study in F344 rats and B6C3F1 mice (10/gender). Rats and mice were exposed to EGBE concentrations of 0, 31, 62.5, 125, 250, and 500 ppm (0, 150, 302, 604, 1,208, and 2,416 milligrams/cubic meter (mg/m<sup>3</sup>)) 6 hours/day, 5 days/week for 14 weeks. The NTP (Ref. 52) identified a LOAEL of 31 ppm in female rats based on decreases in hematocrit, hemoglobin, and red blood cell count and a LOAEL of 62.5 ppm in male rats based on a decrease in red blood cell count. Histopathologic effects were observed in male and female rats. Effects reported in female rats included liver necrosis at 250 ppm and centrilobular degeneration and renal tubular degeneration at 500 ppm. Other effects reported in both genders included: Excessive splenic congestion in the form of extramedullary hematopoiesis (at 250 ppm in male rats and 125 ppm in female rats), hemosiderin accumulation in Kupffer cells (at 125 ppm in male rats and 62.5 ppm in female rats), intracytoplasmic hemoglobin (at 125 ppm in male rats and 31 ppm in female rats), hemosiderin deposition (at 125 ppm in male rats and 62.5 ppm in

female rats), and bone marrow hyperplasia (at 250 ppm in male rats and 62.5 ppm in female rats). The authors identified a LOAEL of 62.5 ppm for mice based on histopathological changes in the forestomach (including: Necrosis, ulceration, inflammation, and epithelial hyperplasia) in both males and females. Signs consistent with the hemolytic effects of EGBE (including: Decreased red blood cell counts, increased reticulocyte counts, and increased mean corpuscular volume) were also observed at 250 and 500 ppm in male and female mice.

The NTP (Ref. 52) also completed a 2-year inhalation study on EGBE in both F344 rats and B6C3F1 mice. In this study, animals were exposed to EGBE 6 hours/day, 5 days/week at concentrations of 0, 31, 62.5, and 125 ppm (0, 150, 302, and 604 mg/m<sup>3</sup>) for groups of 50 F344 rats and 0, 62.5, 125, and 250 ppm (0, 302, 604, and 1,208 mg/m<sup>3</sup>) for groups of 50 B6C3F1 mice. The authors identified a LOAEL of 31 ppm in rats based on decreases in hematocrit, hemoglobin, and red blood cell count in female rats in a satellite group observed at 3 and 6 months. The authors identified 62.5 ppm as the LOAEL for mice based on hemosiderin deposition.

One long-term occupational study of EGBE was identified in the literature. Haufroid et al. (Ref. 72) reported a small decrease in hematocrit and increase in mean corpuscular hemoglobin in a cross sectional study of 31 workers exposed to an average concentration of 0.6 ppm EGBE over 1 to 6 years. The biological significance of these findings, however, is unclear as they were within normal clinical ranges and no other measured parameters were affected by EGBE exposure.

#### *B. What are EPA's conclusions regarding the human hazard potential of EGBE?*

There is evidence to indicate that the human red blood cell response to EGBE exposure is less than that of rodents, however, this conclusion is based on a relatively small number of *in vitro* and short-term human exposure studies with supporting evidence from pharmacokinetic models (Refs. 7, 8, 14, 40, 41, and 50). Little is known of the long-term or repeated exposure responses in humans to EGBE.

In 2010, EPA concluded in the IRIS toxicological review of EGBE that human red blood cells do appear capable of responding similarly to the causative EGBE metabolites, albeit at much higher exposures (Ref. 2). The

IRIS toxicological review of EGBE employed an interspecies uncertainty factor of 1 to derive the reference values for EGBE in part because there was not a preponderance of toxicodynamic data in both animals and humans describing why humans are less sensitive than rats to the hematologic effects in question (Ref. 2). Also, EPA calculated a human equivalent concentration LOAEL (LOAEL<sub>HEC</sub>) for hematologic effects of 271 mg/m<sup>3</sup> (approximately 77 mg/kg/day, assuming constant exposure, an inhalation rate of 20 cubic meters/day (m<sup>3</sup>/day), and a 70 kg human) using pharmacokinetic model estimates (Refs. 7 and 8) of the human internal dose equivalent of the toxic metabolite BAA to that estimated for female rats exposed to 31 ppm EGBE in the NTP (Ref. 52) study (Ref. 2). In its assessment of EGBE, the European Union carried out a slightly different calculation based on the same underlying data and reported a similar, but slightly higher, human equivalent LOAEL of 474 mg/m<sup>3</sup> (approximately 135 mg/kg/day) (Ref. 11).

Additionally, multiple animal studies by the NTP reported liver toxicity (*e.g.*, cytoplasmic alterations of liver hepatocytes at 750 ppm (approximately 69 mg/kg/day) in male rats and 750 ppm (82 mg/kg/day) in female rats (Ref. 66) and liver necrosis at 250 ppm (approximately 243 mg/kg/day) in female rats (Ref. 52)) to which humans do not demonstrate decreased sensitivity. These findings provide further evidence of EGBE's potential toxicity to humans at moderately low to low doses.

Therefore, the available evidence is sufficient to conclude that EGBE can be reasonably anticipated to demonstrate moderately high to high chronic toxicity in humans based on the EPCRA Section 313 listing criteria (59 FR 61432, November 30, 1994).

#### *C. What is EPA's review of the ecological toxicity of EGBE?*

Based on a review of the available aquatic ecological toxicity data, EGBE does not appear to present a significant concern for adverse effects on the environment. Experimentally measured effects occurred at relatively high concentrations indicating low toxicity (Ref. 3). Such high concentrations are not expected to be observed under typical environmental conditions. Table 1 presents some of the available toxicity data for EGBE, the complete listing of the available toxicity data and more details about the studies can be found in the ecological assessment (Ref. 3).

1. *Acute toxicity.* Toxicity threshold values (duration not specified) of 900 milligrams/liter (mg/L) and 72-hour EC<sub>50</sub> values (*i.e.*, the concentration that is effective in producing a sublethal response in 50% of test organisms) of 911 and 1,840 mg/L for biomass and growth rate, respectively, have been reported for green algae (Refs. 73, 74, and 75). The corresponding 72-hour No-Observed-Effect-Concentration (NOEC) values for biomass and growth rate were 88 and 286 mg/L (Ref. 76). For water fleas (*Daphnia magna*), 24- or 48-hour EC<sub>50</sub> values ranged from 835 to 1,815 mg/L (Refs. 77 and 78). A 48-hour EC<sub>50</sub> value of 164 mg/L in rotifers (reproduction) has also been reported (Refs. 74 and 75).

Acute toxicity values for freshwater fish ranged from an LC<sub>50</sub> (*i.e.*, the concentration that is lethal to 50% of test organisms) of 1,395 mg/L for the golden orfe (*Leuciscus idus*) (duration not specified) (Ref. 79) to a 96-hour LC<sub>50</sub> of 2,137 mg/L for the fathead minnow (*Pimephales promelas*) (Ref. 80). A 96-hour LC<sub>50</sub> value of 1,490 mg/L was available for bluegill sunfish (Ref. 81) and 96-hour LC<sub>50</sub> values for rainbow trout were 1,474 and 1,700 mg/L (Refs. 74, 75, and 82). An LC<sub>50</sub> value (duration not specified) of 1,575 mg/L was also available for golden orfe (*Leuciscus idus*) (Ref. 79) and a 24-hour LC<sub>50</sub> value of 1,700 mg/L was available for goldfish (*Carassius auratus*) (Ref. 83).

A study of the invertebrate *Artemia salina* (brine shrimp) reported a 24-hour LC<sub>50</sub> value of 1,000 mg/L (Ref. 84). Also, an embryo-larval test in which Japanese oyster eggs (*Crassostrea gigas*) were incubated with the test material for 24 hours and then examined for abnormalities indicated an identical 24-hour Lowest-Observed-Effect-Concentration (LOEC) of 1,000 mg/L (Ref. 74). A study of an estuarine/marine fish silverside (*Menidia beryllina*) reported a 96-hour LC<sub>50</sub> value of 1,250 mg/L (Ref. 81).

2. *Chronic toxicity.* Values for chronic toxicity in aquatic plants ranged from an 8-day LOEC (inhibition of cell division) of 35 mg/L for the cyanobacteria *Microcystis aeruginosa* (Refs. 85 and 86) to greater than 1,000 mg/L for a 7-day EC<sub>50</sub> (growth rate) for the green alga *Selenastrum capricornutum* (Ref. 87). Experimental data for the freshwater invertebrate *Daphnia magna* include values that ranged from 100 mg/L for a 21-day NOEC (reproduction) (Refs. 74, 75, and 77) to an EC<sub>50</sub> of 297 mg/L (endpoint not reported) (Ref. 88).

TABLE 1—RANGE OF EXPERIMENTAL ECOLOGICAL TOXICITY VALUES FOR EGBE ON SELECTED TARGET SPECIES

Species	Duration and test endpoint	Experiment type <sup>a</sup>	Value (mg/L)	Reference
<b>Acute aquatic toxicity</b>				
Algae:				
Green algae ( <i>Pseudokirchneriella subcapitata</i> ) .....	72-hour EC <sub>50</sub> (growth) .....	S, M .....	1,840	(Refs. 74 and 75).
Green algae ( <i>Pseudokirchneriella subcapitata</i> ) .....	72-hour NOEC (biomass) ..	S, M .....	88	(Ref. 82).
Freshwater invertebrate:				
Water flea ( <i>Daphnia magna</i> ) .....	48-hour EC <sub>50</sub> .....	S, U, O .....	1,815	(Ref. 78).
Rotifer ( <i>Brachionus calyciflorus</i> ) .....	48-hour EC <sub>50</sub> (reproduction).	S, M .....	164	(Refs. 74 and 75).
Freshwater fish:				
Golden orfe ( <i>Leuciscus idus</i> ) .....	LC <sub>50</sub> .....	NS .....	1,395	(Ref. 79).
Fathead minnow ( <i>Pimephales promelas</i> ) .....	96-hour LC <sub>50</sub> .....	S, O .....	2,137	(Ref. 80).
Estuarine/marine invertebrate:				
Brine shrimp ( <i>Artemia salina</i> ) .....	24-hour LC <sub>50</sub> .....	S, U, C .....	1,000	(Ref. 84).
Japanese oyster eggs ( <i>Crassostrea gigas</i> ) .....	24-hr LOEC (embryotoxicity).	S .....	1,000	(Refs. 74 and 75).
Estuarine/marine fish:				
Silverside ( <i>Menidia beryllina</i> ) .....	96-hour LC <sub>50</sub> .....	S, U .....	1,250	(Ref. 81).
<b>Chronic aquatic toxicity</b>				
Algae:				
Blue-green algae ( <i>Microcystis aeruginosa</i> ) .....	8-day LOEC (cell multiplication inhibition).	S, U .....	35	(Refs. 85 and 86).
Green algae ( <i>Selenastrum capricornutum</i> ) .....	7-day EC <sub>50</sub> (growth rate) ...	S, U .....	>1,000	(Ref. 87).
Freshwater invertebrate:				
Water flea ( <i>Daphnia magna</i> ) .....	21-day NOEC (reproduction).	R, M .....	100	(Refs. 74 and 75).
Water flea ( <i>Daphnia magna</i> ) .....	21-day NOEC .....	R, M .....	100	(Ref. 88).
Water flea ( <i>Daphnia magna</i> ) .....	21-day EC <sub>50</sub> .....	R, M .....	297	(Ref. 88).
Freshwater fish:				
Zebrafish ( <i>Brachydanio rerio</i> ) .....	21-day NOEC (mortality) ...	NS .....	>100	(Ref. 89).

<sup>a</sup>Experiment type: S = static, R = renewal, M = measured, U = unmeasured, O = open test system, NS = not specified

## V. What is EPA's rationale for the denial?

EPA is denying the petition to delete EGBE from the Certain Glycol Ethers category which is subject to reporting under EPCRA section 313. This denial is based on EPA's conclusion that EGBE can reasonably be anticipated to cause serious or irreversible chronic health effects in humans, specifically, liver toxicity and concerns for hematological effects. While EPA acknowledges that there is evidence to indicate that humans are less sensitive than rodents to the hematological effects associated with acute or short-term exposure to EGBE, little is known of the long-term or repeated exposure responses in humans to EGBE. Thus, some concern remains over the potential for hematological effects following a lifetime of exposure to EGBE. Unlike the hematological effects of EGBE, there is no evidence of humans' decreased sensitivity to the reported liver effects relative to rodents. Therefore, EPA has concluded that EGBE meets the EPCRA section 313(d)(2)(B) listing criteria based on the available human health toxicity data.

Because EPA believes that EGBE has moderately high to high chronic toxicity, EPA does not believe that an exposure assessment is appropriate for determining whether EGBE meets the criteria of EPCRA section 313(d)(2)(B). This determination is consistent with EPA's published statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals (59 FR 61432, November 30, 1994).

## VI. References

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-TRI-2015-0352. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or

physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

- American Chemistry Council. 2014. Petition of the American Chemistry Council's Ethylene Glycol Ethers Panel To Remove Ethylene Glycol Monobutyl Ether From the Toxics Release Inventory Under Section 313 Of The Emergency Planning and Community Right-To-Know Act of 1986. December 29, 2014.
- U.S. EPA. 2010. Toxicological review of Ethylene Glycol Monobutyl Ether (CASRN 111-76-2) in support of summary information on the Integrated Risk Information System (IRIS). U.S. Environmental Protection Agency. Washington, DC. <http://www.epa.gov/iris/toxreviews/0500tr.pdf>.
- U.S. EPA. 2009. Technical Review of Ethylene Glycol Monobutyl Ether (EGBE): Chemistry, Environmental Fate and Ecological Toxicity CAS Registry Number 111-76-2. Office of Environmental Information. September 9, 2009.
- U.S. EPA. 2015. Memorandum from Jocelyn Hospital, Toxicologist, Environmental Analysis Division to Megan Carroll, Acting Division Director of the Environmental Analysis Division. July 24, 2015. Subject: Review of the Data in the 2010 Integrated Risk Information System (IRIS) Toxicological

- Review of Ethylene Glycol Monobutyl Ether (EGBE).
5. Kumagai, S., Oda H., Matsunaga I., Kosaka H., Akasaka S. 1999. Uptake of 10 polar organic solvents during short-term respiration. *Toxicol. Sci.* 48: 255–263.
  6. Johanson G., Boman A. 1991. Percutaneous absorption of 2-butoxyethanol vapour in human subjects. *Occup. Environ. Med.* 48: 788–792.
  7. Corley R.A., Borrett G.A., Ghanayem B.I. 1994. Physiologically-based pharmacokinetics of 2-butoxyethanol and its major metabolite 2-butoxyacetic acid, in rats and humans. *Toxicol. Appl. Pharmacol.* 129: 61–79.
  8. Corley R.A., Markham D.A., Banks C., Delorme P., Masterman A., Houle J.M. 1997. Physiologically based pharmacokinetics and the dermal absorption of 2-butoxyethanol vapor by humans. *Fundam. Appl. Toxicol.* 39: 120–130.
  9. Commonwealth of Australia. 1996. National Industrial Chemicals Notification and Assessment Scheme (NICNAS)-priority existing chemical no. 6-2-butoxyethanol in cleaning products. Australian Government Publishing Service. Canberra, Australia. [http://www.nicnas.gov.au/\\_data/assets/pdf\\_file/0003/4368/PEC\\_6\\_2-Butoxyethanol-in-Cleaning-Products\\_Full\\_Report\\_PDF.pdf](http://www.nicnas.gov.au/_data/assets/pdf_file/0003/4368/PEC_6_2-Butoxyethanol-in-Cleaning-Products_Full_Report_PDF.pdf).
  10. ECETOC. 1994. Butoxyethanol criteria document. Special Report No. 7. European Centre for Ecotoxicology and Toxicology of Chemicals. Brussels, Belgium.
  11. E.U. 2006. European Union Risk Assessment Report: 2-butoxyethanol. <http://echa.europa.eu/documents/10162/e74a38e1-b9e1-4568-92c5-615c4b56f92d>.
  12. Corley, R.A., Grant, D.M., Farris, E., Weitz, K.K., Soelberg, J.J., Thrall, K.D., Poet, T.S. 2005. Determination of age and gender differences in biochemical processes affecting the disposition of 2-butoxyethanol and its metabolites in mice and rats to improve PBPK modeling. *Toxicol. Lett.* 156: 127–161.
  13. Medinsky, M.A., Singh, G., Bechtold, W.E., Bond, J.A., Sabourin, P.J., Birnbaum, L.S., Henderson, R.F. 1990. Disposition of three glycol ethers administered in drinking water to male F344/N rats. *Toxicol. Appl. Pharmacol.* 102: 443–455.
  14. Bartnik, F.G., Reddy, A.K., Klecak, G., Zimmermann, V., Hostynek, J.J., Kunstler, K. 1987. Percutaneous absorption, metabolism, and hemolytic activity of n-butoxyethanol. *Fundam. Appl. Toxicol.* 8: 59–70.
  15. Ghanayem, B.I., Blair, P.C., Thompson, M.B., Maronpot, R.R., Matthews, H.B. 1987. Effect of age on the toxicity and metabolism of ethylene glycol monobutyl ether (2-butoxyethanol) in rats. *Toxicol. Appl. Pharmacol.* 91: 222–234.
  16. Rettenmeier, A.W., Hennigs, R., Wodarz, R. 1993. Determination of butoxyacetic acid and N-butoxyacetyl-glutamine in urine of lacquerers exposed to 2-butoxyethanol. *Int. Arch. Occup. Environ. Health.* 65: S151–S153.
  17. Johanson, G. 1986. Physiologically based pharmacokinetic modeling of inhaled 2-butoxyethanol in man. *Toxicol. Lett.* 34: 23–31.
  18. Johanson, G., Johnsson, S. 1991. Gas chromatographic determination of butoxyacetic acid in human blood after exposure to 2-butoxyethanol. *Arch. Toxicol.* 65: 433–435.
  19. Johanson, G., Boman, A., Dynesius, B. 1988. Percutaneous absorption of 2-butoxyethanol in man. *Scand. J. Work Environ. Health.* 14: 101–109.
  20. Shyr, L.J., Sabourin, P.J., Medinsky, M.A., Birnbaum, L.S., Henderson, R.F. 1993. Physiologically based modeling of 2-butoxyethanol disposition in rats following different routes of exposure. *Environ. Res.* 63: 202–218.
  21. Sabourin, P.J., Medinsky, M.A., Birnbaum, L.S., Griffith, W.C., Henderson, R.F. 1992. Effect of exposure concentration on the disposition of inhaled butoxyethanol by F344 rats. *Toxicol. Appl. Pharmacol.* 114: 232–238.
  22. Sabourin, P.J., Medinsky, M.A., Thurmond, F., Birnbaum, L.S., Henderson, R.F. 1993. Erratum to: Effect of dose on the disposition of methoxyethanol, ethoxyethanol, and butoxyethanol administered dermally to male F344/N rats. *Fundamental and Applied Toxicology* 19:124–132. *Fundam. Appl. Toxicol.* 20: 508–510.
  23. Lee, K.M., Dill, J.A., Chou, B.J., Roycroft, J.H. 1998. Physiologically based pharmacokinetic model for chronic inhalation of 2-butoxyethanol. *Toxicol. Appl. Pharmacol.* 153: 211–226.
  24. Dill, J.A., Lee, K.M., Bates, D.J., Anderson, D.J., Johnson, R.E., Chou, B.J., Burka, L.T., Roycroft, J.H. 1998. Toxicokinetics of inhaled 2-butoxyethanol and its major metabolite, 2-butoxyacetic acid, in F344 rats and B6C3F1 mice. *Toxicol. Appl. Pharmacol.* 153: 227–242.
  25. Ghanayem, B.I., Sullivan, C.A. 1993. Assessment of the haemolytic activity of 2-butoxyethanol and its major metabolite, butoxyacetic acid, in various mammals including humans. *Hum. Exp. Toxicol.* 12: 305–311.
  26. Grant, D., Sulsh, S., Jones, H.B., Gangolli, S.D., Butler, W.H. 1985. Acute toxicity and recovery in the hemopoietic system of rats after treatment with ethylene glycol monomethyl and monobutyl ethers. *Toxicol. Appl. Pharmacol.* 77: 187–200.
  27. Ghanayem, B.I., Sanchez, I.M., Matthews, H.B. 1992. Development of tolerance to 2-butoxyethanol-induced hemolytic anemia and studies to elucidate the underlying mechanisms. *Toxicol. Appl. Pharmacol.* 112: 198–206.
  28. Ezov, N., Levin-Harrus, T., Mittelman, M., Redlich, M., Shabat, S., Ward, S.M., Peddada, S., Nyska, M., Yedgar, S., Nyska, A. 2002. A chemically induced rat model of hemolysis with disseminated thrombosis. *Cardiovasc. Toxicol.* 2: 181–194.
  29. Koshkaryev, A., Barshtein, G., Nyska, A., Ezov, N., Levin-Harrus, T., Shabat, S., Nyska, M., Redlich, M., Tsipis, F., Yedgar, S. 2003. 2-Butoxyethanol enhances the adherence of red blood cells. *Arch. Toxicol.* 77: 465–469.
  30. Shabat, S., Nyska, A., Long, P.H., Goelman, G., Abramovitch, R., Ezov, N., Levin-Harrus, T., Peddada, S., Redlich, M., Yedgar, S., Nyska, M. 2004. Osteonecrosis in a chemically induced rat model of human hemolytic disorders associated with thrombosis—a new model for avascular necrosis of bone. *Calcif. Tissue Int.* 74: 220–228.
  31. Redlich, M., Maly, A., Aframian, D., Shabat, S., Ezov, N., Levin-Harrus, T., Nyska, M., Nyska, A. 2004. Histopathologic changes in dental and oral soft tissues in 2-butoxyethanol-induced hemolysis and thrombosis in rats. *J. Oral. Pathol. Med.* 33: 424–429.
  32. Corley, R.A.; Weitz, K.K., Mast, T.J., Miller, R.A., Thrall, B.D. 1999. Short-term studies to evaluate the dosimetry and modes of action of EGBE in B6C3F1 mice [final report]. Battelle Memorial Institute. Richland, WA. Battelle Project No. 29753.
  33. Poet, T.S., Soelberg, J.J., Weitz, K.K., Mast, T.J., Miller, R.A., Thrall, B.D., Corley, R.A. 2003. Mode of action and pharmacokinetic studies of 2-butoxyethanol in the mouse with an emphasis on forestomach dosimetry. *Toxicol. Sci.* 71: 176–189.
  34. Green, T.; Toghiani, A.; Lee, R.; Moore, R.; Foster, J. 2002. The development of forestomach tumors in the mouse following exposure to 2-butoxyethanol by inhalation: Studies on the mode of action and relevance to humans. *Toxicology.* 180: 257–273.
  35. Tyler, T.R. 1984. Acute and subchronic toxicity of ethylene glycol monobutyl ether. *Environ. Health. Perspect.* 57: 185–191.
  36. Shepard, K.P. 1994. Ethylene glycol monobutyl ether: Acute oral toxicity study in the guinea pig. Eastman Kodak Company for Chemical Manufacturers Association. Rochester, NY and Arlington, VA.
  37. Gingell, R., Boatman, R.J., Lewis, S. 1998. Acute toxicity of ethylene glycol monobutyl ether in the guinea pig. *Food Chem. Toxicol.* 36: 825–829.
  38. Jacobs, G.A., Martens, M.A. 1989. An objective method for the evaluation of eye irritation *in vivo*. *Food Chem. Toxicol.* 27: 255–258.
  39. Kennah, H.E. II., Hignet, S., Laux, P.E., Dorko, J.D., Barrow, C.S. 1989. An objective procedure for quantitating eye irritation based upon changes of corneal thickness. *Fundam. Appl. Toxicol.* 12: 258–268.
  40. Udden, M.M. 2000. Rat erythrocyte morphological changes after gavage dosing with 2-butoxyethanol: A comparison with the *in vitro* effects of butoxyacetic acid on rat and human erythrocytes. *J. Appl. Toxicol.* 20: 381–387.
  41. Udden, M.M. 2002. *In vitro* sub-hemolytic effects of butoxyacetic acid on human and rat erythrocytes. *Toxicol. Sci.* 69: 258–264.

42. Bauer, P., Weber, M., Mur, J.M., Protois, J.C., Bollaert, P.E., Condi, A., Larcen, A., Lambert, H. 1992. Transient non-cardiogenic pulmonary edema following massive ingestion of ethylene glycol butyl ether. *Intensive Care Med.* 18: 250–251.
43. Gijzenbergh, F.P., Jenco, M., Veulemans, H., Groeseneken, D., Verberckmoes, R., Delooz, H.H. 1989. Acute butylglycol intoxication: A case report. *Hum. Toxicol.* 8: 243–245.
44. Gualtieri, J.F., Harris, C.R., Roy, R., Corley, R.A., Manderfield, C. 1995. Multiple 2-butoxyethanol intoxications in the same patient: Clinical findings, pharmacokinetics, and therapy. *J. Toxicol. Clin. Toxicol.* 33: 550–551.
45. Gualtieri, J.F., DeBoer, L., Harris, C.R., Corley, R. 2003. Repeated ingestion of 2-butoxyethanol: Case report and literature review. *J. Toxicol. Clin. Toxicol.* 41: 57–62.
46. Rambourg-Schepens, M.O., Buffet, M., Bertault, R., Jaussaud, M., Journe, B., Fay, R., Lamiabie, D. 1988. Severe ethylene glycol butyl ether poisoning. Kinetics and metabolic pattern. *Hum. Toxicol.* 7: 187–189.
47. Burkhart, K.K., Donovan, J.W. 1998. Hemodialysis following butoxyethanol ingestion. *Clin. Toxicol.* 36: 723–725.
48. Osterhoudt, K.C. 2002. Fomepizole therapy for pediatric butoxyethanol intoxication. *J. Toxicol. Clin. Toxicol.* 40: 929–930.
49. Dean, B.S., Krenzelok, E.P. 1991. Critical evaluation of pediatric ethylene glycol monobutyl ether poisonings. *Vet. Hum. Toxicol.* 33: 362.
50. Carpenter, C.P., Pozzani, U.C., Weil, C.S., Nair III, J.H., Keck, G.A., Smyth Jr., H.F. 1956. The toxicity of butyl cellosolve solvent. *AMA Arch. Ind. Health.* 14: 114–131.
51. U.S. EPA. 2005. Guidelines for carcinogen risk assessment, Final Report. Risk Assessment Forum, U.S. Environmental Protection Agency. Washington, DC. EPA/630/P-03/001F. <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=116283>.
52. NTP. 2000. NTP technical report on the toxicology and carcinogenesis studies of 2-butoxyethanol (CAS No. 111–76–2) in F344/N rats and B6C3F1 mice (inhalation studies). National Toxicology Program. Research Triangle Park, NC. NTP TR 484. <http://ntp.niehs.nih.gov/?objectid=070AC403-B110-CA79-3A23AF79DE7B752A>.
53. Zeiger, E., Anderson, B., Haworth, S., Lawlor, T., Mortelmans, K. 1992. Salmonella mutagenicity tests: V Results from the testing of 311 chemicals. *Environ. Mol. Mutagen.* 19: 2–141.
54. Gollapudi, B.B., Barber, E.D., Lawlor, T.E., Lewis, S.A. 1996. Re-examination of the mutagenicity of ethylene glycol monobutyl ether to Salmonella tester strain TA97a. *Mutat. Res.* 370: 61–64.
55. Chiewchanwit, T., Au, W.W. 1995. Mutagenicity and cytotoxicity of 2-butoxyethanol and its metabolite, 2-butoxyacetaldehyde, in Chinese hamster ovary (CHO–AS52) cells. *Mutat. Res.* 334: 341–346.
56. Klaunig, J.E., Kamendulis, L.M. 2005. Mode of action of butoxyethanol-induced mouse liver hemangiosarcomas and hepatocellular carcinomas. *Toxicol. Lett.* 156: 107–115.
57. NTP. 1996. Toxicology and carcinogenesis studies of acetonitrile (CAS No 75–05–8) in F344/N rats and B6C3F1 mice (inhalation studies). National Toxicology Program. Research Triangle Park, NC. <http://ehp.niehs.nih.gov/ntp/docs/4004xxdoc.html>.
58. Keith, G., Coulais, C., Ederh, A., Bottin, M.C., Rihn, B. 1996. Ethylene glycol monobutyl ether has neither epigenetic nor genotoxic effects in acute treated rats and in subchronic treated v-HA-ras transgenic mice. *Occup. Hyg.* 2: 237–249.
59. Heindel, J.J., Gulati, D.K., Russell, V.S., Reel, J.R., Lawton, A.D., Lamb IV, J.C. 1990. Assessment of ethylene glycol monobutyl and monophenyl ether reproductive toxicity using a continuous breeding protocol in Swiss CD–1 Mice. *Fundam. Appl. Toxicol.* 15: 683–696.
60. Nagano, K., Nakayama, E., Koyano, M., Oobayashi, H., Adachi, H., Yamada, T. 1979. Testicular atrophy of mice induced by ethylene glycol mono alkyl ethers (author's translation). *Sangyo Igaku/Jap. J. Ind. Health.* 21: 29–35.
61. Nagano, K., Nakayama, E., Oobayashi, H., Nishizawa, T., Okuda, H., Yamazaki, K. 1984. Experimental studies on toxicity of ethylene glycol alkyl ethers in Japan. *Environ. Health Perspect.* 57: 75–84.
62. Dodd, D.E., Snellings, W.M., Maronpot, R.R., Ballantyne, B. 1983. Ethylene glycol monobutyl ether: Acute, 9-day, and 90-day vapor inhalation studies in Fischer 344 rats. *Toxicol. Appl. Pharmacol.* 68: 405–414.
63. Doe, J.E. 1984. Further studies on the toxicology of the glycol ethers with emphasis on rapid screening and hazard assessment. *Environ. Health Perspect.* 57: 199–206.
64. Foster, P.M., Lloyd, S.C., Blackburn, D.M. 1987. Comparison of the *in vivo* and *in vitro* testicular effects produced by methoxy-, ethoxy- and n-butoxy acetic acids in the rat. *Toxicology.* 43: 17–30.
65. Exon, J.H., Mather, G.G., Bussiere, J.L., Olson, D.P., Talcott, P.A. 31991. Effects of subchronic exposure of rats to 2-methoxyethanol or 2-butoxyethanol: Thymic atrophy and immunotoxicity. *Fundam. Appl. Toxicol.* 16: 830–840.
66. NTP. 1993. NTP technical report on toxicity studies of ethylene glycol ethers: 2-methoxyethanol, 2-ethoxyethanol, 2-butoxyethanol (CAS Nos. 109–86–4, 110–80–5, 111–76–2) administered in drinking water to F344/N rats and B6C3F1 mice. National Toxicology Program. Research Triangle Park, NC. 26; NIH Publication 93–3349.
67. Nelson, B.K., Setzer, J.V., Brightwell, W.S., Mathinos, P.R., Kuczuk, M.H., Weaver, T.E., Goad, P.T. 1984. Comparative inhalation teratogenicity of four glycol ether solvents and an amino derivative in rats. *Environ. Health Perspect.* 57: 261–271.
68. Tyl, R.W., Millicovsky, G., Dodd, D.E., Pritts, I.M., France, K.A., Fisher, L.C. 1984. Teratologic evaluation of ethylene glycol monobutyl ether in Fischer 344 rats and New Zealand white rabbits following inhalation exposure. *Environ. Health Perspect.* 57: 47–68.
69. Hardin, B.D., Goad, P.T., Burg, J.R. 1984. Developmental toxicity of four glycol ethers applied cutaneously to rats. *Environ. Health Perspect.* 57: 69–74.
70. Wier, P.J., Lewis, S.C., Traul, K.A. 1987. A comparison of developmental toxicity evident at term to postnatal growth and survival using ethylene glycol monoethyl ether, ethylene glycol monobutyl ether, and ethanol. *Teratog. Carcinog. Mutagen.* 7: 55–64.
71. Greaves, P. 2000. Hepatocellular hypertrophy and hyperplasia. In *Histopathology of preclinical toxicity studies: Interpretation and relevance in drug safety evaluation* (pp. 445–448). New York, NY: Elsevier.
72. Haufroid, V., Thirion, F., Mertens, P., Buchet, J.P., Lison, D. 1997. Biological monitoring of workers exposed to low levels of 2-butoxyethanol. *Int. Arch. Occup. Environ. Health.* 70: 232–236.
73. Bringmann, G., Kuhn, R. 1977. Limiting values for the damaging action of water pollutants to bacteria (*Pseudomonas putida*) and green algae (*Scenedesmus quadricauda*) in the cell multiplication inhibition test. *Z. Wasser Abwasser Forsch.* 10(3/4): 87–98. (In German)
74. Devillers, J., Chezeau, A., Thybaud, E., Poulsen, V., Procher, J.-M., Graff, L., Vasseur, P., Mouchet, F., Ferrier, V., Quiniou, F. 2002. Ecotoxicity of ethylene glycol monobutyl ether and its acetate. *Toxicology Mechanisms and Methods.* 12: 255–263.
75. Devillers, J., Chezeau, A., Thybaud, E., Poulsen, J.-M., Graff, L., Vasseur, P., Chenon, P., Mouchet, F., Ferrier, V., Quiniou, F. 2002. Ecotoxicity of ethylene glycol monomethyl ether and its acetate. *Toxicology Mechanisms and Methods.* 12: 241–254.
76. INERIS. 1999. Détermination de la toxicité chronique du 2-butoxyethanol vis-à-vis de l'algue d'eau douce *Pseudokirchneriella subcapitata*, Ba746d-CGR21427. Verneuil-en-Halatte, France, 14 december 1999, INERIS: 14. As cited in Ref. 77.
77. ECB (European Chemicals Bureau). 2006. European Union Risk Assessment Report for 2-Butoxyethanol (EGBE). Vol. 68. European Commission.
78. Bringmann, G., Kuhn, R. 1982. Results of the toxic action of water pollutants on *Daphnia magna* in an improved standardized procedure. *Z. Wasser Abwasser Forsch.* 15(1): 1–6. (In German)
79. Juhnke, I., Luedemann, D. 1978. Results of the study of 200 chemical compounds on acute fish toxicity using the Golden Orfe test. *Z. Wasser Abwasser Forsch.* 11(5): 161–164. (In German)
80. Dow Chemical Co. 1979. Toxicity of Dowanol EB to freshwater organisms (redactor: Bartlett), 31 August 1979. As cited in Ref. 77.
81. Dawson, G.W., Jennings, A.L., Drozdowski, D., Rider, E. 1975. The acute toxicity of 47 industrial chemicals

- to fresh and saltwater fishes. *Journal of Hazardous Materials*. 1: 303–318.
82. INERIS. 1999. Détermination de la toxicité aiguë du 2-butoxyethanol vis-à-vis de *Oncorhynchus mykiss*, unpublished, Ba746f-CGR21427. Verneuil-en-Halatte, France, 14 december 1999, INERIS: 10. As cited in Ref. 77.
83. Bridie, A.L., Wolff, C.J.M., Winter, M. 1979. The acute toxicity of some petrochemicals to goldfish. *Water Res.* 13(7): 623–626.
84. Price, K.S., Waggy, G.T., Conway, R.A. 1974. Brine shrimp bioassay and seawater BOD of petrochemicals. *Journal WPCF*. 46(1): 63–76.
85. Bringmann, G., Kuhn, R. 1978. Threshold Values of Substances Harmful to Water for Blue Algae (*Microcystis aeruginosa*) and Green Algae (*Scenedesmus quadricauda*) in Tests Measuring the Inhibition of Cellular Propagation. *Vom Wasser*. 50:45 60 (in German) (English Abstract), Tr 80 0201, Literature Research Company: 22 p.
86. Bringmann, G., Kuhn, R. 1978. Testing of Substances for Their Toxicity Threshold: Model Organisms *Microcystis (Diplocystis) aeruginosa* and *Scenedesmus quadricauda*. *Mitt. Int. Ver. Theor. Angew. Limnol.* 21: 275 284.
87. Dill, DC, Milazzo, D.P. 1988. Dowanol PM Glycol Ether: Evaluation of the toxicity to the green alga, *Selenastrum capricornutum* Printz. Dow Chemical Company. EPA Document Control Number 86–890001160. 18 pages.
88. INERIS. 1999. Détermination de la toxicité chronique du 2-butoxyethanol vis-à-vis de *Daphnia magna*, Ba746a-CGR21427. Verneuil-en-Halatte, France, 15 december 1999, INERIS: 13. As cited in Ref. 77.
89. INERIS. 2001. Essai poisson 21 jours, *Danio rerio*, unpublished report, N° 22685, 05.11.2001. As cited in Ref. 77.

#### List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: September 24, 2015.

**Arnold E. Layne,**

*Director, Office of Information Analysis and Access.*

[FR Doc. 2015–25674 Filed 10–7–15; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[MD Docket No. 15–121; FCC 15–108]

### Assessment and Collection of Regulatory Fees for Fiscal Year 2015

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document the Commission revises its Schedule of Regulatory Fees to recover an amount of \$339,844,000 that Congress has required the Commission to collect for fiscal year 2015. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual “Mandatory Adjustments” and “Permitted Amendments” to the Schedule of Regulatory Fees.

**DATES:** Comments are due November 9, 2015 and Reply Comments are due December 7, 2015.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418–0444.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Further Notice of Proposed Rulemaking (FNPRM), FCC 15–108, MD Docket No. 15–121, adopted on September 1, 2015 and released on September 2, 2015.

#### I. Administrative Matters

##### A. Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>1</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Further Notice of Proposed Rulemaking.

##### B. Initial Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

##### C. Filing Instructions

3. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of*

<sup>1</sup> *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAANA).

*Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

• **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS.

• **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

○ Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

4. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

##### D. Ex Parte Information

5. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and summarize all data presented and arguments made

during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

## II. Introduction and Executive Summary

6. In the *Further Notice of Proposed Rulemaking* in this docket, we seek further comment on changes to our methodology in calculating regulatory fees for AM and FM broadcast radio and on reallocating FTEs from the Wireline Competition Bureau working on numbering and universal service issues.

## III. Background

7. Congress adopted a regulatory fee schedule in 1993<sup>2</sup> and authorized the Commission to assess and collect annual regulatory fees pursuant to the schedule, as amended by the Commission.<sup>3</sup> As a result, the Commission annually reviews the regulatory fee schedule, proposes changes to the schedule to reflect changes in the amount of its appropriation, and proposes increases or decrease to the schedule of regulatory fees.<sup>4</sup> The Commission makes changes to the regulatory fee schedule "if the Commission determines that the schedule requires amendment to comply with the requirements"<sup>5</sup> of

section 9(b)(1)(A) of the Act.<sup>6</sup> The Commission may also add, delete, or reclassify services in the fee schedule to reflect additions, deletions, or changes in the nature of its services "as a consequence of Commission rulemaking proceedings or changes in law." Thus, for each fiscal year, the proposed fee schedule in the annual Notice of Proposed Rulemaking (NPRM) will reflect changes in the amount appropriated for the performance of the FCC's regulatory activities, changes in the industries represented by the regulatory fee payers, changes in Commission FTE levels, and any other issues of relevance to the proposed fee schedule.<sup>7</sup> After receipt and review of comments, the Commission issues a *Report and Order* adopting the fee schedule for the fiscal year and sets out the procedures for payment of fees.

## IV. Further Notice of Proposed Rulemaking

### A. Broadcasters' Regulatory Fees

8. In the *FY 2015 NPRM*, we sought comment on whether the Commission should review the apportionment of regulatory fees among broadcasters. We sought comment on whether the Commission should reexamine the number of FTEs devoted to the regulation of radio versus television broadcasters and adjust the fee paid by radio and television broadcasters to more accurately take into account factors related to "the benefits provided to the payor of the fee by the Commission's activities."<sup>8</sup> NAB filed comments in support of our effort to better align fees with the FTEs working on broadcast issues, but observes that we have not yet provided information about the relevant FTEs.<sup>9</sup> We have reviewed the categories of work performed by FTEs in the Media Bureau, in order to provide further information for commenters on this issue. The Media Bureau, consisting of 169 FTEs, develops, recommends, and administers the policy and licensing programs for electronic media, including cable television, broadcast television, and radio in the United States and its territories, and also handles post-licensing matters regarding DBS service. The Media Bureau has 25 FTEs in the bureau front office, (including staff assigned to Bureau-wide administrative support), 51 in the Audio

Division, 27 in the Industry Analysis Division, 13 in Engineering Division, 29 in the Policy Division, and 24 in the Video Division. Some of these FTEs may be categorized as auctions-funded, depending on the Commission's auctions schedule. All of the Engineering Division FTEs work on cable issues, and some FTEs from the Policy and Industry Analysis Divisions also work on cable issues. Of the 52 FTEs in the Audio Division, approximately 42 are assigned to FM and 10 to AM. The 25 FTEs in the Video Division work on television issues. We seek further comment on whether and how to reform our regulatory fee assessments for broadcasters.

9. The Commission assesses regulatory fees on radio broadcasters based on type and class of service and on the population they serve. Earlier this year we sought comment on whether the dividing points for higher fee levels for both television and radio broadcasters remain appropriate and observed that "no single ratio apportions regulatory fees among AM and FM radio categories."<sup>10</sup> We seek further comment on rationalizing the regulatory fee table for radio broadcasters. First, we seek input on including a higher population row in the table, dividing radio broadcasters that serve 3,000,001–6,000,000 people from those that serve more. Second, we seek input on standardizing the incremental increase in fees as radio broadcasters increase the population they serve, such as by requiring that fee adjustments between tiers monotonically increase as the population served increases. Third, we seek input on consistently assessing fees based on the relative type and class of service, such as by assessing FM class B, C, C0, C1, & C2 stations at twice the rate of AM class C stations, and FM class A, B1, & C3 stations assessed at 75 percent more than AM class C stations. For AM stations, we seek comment on assessing AM class A stations at 60 percent more, AM class B stations at 15 percent more, and AM class D stations at 10 percent more than AM class C stations (*i.e.*, at roughly the relative rates assessed today). Taking these options together, we seek comment on the following potential table of regulatory fees for radio broadcasters.

that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest.").

<sup>9</sup>NAB Comments at 2.

<sup>10</sup>*FY 2015 NPRM*, 30 FCC Rcd at 5359, para. 13.

<sup>2</sup> 47 U.S.C. 159 (g) (showing original fee schedule prior to Commission amendment).

<sup>3</sup> 47 U.S.C. 159

<sup>4</sup> 47 U.S.C. 159(b)(1)(B).

<sup>5</sup> 47 U.S.C. 159(b)(2).

<sup>6</sup> 47 U.S.C. 159(b)(1)(A).

<sup>7</sup> Section 9(b)(2) discusses mandatory amendments to the fee schedule and Section 9(b)(3) discusses permissive amendments to the fee schedule. Both mandatory and permissive amendments are not subject to judicial review. 47 U.S.C. 159(b)(2) and (3).

<sup>8</sup> 47 U.S.C. 159(b)(1)(A) (providing for adjustment of the FTE allocation to "take into account factors

PROPOSED RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	\$910	\$655	\$570	\$625	\$1,000	\$1,140
25,001–75,000	1,370	985	855	940	1,495	1,710
75,001–150,000	1,825	1,310	1,140	1,255	1,995	2,280
150,001–500,000	2,735	1,965	1,710	1,880	2,995	3,420
500,001–1,200,000	4,560	3,280	2,850	3,135	4,990	5,700
1,200,001–3,000,000	6,840	4,915	4,275	4,705	7,480	8,550
3,000,001–6,000,000	9,120	6,555	5,700	6,270	9,975	11,400
>6,000,000	11,400	8,195	7,125	7,840	12,470	14,250

10. The Commission assesses regulatory fees on television broadcasters based on the markets they serve (1–10:11–25:26–50:51–100: Remaining Market). Before the Commission combined the VHF and UHF regulatory fee categories, the ratio of regulatory fees for VHF stations (then

considered the most valuable stations) was roughly 14:11:7:4:1. Today, it is roughly 10:9:6:3:1. We seek comment on readjusting the table to restore the traditional determination that Top 10 stations should pay about twice what stations in markets 26–50 pay (that is, the new ratios would be 12:9:6:3:1).

With this change, and adjusting to recover the same total regulatory fees as television broadcasters pay today, we seek comment on the following potential table of regulatory fees for television broadcasters.

Digital TV (47 CFR part 73) VHF and UHF commercial	Before	After
Markets 1–10	\$46,825	\$55,025
Markets 11–25	43,200	41,270
Markets 26–50	27,625	27,515
Markets 51–100	16,275	13,755
Remaining Markets	4,850	4,585
Construction Permits	4,850	4,585

11. NAB also observes that after the spectrum incentive auction there may be fewer television stations, resulting in material changes in the regulatory fee apportionment among the remaining stations.<sup>11</sup> We seek comment on whether, when, and how the Commission should adjust its methodology for assessing regulatory fees on television stations, to respond to such potential changed circumstances consistent with the provisions of Section 9 of the Communications Act.

*B. ITTA’s Proposals To Reallocate FTEs*

12. ITTA has suggested that we should consider all cross-cutting work throughout the Commission, not just in the International Bureau, and we should re-assign certain Wireline Competition Bureau FTEs for regulatory fee purposes.<sup>12</sup> ITTA contends that the Commission should make appropriate adjustments to its regulatory fee structure to reflect that the work of the Wireline Competition Bureau is no longer primarily focused on ITSPs.<sup>13</sup> According to ITTA, resources expended by Wireline Competition Bureau FTEs increasingly benefit other industry

sectors.<sup>14</sup> ITTA argues that the Commission’s efforts to modernize the Lifeline program and to conduct a comprehensive analysis of the special access marketplace, for example, generate significant benefits for entities that do not pay regulatory fees as ITSPs.<sup>15</sup>

13. ITTA has previously proposed that we combine wireless providers into the ITSP fee category so that all voice providers pay regulatory fees on the same basis.<sup>16</sup> ITTA continues to endorse this approach and contends that such action would be consistent with the Commission’s decision to incorporate interconnected VoIP providers into the ITSP fee category to ensure that such providers are paying their share of regulatory fees in connection with the Commission’s oversight of voice services.<sup>17</sup>

14. We recognize that there is substantial convergence in the telecommunications industry and organizational changes in the Commission that may support additional FTE reallocations as ITTA contends. Wireless providers are not subject to all of the regulations and

requirements imposed on ITSPs. However, there are certain rules (e.g., universal service), that wireless and wireline services benefit from and the Wireline Competition Bureau FTEs provide the oversight and regulation of the industry in these areas.<sup>18</sup> We seek comment on ITTA’s proposals to (i) combine wireless voice and wireline services into the ITSP category and, alternatively, to (ii) re-assign certain Wireline Competition Bureau FTEs as indirect for regulatory fee purposes. Concerning any reassignment of direct FTEs, we seek comment on whether it is reasonable and consistent with section 9 of the Act to readjust the assignment of FTEs in the bureau and if the record demonstrates the clearest case for reassignment.<sup>19</sup>

15. Commenters supporting ITTA’s proposals should also explain: How wireless voice services and wireline services can be combined (currently wireless regulatory fees are calculated per subscriber and ITSP fees are based on revenues) and how we would determine which and how many Wireline Competition Bureau FTEs to reassign as indirect. We note that, as ITTA observes, certain issues handled

<sup>11</sup> NAB Comments at 7–9.

<sup>12</sup> ITTA Comments at 2–5.

<sup>13</sup> *Id.* at 3–4.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 4–5.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

<sup>18</sup> 47 CFR 54.900 *et seq.*

<sup>19</sup> *FY 2013 Report and Order*, 28 FCC Rcd at 12357–58, para. 19.



in the Wireline Competition Bureau benefit wireless providers, and that argument could support reassigning certain Wireline Competition Bureau FTEs as Wireless Telecommunications Bureau FTEs for regulatory fee purposes.<sup>20</sup> For example, given the amount of Universal Service Lifeline Support distributed to wireless providers, should FTEs who work on issues related to such providers be allocated the Wireless Telecommunications Bureau for regulatory fee calculations?<sup>21</sup> Alternatively, we also seek comment on adopting a new fee category for wireless providers, as a subcategory of the ITSP regulatory fee category, based on a percentage Wireline Competition Bureau FTE work devoted to work related to these wireless regulatees.<sup>22</sup>

## V. Regulatory Flexibility Analysis

### Initial Regulatory Flexibility Analysis

16. As required by the Regulatory Flexibility Act (RFA),<sup>23</sup> the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (*Further Notice*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on this *Further Notice*. The Commission will send a copy of the *Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>24</sup> In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>25</sup>

#### A. Need for, and Objectives of, the Notice

17. The *Further Notice* seeks comment regarding adjusting the regulatory fees paid by broadcasters, for radio and television. Specifically, the Commission seeks comment on the extent of FTEs that work on video, cable, DBS, and radio services, and whether the current

proportion of fees paid by these various fee categories associated with these services are still accurate. The level of FTE activity on these media services determines the proportion of fees to be paid by each media service fee category, which in turn is used to calculate the fee amount for each fee category.

#### B. Legal Basis

18. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.<sup>26</sup>

#### C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.<sup>27</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>28</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>29</sup> A “small business concern” is one which: (1) Is independently owned and operated; (2) Is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>30</sup>

20. Small Entities. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected by the proposals under consideration.<sup>1</sup> As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.<sup>2</sup> In addition, a “small organization is generally any not-for-profit enterprise which is independently owned and operated and

not dominant in its field.<sup>3</sup> Nationwide, as of 2007, there were approximately 1,621,215 small organizations.<sup>4</sup> Finally the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>5</sup> Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.<sup>6</sup> We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”<sup>7</sup> Thus, we estimate that most local government jurisdictions are small.

21. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>8</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>9</sup> Census data for 2007 shows that there were 3,188 firms that operated that year. Of this

<sup>3</sup> 5 U.S.C. 601(4).

<sup>4</sup> See Independent Sector, *The New Nonprofit Almanac and Desk Reference* (2010).

<sup>5</sup> 5 U.S.C. 601(5).

<sup>6</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at [http://www.sba.gov/sites/default/files/FAQMarch201\\_Opdf](http://www.sba.gov/sites/default/files/FAQMarch201_Opdf).

<sup>7</sup> The 2011 Census Data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, we note that there were a total of 729 cities and towns (incorporated places and civil divisions) with populations over 50,000. See <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 789, 237 are small.

<sup>8</sup> See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>9</sup> See 13 CFR 120.201, NAICS Code 517110.

<sup>20</sup> Based on staff analysis, approximately 10 FTEs work on high-cost issues, 4 FTEs work on Lifeline issues, 9 FTEs work on E-rate issues, and 4 FTEs work on Rural Health Care issues. In addition approximately 14 FTEs work on numbering issues and/or special access.

<sup>21</sup> Wireless providers received an estimated \$1.4 billion in Lifeline disbursements in 2014.

<sup>22</sup> See, e.g., *FY 2014 NPRM*, 29 FCC Rcd at 10782–84, paras. 38–43.

<sup>23</sup> 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 847 (1996).

<sup>24</sup> 5 U.S.C. 603(a).

<sup>25</sup> *Id.*

<sup>26</sup> 47 U.S.C. 154(i) and (j), 159, and 303(r).

<sup>27</sup> 5 U.S.C. 603(b)(3).

<sup>28</sup> 5 U.S.C. 601(6).

<sup>29</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

<sup>30</sup> 15 U.S.C. 632.

<sup>1</sup> See 5 U.S.C. 601(3)–(6).

<sup>2</sup> See SBA, Office of Advocacy, “Frequently Asked Questions”, available at <http://www.sba.gov/faqs/faqindex.cfm?areaid=24>.

total, 3,144 operated with fewer than 1,000 employees.<sup>10</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

22. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>11</sup> According to Commission data, census data for 2007 shows that there were 3,188 establishments that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.<sup>12</sup> The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *Further Notice*.

23. Incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>13</sup> According to Commission data, 3,188 firms operated in that year. 1,307 carriers reported that they were incumbent local exchange service providers.<sup>14</sup> Of this total, 3,144 operated with fewer than 1,000 employees.<sup>15</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies proposed in the *Further Notice*. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>16</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>17</sup>

24. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and

Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>18</sup> U.S. Census data for 2007 indicate that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.<sup>19</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>20</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>21</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>22</sup> Of this total, 70 have 1,500 or fewer employees.<sup>23</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the proposals in this *Notice*.

25. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>24</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>25</sup> Of this total, an estimated 317 have 1,500 or fewer employees and

42 have more than 1,500 employees.<sup>26</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *Further Notice*.

26. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS Code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Mobile virtual networks operators (MVNOs) are included in this industry.<sup>27</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>28</sup> U.S. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.<sup>29</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>30</sup> All 193 carriers have 1,500 or fewer employees.<sup>31</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the *Further Notice*.

27. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>32</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.<sup>33</sup> Under this category and the associated small business size

<sup>10</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSZ5&prodType=table).

<sup>11</sup> 13 CFR 121.201, NAICS code 517110.

<sup>12</sup> See *id.*

<sup>13</sup> 13 CFR 121.201, NAICS code 517110.

<sup>14</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> *Id.*

<sup>18</sup> 13 CFR 121.201, NAICS code 517110.

<sup>19</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSZ5&prodType=%20table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSZ5&prodType=%20table).

<sup>20</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 13 CFR 121.201, NAICS code 517110.

<sup>25</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>26</sup> *Id.*

<sup>27</sup> <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>28</sup> 13 CFR 121.201, NAICS code 517911.

<sup>29</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSZ5&prodType=table).

<sup>30</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>31</sup> *Id.*

<sup>32</sup> 13 CFR 121.201, NAICS code 517911.

<sup>33</sup> *Id.*

standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>34</sup> Of this total, an estimated 211 have 1,500 or fewer employees.<sup>35</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this *Further Notice*.

28. Toll Resellers. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>36</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.<sup>37</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>38</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>39</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposals in the *Further Notice*.

29. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>40</sup> Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.<sup>41</sup> Thus, under this category and the associated small business size

standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>42</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>43</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *Further Notice*.

30. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>44</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.<sup>45</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>46</sup> Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

31. Cable Television and other Subscription Programming.<sup>47</sup> Since

2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers. That category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."<sup>48</sup> The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees.<sup>49</sup> Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 had fewer than 1,000 employees.<sup>50</sup> Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the *Further Notice*.

32. Cable Companies and Systems. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>51</sup> Industry data indicate that there are currently 4,600 active cable systems in

to us for two reasons. First, the size standard established by the SBA for Cable and Other Subscription Programming is annual receipts of \$38.5 million or less. Thus to use the annual receipts size standard would require the Commission either to switch from existing employee based size standard of 1,500 employees or less for Wired Telecommunications Carriers, or else would require the use of two size standards. No official approval of either option has been granted by the Commission as of the time of the release of the *FY 2015 NPRM*. Second, the data available under the size standard of \$38.5 million dollars or less is not applicable at this time, because the only currently available U.S. Census data for annual receipts of all businesses operating in the NAICS Code category of 515210 (Cable and other Subscription Programming) consists only of total receipts for all businesses operating in this category in 2007 and of total annual receipts for all businesses operating in this category in 2012. Hence the data do not provide any basis for determining, for either year, how many businesses were small because they had annual receipts of \$38.5 million or less. See [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_515210&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_515210&prodType=table).

<sup>48</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition), (Full definition stated in paragraph 6 of this IRFA) available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>49</sup> 13 CFR 121.201, NAICS code 517110.

<sup>50</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_515210&prodType=Table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_515210&prodType=Table).

<sup>51</sup> 47.CFR 76.901(e).

<sup>34</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>35</sup> *Id.*

<sup>36</sup> NAICS Code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>37</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>38</sup> *Id.*

<sup>39</sup> In 2014, "Cable and Other Subscription Programming," NAICS Code 515210, replaced a prior category, now obsolete, which was called "Cable and Other Program Distribution." Cable and Other Program Distribution, prior to 2014, were placed under NAICS Code 517110, Wired Telecommunications Carriers. Wired Telecommunications Carriers is still a current and valid NAICS Code Category. Because of the similarity between "Cable and Other Subscription Programming" and "Cable and Other Program Distribution," we will, in this proceeding, continue to use Wired Telecommunications Carrier data based on the U.S. Census. The alternative of using data gathered under Cable and Other Subscription Programming (NAICS Code 515210) is unavailable

<sup>34</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>35</sup> *Id.*

<sup>36</sup> 13 CFR 121.201, NAICS code 517911.

<sup>37</sup> *Id.*

<sup>38</sup> See *Trends in Telephone Service*, at Table 5.3.

<sup>39</sup> *Id.*

<sup>40</sup> 13 CFR 121.201, NAICS code 517110.

<sup>41</sup> *Id.*

the United States.<sup>52</sup> Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.<sup>53</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>54</sup> Current Commission records show 4,600 cable systems nationwide.<sup>55</sup> Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>56</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

33. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today.<sup>57</sup> Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>58</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>59</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>60</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate

with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

34. All Other Telecommunications. "All Other Telecommunications" is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>61</sup> The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>62</sup> For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual receipts of less than \$25 million.<sup>63</sup> Thus, a majority of "All Other Telecommunications" firms potentially affected by the proposals in the *Further Notice* can be considered small.

#### D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

35. This *Further Notice* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements.

#### E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification,

consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>64</sup>

37. This *Further Notice* seeks comment on the Commission's regulatory fee collection for radio and television broadcasters, including comment on exempting smaller broadcasters from regulatory fees. Specifically, the Commission seeks comment on the extent of FTEs that work on video, cable, DBS, and radio services, and whether the current proportion of fees paid by these various fee categories associated with these services are still accurate. The level of FTE activity on these media services determines the proportion of fees to be paid by each media service fee category, which in turn is used to calculate the fee amount for each fee category. Since this determines the fee rate for big and small media companies, the Commission is sensitive to the impact of any changes in the proportion of FTE activity on companies in the media industry.

#### F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

38. None.

#### VI. Ordering Clauses

39. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this *Report and Order* and *Further Notice of Proposed Rulemaking* is hereby adopted.

40. *It is further ordered* that this *Further Notice of Proposed Rulemaking* comments are due November 9, 2015 and reply comments are due December 7, 2015.

41. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch.**

Secretary.

[FR Doc. 2015-25578 Filed 10-7-15; 8:45 am]

**BILLING CODE 6712-01-P**

<sup>52</sup> August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations And Licensing System (COALS). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>53</sup> See SNL KAGAN at [www.snl.com/interactiveX/topcableMSOs.aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc](http://www.snl.com/interactiveX/topcableMSOs.aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc).

<sup>54</sup> 47 CFR 76.901(c).

<sup>55</sup> See footnote 2, *supra*.

<sup>56</sup> August 5, 2015 report from the Media Bureau based on its research in COALS. See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>57</sup> See SNL KAGAN at [www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx](http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx).

<sup>58</sup> 47.901(f) and notes ff. 1, 2, and 3.

<sup>59</sup> See SNL KAGAN at [www.snl.com/Interactivex/TopCableMSOs.aspx](http://www.snl.com/Interactivex/TopCableMSOs.aspx).

<sup>60</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. See 47 CFR 76.901(f).

<sup>61</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>62</sup> 13 CFR 121.201; NAICs Code 517919.

<sup>63</sup> [http://factfinder.census.gov/faces/tableservices.jspx/pages/productview.xhtml?pid+ECN\\_2007\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices.jspx/pages/productview.xhtml?pid+ECN_2007_US_51SSSZ4&prodType=table).

<sup>64</sup> 5 U.S.C. 603(c)(1) through (c)(4).

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 2, 4, 13, 18, and 19**[FAR Case 2015–020; Docket 2015–0020;  
Sequence 1]

RIN 9000–AN09

**Federal Acquisition Regulation;  
Simplified Acquisition Threshold for  
Overseas Acquisitions in Support of  
Humanitarian or Peacekeeping  
Operations****AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).**ACTION:** Proposed rule.**SUMMARY:** DoD, GSA, and NASA are  
proposing to amend the Federal  
Acquisition Regulation (FAR) to  
implement a higher simplified  
acquisition threshold for overseas  
acquisitions in support of humanitarian  
or peacekeeping operations.**DATES:** Interested parties should submit  
written comments to the Regulatory  
Secretariat at one of the addresses  
shown below on or before December 7,  
2015 to be considered in the  
formulation of a final rule.**ADDRESSES:** Submit comments in  
response to FAR Case 2015–020 by any  
of the following methods:

- **Regulations.gov:** <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2015–020.” Select the link “Comment Now” that corresponds with FAR Case 2015–020. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2015–020” on your attached document.

- **Mail:** General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAR Case 2015–020, in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after

submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathlyn Hopkins, Procurement Analyst, at 202–969–7226, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR case 2015–020.

**SUPPLEMENTARY INFORMATION:****I. Background**

The purpose of this rule is to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold (SAT) for overseas acquisitions in support of humanitarian or peacekeeping operations. FAR Case 2003–022 was published as an interim rule on February 23, 2004 (69 FR 8312) and as a final rule on December 20, 2004 (69 FR 76350). Drafters of that rule revised the definition for SAT contained at FAR 2.101, Definitions, but also inadvertently deleted the reference to overseas humanitarian or peacekeeping missions and the requisite doubling of the SAT in those circumstances. The civilian statute at the time was numbered 41 U.S.C. 259(d)(1); it is now at 41 U.S.C. 153. The purpose of this rule is to reinstate the increased SAT for overseas acquisitions for peacekeeping or humanitarian operations. Conforming changes are made in FAR parts 4, 13, 18, and 19.

**II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**III. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely provides flexibilities associated with contracting under the

SAT for overseas acquisitions in support of humanitarian or peacekeeping operations. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The purpose of this rule is to implement 41 U.S.C. 153, which establishes a higher SAT for overseas acquisitions in support of humanitarian or peacekeeping operations. The increased threshold is limited to those procurements. In Fiscal Year 2014, 1,545 awards were made in support of humanitarian or peacekeeping operations, and 585 (37.86 percent) of these awards were to small businesses. Additionally, only 81 (5.24 percent) of the awards were valued between \$150,000 and \$300,000. Therefore, it is not anticipated that this rule will have a significant economic impact on small businesses.

The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were determined that will accomplish the objectives of the rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015–020), in correspondence.

**IV. Paperwork Reduction Act**

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 2, 4, 13, 18, and 19**

Government procurement.

**William Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 13, 18, and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 13, 18, and 19 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**PART 2—DEFINITIONS OF WORDS AND TERMS**

■ 2. Amend section 2.101 in paragraph (b)(2), by revising the definition “Simplified acquisition threshold” to read as follows:

**2.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

*Simplified acquisition threshold* means \$150,000, except for—

(1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 1903), the term means—

(i) \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

(2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (41 U.S.C. 153 and 10 U.S.C. 2302), the term means \$300,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

\* \* \* \* \*

**PART 4—ADMINISTRATIVE MATTERS****4.1102 [Amended]**

■ 3. Amend section 4.1102 by removing from paragraph (a)(3)(i) “10 U.S.C. 2302(7)” and adding “10 U.S.C. 2302(8)” in its place.

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES****13.003 [Amended]**

■ 4. Amend section 13.003 by removing from paragraph (b)(1) “described in paragraph (1)” and adding “described in paragraph (1)(i)” in its place.

**PART 18—EMERGENCY ACQUISITIONS**

■ 5. Amend subpart 18.2 by redesignating section 18.204 as section 18.205; and adding a new section 18.204 to read as follows:

**18.204 Humanitarian or peacekeeping operation.**

(a) A humanitarian or peacekeeping operation is defined in 2.101.

(b) *Simplified acquisition threshold.* The threshold increases when the head

of the agency determines the supplies or services are to be used to support a humanitarian or peacekeeping operation. (See 2.101.)

**PART 19—SMALL BUSINESS PROGRAMS****19.203 [Amended]**

■ 6. Amend section 19.203 by removing from paragraph (b) “described in paragraph (1)” and adding “described in paragraph (1)(i)” in its place.

**19.502–2 [Amended]**

■ 7. Amend section 19.502–2 by removing from paragraph (a) “described in paragraph (1) of the Simplified Acquisition Threshold” and adding “described in paragraph (1)(i) of the simplified acquisition threshold” in its place.

[FR Doc. 2015–25614 Filed 10–7–15; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 36**

[FAR Case 2015–018; Docket No. 2015–0018; Sequence No. 1]

RIN 9000–AN10

**Federal Acquisition Regulation; Improvement in Design-Build Construction Process**

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 814 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 that requires the head of the contracting activity to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design-build construction acquisition that is valued at greater than \$4 million.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before December 7, 2015 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2015–018 by any of the following methods:

• **Regulations.gov:** <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2015–018.” Select the link “Comment Now” that corresponds with FAR Case 2015–018. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2015–018” on your attached document.

• **Mail:** General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAR Case 2015–018, in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, at 202–501–1448, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR case 2015–018.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD, GSA, and NASA are proposing to amend the FAR to implement section 814 of the Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015. Section 814 is entitled Improvement in Defense Design-Build Construction Process. Section 814 requires the head of the contracting activity, delegable to a level no lower than the senior contracting official, to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design build construction acquisition that is valued at greater than \$4 million.

**II. Discussion and Analysis**

This proposed rule does not change the maximum number of offerors, currently five, that may be selected to submit phase-two proposals without a contracting officer determination. However, for acquisitions valued above

\$4 million, the determination must now have a higher level of approval for the contracting officer to select more than five offerors. A potential offeror may be more inclined to invest their pre-award efforts on solicitations where they have an increased chance of award.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### IV. Regulatory Flexibility Act

This change is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Nevertheless, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared, and is summarized as follows:

This rule implements section 814 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. Section 814 is entitled Improvement in Defense Design-Build Construction Process. Section 814 requires the head of the contracting activity, delegable to a level no lower than the senior contracting official, to approve any determinations to select more than five offerors to submit phase-two proposals for a two-phase design build construction acquisition that is valued at greater than \$4 million.

The number of design-build construction awards is not currently tracked by the Federal government's business systems. In Fiscal Year 2014, the Federal government awarded 3,666 construction awards to 2,239 unique small business vendors. It is unknown what percentage of these contracts involved design-build construction services.

This rule does not impose new recordkeeping or reporting requirements. The new approval requirement for advancing more than five contractors to phase two of a two-phase design-build selection procedure only affects the internal procedures of the Government. For acquisitions valued over \$4M, the head of the contracting activity (HCA) is required to now make a determination that it is in the best interest of the Government to select more than five

offerors to proceed to phase two. Any burden caused by this rule is expected to be minimal and will not be any greater on small businesses than it is on large businesses.

The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternative approaches were considered. It is not anticipated that the proposed rule will have a significant economic impact on small entities.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015-018), in correspondence.

### V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subject in 48 CFR Part 36

Government procurement.

#### William Clark,

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 36 as set forth below:

### PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 1. The authority citation for 48 CFR part 36 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 36.303-1 by revising paragraph (a)(4) to read as follows:

#### 36.303-1 Phase One.

(a) \* \* \*

(4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified in the solicitation shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the

Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. The contracting officer shall document this determination in the contract file. For acquisitions greater than \$4 million, the determination shall be approved by the head of the contracting activity, delegable to a level no lower than the senior contracting official within the contracting activity.

\* \* \* \* \*

[FR Doc. 2015-25613 Filed 10-7-15; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-HQ-ES-2015-0143; 4500030113]

### Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List 19 Species as Endangered or Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition findings.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service, FWS, or USFWS), announce 12-month findings on petitions to list 19 species as endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the American eel, Cumberland arrow darter, the Great Basin distinct population segment (DPS) of the Columbia spotted frog, Goose Creek milkvetch, Nevares spring bug, Page springsnail, Ramshaw meadows sand-verbena, Sequatchie caddisfly, Shawnee darter, Siskiyou mariposa lily, Sleeping ute milkvetch, Southern Idaho ground squirrel, Tahoe yellow cress, and six Tennessee cave beetles (Baker Station, Coleman, Fowler's, Indian Grave Point, inquirer, and Noblett's cave beetles) is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to any of the 19 species listed above or their habitat at any time.

**DATES:** The findings announced in this document were made on October 8, 2015.

**ADDRESSES:** These findings are available on the Internet at <http://www.regulations.gov> at Docket Number

FWS-HQ-ES-2015-0143. Supporting information used in preparing these findings is available for public inspection, by appointment, during normal business hours by contacting the

appropriate person as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning these findings to the

appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. **FOR FURTHER INFORMATION CONTACT:**

Species	Contact information
American eel .....	Northeast Regional Office, Endangered Species Program, 413-253-8615.
Cumberland arrow darter .....	Kentucky Ecological Services Field Office, 502-695-0468.
Great Basin DPS of the Columbia spotted frog .....	Nevada Fish and Wildlife Office, 775-861-6300.
Goose Creek milkvetch .....	Utah Ecological Services Field Office, 801-975-3330.
Nevares spring naucorid bug .....	Carlsbad Fish and Wildlife Office, 760-431-9440.
Page springsnail .....	Arizona Ecological Services Field Office, 602-242-0210.
Ramshaw meadows sand-verbena .....	Sacramento Fish and Wildlife Office, 916-414-6700.
Sequatchie caddisfly .....	Tennessee Ecological Services Field Office, 931-528-6481.
Shawnee darter .....	Kentucky Ecological Services Field Office, 502-695-0468.
Siskiyou mariposa lily .....	Yreka Fish and Wildlife Office, 530-842-5763.
Sleeping ute milkvetch .....	Western Colorado Ecological Services Field Office, 970-628-7184.
Southern Idaho ground squirrel .....	Idaho Fish and Wildlife Office, 208-378-5265.
Tahoe yellow cress .....	Nevada Fish and Wildlife Office, 775-861-6300.
Tennessee cave beetles (Baker Station, Coleman, Fowler's, Indian Grave Point, inquirer, and Noblett's cave beetles).	Tennessee Ecological Services Field Office, 931-528-6481.

If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(B) of the Act (16 U.S.C. 1533) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information indicating that listing an animal or plant species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned actions regarding the American eel, Cumberland arrow darter, the Great Basin distinct population segment (DPS) of the Columbia spotted frog, Goose Creek milkvetch, Nevares spring bug, Page springsnail, Ramshaw meadows sand-verbena, Sequatchie caddisfly, Shawnee darter, Siskiyou mariposa lily, Sleeping ute milkvetch, Southern Idaho ground squirrel, Tahoe yellow cress, and six Tennessee cave beetles (Baker Station, Coleman, Fowler's, Indian Grave Point, inquirer, and Noblett's cave beetles) are: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants (warranted but precluded). Section 4(b)(3)(C) of the Act requires that we

treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

**Summary of Information Pertaining to the Five Factors**

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species based on any of the following five factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

We summarize below the information on which we based our evaluation of the five factors provided in section 4(a)(1) of the Act in determining whether the American eel, Cumberland arrow darter, the Great Basin DPS of the Columbia spotted frog, Goose Creek milkvetch, Nevares spring bug, Page springsnail, Ramshaw meadows sand-verbena, Sequatchie caddisfly, Shawnee darter,

Siskiyou mariposa lily, Sleeping ute milkvetch, Southern Idaho ground squirrel, Tahoe yellow cress, and six Tennessee cave beetles (Baker Station, Coleman, Fowler's, Indian Grave Point, inquirer, and Noblett's cave beetles) are threatened species or endangered species. More detailed information about these species is presented in the species-specific assessment forms found on [www.regulations.gov](http://www.regulations.gov). In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat. In that case, we determine if that factor rises to the level of a threat, meaning that it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely affected could suffice. The mere identification of factors that could affect a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered species or a threatened species under the Act.

In making our 12-month findings, we considered and evaluated the best



available scientific and commercial information.

### American Eel (*Anguilla rostrata*)

#### Previous Federal Actions

For a complete petition history for the American eel prior to September 2011, see the Previous Federal Action section of our September 29, 2011, 90-day substantial petition finding. Publication of the 90-day finding in the **Federal Register** (September 29, 2011; 76 FR 60431) opened a period to solicit new information that was not previously available or was not considered at the time of our previous 2007 status review and not-warranted 12-month finding (February 2, 2007; 72 FR 4967), and initiated a new status review.

On December 23, 2011, the petitioner (Center for Environmental Science Accuracy and Reliability (CESAR), formerly known as the Council for Endangered Species Act Reliability) filed a Notice of Intent to sue the Service for failure to publish a finding within 12 months of receiving the April 30, 2010, petition. On August 7, 2012, CESAR filed a complaint with the U.S. District Court for the District of Columbia for the Service's failure to meet the petition's statutory timeline. On April 24, 2013, the Service entered into a court-approved settlement agreement with CESAR stipulating that the Service would complete a status review of American eel and deliver a 12-month finding to the **Federal Register** on or before September 30, 2015 (Stipulated Settlement Agreement, *Center for Env'tl Science Accuracy and Reliability v. Salazar, et al.* (D.D.C., Case No. 1:12-cv-01311-EGS), Doc. 18, filed April 24, 2013.).

To ensure the status review was based on the best scientific and commercial information available, the Service, in November 2013 through January 2014, requested any new or updated American eel information since the 2007 status review. The requests were sent to State and Federal agencies, Native American tribes, nongovernmental agencies, and other interested parties. In addition to any new or updated information, the requests specifically sought information related to panmixia, glass eel recruitment, climate change, oceanographic conditions, and eel abundance at fishways. See the lists of references reviewed and cited for a list of agencies, organizations, and parties from which we received information; these reference lists are available at <http://www.regulations.gov> and at <http://www.fws.gov/northeast/newsroom/eels.html>.

### Summary of Status Review

In making our 12-month finding on the petition, we consider and evaluate the best available scientific and commercial information. This evaluation includes information from all sources, including State, Federal, tribal, academic, and private entities and the public. However, because we have a robust history with the American eel and completed a thorough status review for the species in 2007, we are incorporating by reference the February 7, 2007, 12-month finding (72 FR 4967) and using its information as a baseline for our 2015 status review and 12-month petition finding.

A supporting document entitled, *American Eel Biological Species Report* (Report) provides a summary of the current (post 2007) literature and information regarding the American eel's distribution, habitat requirements, life-history, and stressors. The Report is available as a Supplemental Document at <http://www.fws.gov/northeast/newsroom/eels.html>. We describe in the Report or in our 12-month finding document any substantive changes that we identified in the data used in the February 7, 2007, 12-month finding or in conclusions drawn from that data, based upon our review of the best available scientific and commercial information since 2007.

American eel are a facultative catadromous fish species, meaning they commonly use brackish estuaries or near-shore marine habitats, in addition to the freshwater habitats. After mature eels spawn in the Sargasso Sea, the eggs hatch into "leptocephali," a larval stage that lasts for about 1 year. Leptocephali are transported by ocean currents from the Sargasso Sea to the Atlantic coast of North America, the Caribbean, Gulf of Mexico, Central America and northern portions of South America. Leptocephali metamorphose into "glass eels" while at sea and then actively swim across the continental shelf to coastal waters. Glass eels transform into small pigmented juvenile eels, commonly called "elvers," after taking up residence in marine, estuarine, or freshwater rearing habitats in coastal waters. As they grow, the larger juvenile eels are known as "yellow eels." American eels begin sexual differentiation at a length of about 20 to 25 centimeters (7.9 to 9.8 inches), well in advance of maturation as a "silver eel." Upon nearing sexual maturity, silver eels begin migration toward the Sargasso Sea, completing sexual maturation en route. In the United States, the American eel is found in fresh, estuarine, and marine waters in

36 States. The upstream extent of eel distribution in freshwater is limited by impassable dams and natural barriers. American eel are ubiquitous in many continental aquatic habitats including marine habitats, estuaries, lakes, ponds, small streams, and large rivers to the headwaters. They may be locally abundant to the extent that they sometimes constitute a large proportion of the total fish biomass in many watersheds.

The 2007 Status Review and the 2015 Report reviewed a number of stressors (natural or human induced negative pressures affecting individuals or subpopulations of a species) on the American eel, including the effects of climate change; parasites; habitat loss in estuaries, lakes, and rivers; migratory effects from hydroelectric projects; recreational and commercial harvests; and contaminants.

In terms of climate change, North Atlantic Ocean temperatures may continue to rise as a result of climate change, but a great deal of uncertainty remains regarding changes in physical oceanographic processes and how, or to what extent, those processes will affect eel migration, aggregation for reproduction, and ultimately abundance. The species report discusses in detail the complex subject of climate change and its foreseeable effects on the species. Based on our review of the best available scientific and commercial information, we conclude that climate change, based on its reasonably foreseeable effects, is not a threat to the American eel that puts it in danger of extinction or likely to become so in the foreseeable future, nor is it reasonably foreseeable that it would become such a threat in the future.

As for parasites, despite the spread of *Anguillicoloides crassus* and increasing mean infection rates over time, there is no direct evidence to support a conclusion that the parasite causes significant American eel mortality. Nor is there direct evidence to support or refute the hypotheses that *A. crassus* impairs the silvering process, prevents American eels from completing their spawning migration to the Sargasso Sea, or impairs spawning.

With regard to habitat loss, American eel have been extirpated from some portions of their historical range, mostly as a result of large hydroelectric and water storage dams built since the early twentieth century. Although dams have extirpated eels from some large rivers and certain headwaters, the species remains widely distributed over the majority of its historical range. We consider habitat loss from barriers to be a historical effect, and any population-

level effects likely have already been realized. The extensive range of American eel provides multiple freshwater and estuarine areas that support the species' life stages and thus buffer the species as a whole from stressors affecting individuals or smaller populations in any one area. Currently, ocean habitats and the full range of continental habitats (estuaries, lakes, and rivers) remain available and occupied by the American eel. Some American eels complete their life cycle without ever entering freshwater. Highly fecund females continue to be present in extensive areas of freshwater (lacustrine and riverine), estuarine, and marine habitats; males also continue to be present in these habitats. Recruitment of glass eels continues to occur in these habitats with no evidence of continuing reduction in glass eel recruitment. For these reasons, we conclude that the available freshwater, estuarine, and marine habitats are sufficient to sustain the American eel population.

With regard to migratory effects from hydroelectric projects, hydroelectric dams are obstacles that may delay the downstream migration of silver eels that mature in riverine habitats, and hydroelectric turbines can cause mortality or injury (eels that mature and migrate from estuary or marine habitats downstream are not affected by hydroelectric dams). The effects of turbine injury, including delayed mortality and possible impaired reproduction and increased predation risk, are poorly understood in the American eel. The best scientific and commercial information available indicates that mortality from hydroelectric turbines can cause significant mortality to downstream-migrating silver eels. The installation of effective downstream passage measures (*i.e.*, bypasses or night spillage) through the Federal Energy Regulatory Commission relicensing process has reduced, and continues to reduce this mortality.

In terms of recreational and commercial harvest, we continue to acknowledge that sometimes large numbers of individual American eel are recreationally or commercially harvested for food, bait, or aquaculture, but we conclude that harvest and trade are not threats to the American eel. The species is highly resilient, and remains a widely distributed fish species with a relatively stable population despite the levels of historical habitat loss and historical and current commercial and recreational harvest. That harvest is being managed and monitored via existing harvest quotas, licenses, and

reporting requirements to ensure the species' conservation.

In addition, contaminants may affect early life stages of the American eel, but without specific information, we remain cautious in extrapolation of laboratory studies to rangewide population-level effects (*e.g.*, there are no studies showing reduced recruitment of glass eels in the wild, which would be an indicator of decreased outmigration, or decreased egg or leptocephali survival). A correlation between the contamination of the upper Saint Lawrence River/Lake Ontario watershed and the timing of the 1980s decline of American eel in the upper Saint Lawrence River/Lake Ontario watershed is not evident.

Lastly, there are no individual stressors that rise to the level of a threat to the American eel. Some stressors can have cumulative effects and result in increased mortality. For example, the Report discusses known cumulative and synergistic interactions of various contaminants and known cumulative effects of increased predation and mortality at or below dams that block eel migration. While some individual American eels may be exposed to increased levels of mortality as a result of these contaminant or predation cumulative effects, we have no indication that the species is, or will be, significantly affected at a population level. Therefore, we conclude that there are no cumulative stressors that are a threat to the American eel now, or that will become a threat in the foreseeable future.

The best available information indicates that, American eel are a single panmictic population that lacks distinct population structure, breeds in the Sargasso Sea, and shares a single common gene pool. Panmixia is central to evaluating stressors to the American eel since, in order for any stressor to rise to the level of a threat (natural or human-induced pressure affecting a species as a whole), it must act upon a large portion of the population at some life-history focal point, or the stressor must be present throughout a large part of the species' range. And the stressor must elicit a response that results in significant mortality, impaired reproduction, or juvenile recruitment failure.

Several lines of evidence indicate that the American eel population is not subject to threats that would imperil its continued existence. Despite historical habitat losses and a population reduction over the past century, American eels remain widely distributed throughout a large part of their historical range. Glass eels are

recruited to North American rivers in large numbers. Elvers are also present in large numbers well inland on some east coast river systems—for example, more than 820,000 eels passed through a new fishway at the Roanoke Rapids Dam, located 137 miles inland on the Roanoke River in 2013, the fourth year of operation. American eels are plastic in their behavior and adaptability, inhabiting a wide range of freshwater, estuarine, and marine habitats over an exceptionally broad geographic range. Because of the species' panmixia, areas that have experienced depletion or extirpation may experience a "rescue effect" allowing for continued or renewed occupation of available areas. Trends in abundance over recent decades vary among locations and life stages, showing decreases in some areas, and increases or no trends in other areas. Limited records of glass eel recruitment do not show trends that would signal recent declines in annual reproductive success or the effect of new or increased stressors. Taken as a whole, a clear trend cannot be detected in species-wide abundance during recent decades, and, while acknowledging that there have been large declines in abundance from historical times, the species currently appears to be depleted but stable. While some eel habitat has been permanently lost and access to freshwater habitats is impaired by dams that lack upstream fish passage, access to freshwater habitat has improved, and continues to improve, in other areas through new or improved eel ladders and removal of barriers. Despite the loss of some freshwater habitat, the American eel population appears to be stable based on young-of-the-year indices and estimates of spawner abundance. In addition, since 2007, newer information indicates that some American eel complete their life cycle in estuarine and marine waters.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors are not of sufficient imminence, intensity, or magnitude to indicate that the American eel is in danger of extinction (an endangered species), or likely to become an endangered species within the foreseeable future (a threatened species), throughout all of its range.

There are no threats currently affecting the American eel throughout the species' range. There are several stressors that cause individual mortality, including recreational and commercial harvest (Factor B),

predation (Factor C), and hydroelectric turbines (Factor E), but none that affect a portion of the species' range more than another. In addition, there are no portions of the species' range that are considered significant given the species' panmictic life-history. Therefore, we find that no portion of the American eel's range warrants further consideration of possible endangered or threatened status under the Act, and we find that listing the American eel as a threatened or endangered species throughout all or a significant portion of its range is not warranted at this time.

### **Cumberland Arrow Darter (*Etheostoma sagitta*)**

#### *Previous Federal Actions*

The Cumberland arrow darter was first identified as a candidate for protection under the Act through our internal process in the Candidate Notice of Review published in the November 21, 2012, **Federal Register** (77 FR 69994); the subspecies was identified at the time as *E. sagitta sagitta*. Threats to the subspecies identified at that time were water pollution from surface coal mining and gas exploration activities; removal of riparian vegetation; stream channelization; increased siltation associated with poor mining, logging, and agricultural practices; and deforestation of watersheds. It was assigned a listing priority number (LPN) of 9. On November 22, 2013 (78 FR 70104), the LPN was changed to 8 due to morphological and genetic analysis resulting in the recognition of Cumberland arrow darter as a species (*E. sagitta*) as opposed to a subspecies, which it remained until evaluation for listing this year.

#### **Summary of Status Review**

The following summary is based on information in our files. From 2010 to 2012, the Service and its partners (Kentucky Department of Fish and Wildlife Resources (KDFWR), Kentucky State Nature Preserve Commission (KSNPC), and Tennessee Wildlife Resources Agency (TWRA)) completed a range-wide status assessment for the Cumberland arrow darter (USFWS 2012, pp. 1–2). We first generated a list of historical (pre-2000) records through review of agency databases (KDFWR, KSNPC, and TWRA), museum records (University of Tennessee), and published literature. From 2010 through 2012, surveys were completed at 187 of 202 historical sites and in 124 of 128 historical streams (sites corresponded to individual sampling reaches and more than one could be present on a given stream). Surveys were also conducted at

other sites/streams where habitat conditions appeared to be suitable for the species. When first considered for candidate status in early 2012, status surveys were still ongoing, and the species had been observed in 72 of 123 historical sites visited (58 percent) and 60 of 101 historical streams visited (59 percent). More comprehensive surveys in Tennessee in late 2012 and additional surveys in Kentucky in 2013–2014 expanded the species' known range to 98 streams, including 119 of 187 historical sites visited (64 percent), 85 of 128 historical streams visited (66 percent), and 13 new (non-historical) streams (USFWS 2012, pp. 1–2; USFWS unpublished data). New distributional records were obtained during each year of sampling, primarily from the middle and western portions of the species' geographical range. Within Kentucky, the species was observed at 87 of 143 sites (61 percent) and in 61 of 100 streams (61 percent). Within Tennessee, the species was observed at 32 of 44 sites (73 percent) and in 24 of 30 streams (80 percent). [Note that 2 of the historical streams surveyed occur in both Kentucky and Tennessee and are, therefore, included in each of the State totals provided in the previous sentences (*i.e.*, 100 and 30, respectively.)] The species' most significant declines were documented within the Poor Fork, Clover Fork, Straight Creek, Clear Creek, and Clear Fork drainages, all of which are located within the eastern half of the species' geographical range. This portion of the upper Cumberland River drainage has less public ownership than the western half of the drainage and has been impacted more extensively by surface coal mining.

Over the last 3 years, new field surveys and monitoring efforts across the Cumberland arrow darter's range have improved our understanding of the species' distribution and stressors. Based on these findings, we have reexamined the species' status and reevaluated the magnitude and imminence of its stressors. We acknowledge that the species has suffered declines in portions of its range (*e.g.*, it has been extirpated from 43 of 128 historical streams) and portions of the range continue to suffer some level of water quality degradation and habitat disturbance. However, we have determined that the species' overall status is more secure than previously believed, and stressors acting on the species are not of sufficient imminence, intensity, or magnitude to indicate the species is in danger of extinction (an endangered species), or likely to become

endangered within the foreseeable future (a threatened species). The Cumberland arrow darter's status is bolstered by its large number of occupied streams (98) and its frequent occurrence in streams on public lands and in streams with listed species (*e.g.*, blackside dace). In support of this not-warranted finding, we offer the following specifics with regard to its status:

- The species' range (number of extant streams) is larger than first believed. When first identified as a candidate for listing in 2012, the Cumberland arrow darter was known from 72 of 123 historical sites visited (58 percent) and 60 of 101 historical streams visited (59 percent). More comprehensive surveys in Tennessee and additional surveys in Kentucky from 2012 through 2014 expanded the species' known range to 98 streams, including 85 of 128 historical streams (66 percent) and 13 new streams. The species' relatively broad distribution and high number of occupied streams increases its resiliency and redundancy.

- The species has demonstrated greater persistence in streams with at least 1 listed species (62 streams) or in streams located on public lands (45 streams). When combined, these two groups total 75 streams, or 77 percent of the species' known habitats. Historically, less habitat disturbance has occurred on public lands, and many of the species' best remaining habitats are located in these areas. The Cumberland arrow darter also benefits indirectly from listed species' protections provided by Federal and State statutes and regulations, especially in Kentucky where State water quality regulations (401 Kentucky Administrative Regulations 10:031, Section 8) provide added protections for streams supporting listed species ("Outstanding State Resource Waters").

The species utilizes larger streams more frequently than previously believed, bolstering the species' redundancy, resiliency, and representation (capacity of a species to adapt to changing environmental conditions). We have recent records (multiple individuals each) from Capuchin Creek, Elk Fork Creek, Jellico Creek (at Crisillis Branch), Marsh Creek (near mouth), and Roaring Paunch Creek, all of which are fourth-order streams or larger and have watersheds exceeding 65 square kilometers (25 square miles). This information suggests the species utilizes more stream kilometers (miles) than previously believed because most survey efforts have focused on smaller streams (third-order and smaller). The species'

presence in these habitats protects against stochastic and catastrophic events (e.g., drying, floods, or pollution events) that can occur across the species' range.

### Finding

We evaluated the stressors to the Cumberland arrow darter and considered factors that, individually and in combination, presently or potentially could pose a risk to the species and its habitat. Based on our analysis of these stressors and our review of the species' current status, we conclude that listing this species under the Act is not warranted, because this species is not in danger of extinction, and is not likely to become in danger of extinction throughout all of its within the foreseeable future. We evaluated the current range of the Cumberland arrow darter to determine if there is any apparent geographic concentration of potential threats for this species. We examined potential threats, and found that potential impacts (e.g., water quality degradation) associated with surface coal mining and other land uses (e.g., residential development) are greater in the eastern half of the species' geographical range (e.g., water quality degradation is more common within this part of the range, and more extirpations have occurred there).

To determine if this portion of the range was significant, we evaluated its contribution and importance to the species' overall viability. Even though the species has been extirpated from multiple streams within the eastern half of the geographical range, we do not consider this portion of the range to be so important that, without the members in that portion, the species in the remainder of the range would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range (i.e., the loss of this portion clearly would not be expected to increase the vulnerability to extinction of the entire species). The species continues to occupy 98 streams across its entire range. A total of 75 of these streams (77 percent) either support a listed species (62 streams) or occur on publicly owned lands (45 streams) where disturbance is minimal (e.g., Daniel Boone National Forest). The eastern half of the species' geographical range continues to support multiple viable populations; 17 occupied streams, 15 of which are in public ownership or are occupied by a listed species. Given the hypothetical loss of the geographical eastern portion of the species range, the Cumberland arrow darter would still occupy 81 streams, 60 of which are in public ownership are

occupied by a listed species. Therefore, we do not consider the eastern half of the species geographical range to constitute a significant portion of the species' range. Because this portion of the range is not significant, we conclude that the species is not in danger of extinction (an endangered species) nor likely to become endangered within the foreseeable future (a threatened species), throughout all or a significant portion of its range. Therefore, we find that listing the Cumberland arrow darter as an endangered or threatened species under the Act is not warranted at this time. Therefore, we no longer consider it to be a candidate species for listing.

### Great Basin DPS of the Columbia Spotted Frog (*Rana luteiventris*)

#### Previous Federal Actions

On May 4, 1989, we received a petition dated May 1, 1989, from Peter Hoving, Chairman, Issues Committee, requesting that the spotted frog be listed as a threatened species under the Act. In 1993, we announced a finding on the petition where we found five populations of the spotted frog warranted listing (58 FR 27260; May 7, 1993). On September 19, 1997, we announced our acceptance of species-specific genetic and geographic differences in spotted frogs and we added the Great Basin distinct population segment of the Columbia spotted frog to the candidate list with a listing priority number (LPN) of 3 (62 FR 49402). In the December 6, 2007, Candidate Notice of Review (CNOR) (72 FR 69039), we announced a change in LPN from 3 to 9 for this entity. In subsequent annual CNOR publications, we maintained our determination of LPN of 9 for this species.

#### Summary of Status Review

The Columbia spotted frog (Great Basin DPS) occurs in Nevada, southwestern Idaho, and southeastern Oregon. The Columbia spotted frog is a slim-waisted, long-legged, smooth-skinned frog measuring between 2 to 4 inches. Dorsal colors and pattern include light brown, dark brown, or gray, with small spots. Ventral coloration can differ among geographic population units and may range from yellow to salmon with mottled throat regions.

Columbia spotted frogs in the Great Basin have been affected primarily by the remaining effects of past habitat destruction and modification, which caused increased habitat fragmentation and isolation. Livestock grazing, mining activities, beaver management, water

development, predation, disease, and the effects of climate change have also been identified as potential threats to the species. Heavy use by livestock has been shown to be detrimental to Columbia spotted frog habitat in localized areas. Livestock grazing and development of springs for livestock and agricultural purposes occur or have occurred throughout the Great Basin and resulted in an unquantifiable loss of riparian and wetland habitats used by the species. However, springs developed into ponds for the purposes of watering livestock have resulted in the creation and maintenance of persistent, high quality breeding and rearing habitat for the species in portions of the species range. Mining has been shown to have localized impacts to populations but has a relatively low influence on a rangewide basis. Historical trapping nearly extirpated beaver from the Great Basin; however, beaver populations have rebounded and occupy the majority of its historical range but at lower densities. Harvest of beaver continues throughout the Great Basin but does not seem to be negatively impacting the beaver population as a whole within the Great Basin. However, there is little information on the impacts of harvest at the local watershed level to analyze impacts at this finer scale. The ability of beavers to restore degraded stream systems and the resulting habitat modification from their dams which keeps water on the landscape longer is becoming recognized as an important restoration technique (Gibson and Olden 2014, pp. 399–401; Pollack *et al.* 2014, pp. 284–286).

Nonnative fish and amphibian predators occur within the range of Columbia spotted frogs. The level of impact from predation is variable across the species' range, and depends on the quality of habitat (availability of cover and shelter). These nonnative predators can also introduce and help spread diseases and pathogens. However, current population-level effects of both predation and disease (pathogens and parasites) have not been documented within the Great Basin; therefore, we conclude that predation and disease are not negatively affecting Columbia spotted frogs in the Great Basin at this time nor do we expect them to in the near future.

Climate change has affected, and is expected to continue to affect, Great Basin ecosystems; however, the impacts to permanent water sources and to Columbia spotted frog populations are not well documented. The available data does not indicate whether any effects from climate change will have population-level effects within a

reasonably foreseeable period of time. Based on this variability and uncertainty of the exact effects of climate change on the Columbia spotted frog Great Basin DPS within its range, we cannot reasonably determine that the effects of climate change are likely to have a population-level impact on the species now or in the foreseeable future.

Many of the stressors discussed above do not act alone. Multiple stressors can alter the effects of other stressors or act synergistically to affect individuals and populations. For example, Kiesecker and Blaustein (1995, pp. 11050–11051) describe how UV-B acts with a pathogen to increase embryonic mortality above levels shown with either factor alone. Interactions between current land uses and changing climate or other environmental conditions may cause shifts in populations, communities, and ecosystems or may increase an individual's susceptibility to infection, disease, or predation (Hansen *et al.* 2001, p. 767; IPCC 2002, p. 22). However, the best available scientific information does not indicate that multiple stressors acting in combination or synergistically currently rising to the level of being identified as a stressor to the Great Basin DPS of Columbia spotted frogs and we therefore conclude that they do not cumulatively pose a threat to the species at this time nor do we expect them to do so in the future.

Conservation efforts are occurring in many areas across the range of the Columbia spotted frog. A 10-year Conservation Agreement and Strategy has been implemented in Nevada since 2003. Due to the success of the Conservation Agreement and Strategy in managing and conserving Columbia spotted frogs in Nevada, a revised 10-year agreement (2015–2024) was signed in February 2015. In 2006, a Candidate Conservation Agreement with Assurances was developed for a population in Idaho. An increase in monitoring has improved our knowledge of the distribution of the species, as well as improved knowledge of demography in several populations. Improved grazing management in some locations has contributed to improved stream and riparian habitat in some areas. Creating ponded habitat has also improved numerous occupied sites throughout the Great Basin, as well as in other parts of the species' range. All three States include Columbia spotted frog on their list of protected species.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting

on the species and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the Great Basin DPS of the Columbia spotted frog is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. This finding is based on additional populations that have been found since the species was first identified as a candidate, the relatively stable population and distribution of the species, and conservation management that is occurring throughout the species' range for impacts to both the habitat and the species. Because the distribution of the species is relatively stable across its range and stressors are similar throughout the species' range, we found no concentration of stressors that suggests that the Great Basin DPS of the Columbia spotted frog may be in danger of extinction in any portion of its range. Therefore, we find that listing the Great Basin DPS of the Columbia spotted frog as a threatened or an endangered species or maintaining the species as a candidate is not warranted throughout all or a significant portion of its range at this time, and consequently we are removing it from candidate status.

### Goose Creek Milkvetch (*Astragalus anserinus*)

#### *Previous Federal Actions*

On February 3, 2004, we received a petition dated January 30, 2004, from Red Willow Research, Inc., and 25 other concerned parties, including the Prairie Falcon Audubon Society Chapter Board, Western Watersheds Project, Utah Environmental Congress, Sawtooth Group of the Sierra Club, and 21 private citizens. The petitioners requested that we list Goose Creek milkvetch as a threatened or an endangered species, emergency list the species, and designate critical habitat concurrently with the listing (Red Willow Research Inc, in *litt.* 2004). The petition contained information on the natural history of Goose Creek milkvetch, its population status, and potential threats to the species. Potential threats discussed in the petition include the destruction and modification of habitat, disease and predation, inadequacy of existing regulatory mechanisms, and other natural and manmade factors such as exotic and noxious weed invasions and road construction and maintenance. The petition clearly identified itself as a petition, and included the requisite identification information as required in 50 CFR 424.14(a).

In a February 19, 2004, letter to the petitioners, we responded that our initial review of the petition for Goose Creek milkvetch determined that an emergency listing was not warranted, and that due to court orders and judicially approved settlement agreements for other listing actions, we would not be able to further address the petition to list the species at that time. On August 16, 2007, we published a notice of 90-day finding that the petition presented substantial scientific or commercial information indicating that listing Goose Creek milkvetch may be warranted, and we were initiating a status review of the species (72 FR 46023). A 60-day public comment period followed.

Our subsequent 12-month finding identified Goose Creek milkvetch as a species for which listing as an endangered species or threatened species was warranted but was precluded due to higher priority listing decisions, and we assigned Goose Creek milkvetch a listing priority number of 5 (74 FR 46521; September 10, 2009). Following the finding, we completed annual Candidate Notices of Review in 2010 (75 FR 69222; November 10, 2010), 2011 (76 FR 66370; October 6, 2011), 2012 (77 FR 69994; November 21, 2012), 2013 (78 FR 70104; November 22, 2013), and 2014 (79 FR 72449; December 5, 2014), all of which maintained the species as a candidate. We assigned the listing priority number of 2 to the species in 2012, and maintained that listing priority through 2014. The change in the listing priority number was based upon information indicating that livestock use and invasive species (cheatgrass) had increased following the 2007 wildfires and that impacts to the species from these stressors were imminent.

As a result of the Service's 2011 multidistrict litigation settlement with petitioners, a proposed listing rule or a not-warranted 12-month finding is required by September 30, 2016 (In re: Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)). This 12-month finding satisfies the requirements of that settlement agreement for the Goose Creek milkvetch.

### Summary of Status Review

Goose Creek milkvetch is a narrow endemic plant in the Goose Creek drainage in Idaho, Nevada, and Utah. The current range of Goose Creek milkvetch is essentially the same as the historical range; however, we continue to identify a greater distribution of the species across its range. Overall, Goose

Creek milkvetch occurs in a scattered distribution within five populations. Plants are typically found on sparsely vegetated outcrops of highly weathered volcanic-ash (tuffaceous) soils. The total population size in 2014 is estimated to be approximately 31,648 plants occupying approximately 2,117 acres (857 hectares).

In our 2009 12-month finding (74 FR 46521; September 10, 2009), we identified the threats to Goose Creek milkvetch to be wildfire, wildfire management (firefighting and post-wildfire emergency stabilization and restoration activities), invasive nonnative plant species (cheatgrass, leafy spurge, crested wheatgrass), livestock use, development, recreation, mining, the inadequacy of regulatory mechanisms, and small population size. In our current candidate assessment, we evaluated available information, and concluded that the species is resilient to these stressors and that current impacts to the species are not as strong as previously believed.

In 2015 we identified leafy spurge as a future threat to Goose Creek milkvetch, based upon its anticipated future spread and expansion within the species' range containing 64 percent of the total population. Leafy spurge has the ability to increase in density rapidly and displace Goose Creek milkvetch, which may lead to local extirpation of the species in infested areas that are not detected and controlled at early stages of leafy spurge invasion. As a result, our initial finding was that Goose Creek milkvetch warranted listing as a result of the future threat of leafy spurge. However, the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service finalized a conservation agreement for the long-term conservation of Goose Creek milkvetch in early 2015 that identifies conservation measures to address the spread and control of leafy spurge in Goose Creek milkvetch habitat. Through our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003) analysis, we evaluated the actions in the conservation agreement and concluded that there is sufficient certainty that the actions will be implemented and effective such that leafy spurge will not become a future threat to Goose Creek milkvetch.

As a result of new information and analysis, the originally identified threats in our previous 12-month finding are no longer considered current or foreseeable threats for the following reasons: (1) The population is stable, the species is persisting at all monitored sites despite disturbance events, and it is occupying

its historical range; (2) the species occurs over 216 square miles (559 square kilometers), and currently has adequate representation, resiliency, and redundancy throughout its range; (3) the species appears resilient to the identified stressors based on our evaluation in the 2015 candidate assessment; (4) new monitoring information after recent wildfires indicates that Goose Creek milkvetch was not significantly affected by wildfire and wildfire management (post-wildfire emergency stabilization and restoration activities) as previous information indicated; and (5) expanded commitments in the 2015 BLM/FWS conservation agreement to survey for and annually treat leafy spurge within Goose Creek milkvetch habitat on BLM lands will be effective in controlling the future spread of this noxious weed, and will protect approximately 86 percent of the total known population and 93 percent of the total known habitat of Goose Creek milkvetch.

#### **Finding**

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the current stressors acting on the species and its habitat are not of sufficient imminence, intensity, or magnitude to indicate that the Goose Creek milkvetch is warranted for listing at this time. However, we did find the potential future threat from leafy spurge is of such a magnitude that listing Goose Creek milkvetch may be warranted. We evaluated the actions outlined in the 2015 conservation agreement with the BLM under PECE, and we found sufficient certainty of implementation and effectiveness of the actions such that the potential future threat of the habitat impacts due to the spread of leafy spurge will largely be ameliorated. Therefore, based on the best available information, we find that listing Goose Creek milkvetch is not warranted throughout its range. Because the distribution of the species is relatively stable across its range and stressors are similar throughout the species' range, we found no concentration of stressors that suggests that the Goose Creek milkvetch may be in danger of extinction in any portion of its range. Therefore, we find that listing the Goose Creek milkvetch as a threatened or an endangered species is not warranted throughout all or a significant portion of its range at this time, and consequently we are removing it from candidate status.

#### **Nevaros Spring Naucorid Bug (Ambrysus Funebis)**

##### **Previous Federal Actions**

On November 15, 1994, we added the Nevaros Spring naucorid bug (Amargosa naucorid bug) to the candidate list as a category 2 species on the Candidate Notice of Review (CNOR) (59 FR 59012). Category 2 species were those species for which listing as endangered or threatened species was possibly appropriate, but for which biological information sufficient to support a proposed rule was lacking. However, the February 28, 1996, CNOR (61 FR 7596) discontinued recognition of category 1 and 2 species, so the Nevaros Spring naucorid bug was no longer considered a candidate species after that date. On May 4, 2004 (69 FR 24880), we added the species to the candidate list with a listing priority number (LPN) of 5. In our November 21, 2012, CNOR (77 FR 69998), we changed the LPN from 5 to 2. In subsequent annual CNOR publications, we maintained our determination of LPN of 2 for this species.

##### **Summary of Status Review**

The Nevaros Spring naucorid bug is an aquatic invertebrate found only within the Furnace Creek Springs (Nevaros, Texas, and Travertine Springs) of Death Valley National Park, California, managed by the National Park Service (NPS). Based on both historical and recent surveys, this narrow endemic species is considered locally abundant where found, but otherwise uncommon in aquatic habitats within the Travertine and Nevaros Spring complexes and in areas of the Furnace Creek Wash. The Furnace Creek Springs have been used as a water source (potable and non-potable water) since the 1800s, and the primary threat to the Nevaros Spring naucorid bug at the time it was placed on the candidate list (2004) was loss of habitat due to diversion of water.

Since then, the NPS has rebuilt the Furnace Creek water collection system and has implemented restoration actions within the range of the species. The combined post-pumping flow for affected springs is approximately 80 percent of the estimated pre-pumping flow. While this activity represents a negative factor within one of four of the Travertine Springs springbrooks, we have determined that this stressor is not of significant magnitude to affect the conservation status of the species. Flows from Nevaros Springs (occupied by the bug) and Texas Spring (unknown occupation) have not been affected by the groundwater pumping and are not

part of the Furnace Creek water collection system. The NPS has also eliminated water diversions and implemented aquatic habitat restoration at Travertine Spring 2, including restoration of its previously dry downstream springbrook. The results have augmented local groundwater, which has reemerged in aquatic habitat in portions of the spring area and downstream areas, including Furnace Creek Wash (occupied by the bug). Similar beneficial restoration actions are planned for other areas. While we believe that these future habitat restoration efforts could enhance the conservation status of the species by providing suitable habitat, these future actions are not factored into our determination.

We also evaluated potential threats related to nonnative or invasive plants, predation, fire, and the effects of climate change. The impact to the species' habitat from nonnative or invasive plants is minor in scope and is currently being managed by the NPS. Predation is not currently a threat to the species and is not expected to be a threat in the near future. Fire has been a rare event within the Furnace Creek Springs area, and it is not expected to be a threat in the near future due to specific management actions being implemented by the NPS as required by the Death Valley National Park *General Management Plan*. Based on computer model projections (Fisk 2011, pp. 141–144), potential impacts to the species from the effects of climate change (*i.e.*, changes to groundwater head and spring discharge for the Furnace Creek Springs) also are unlikely to be significant well into the 21st Century.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat are not of sufficient imminence, intensity, or magnitude to indicate that the Nevares Spring naucorid bug is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. This finding is based on the relatively stable population and distribution of the species, and the habitat restoration efforts and conservation management that have occurred throughout the species' range to minimize impacts to both the habitat and the species since the species was first identified as a candidate. Because the distribution of the species is narrow and stressors are similar throughout the entire species'

range, we found no concentration of stressors that suggests that the Nevares Spring naucorid bug may be in danger of extinction in any portion of its range, or likely to become so in the foreseeable future. Therefore, we find that listing the Nevares Spring naucorid bug as a threatened species or an endangered species or maintaining the species as a candidate throughout all or a significant portion of its range is not warranted at this time, and consequently we are removing it from candidate status.

### Page Springsnail (*Pyrgulopsis morrisoni*)

#### *Previous Federal Actions*

The Service first identified the Page springsnail as a category 2 candidate species on January 6, 1989 (54 FR 554). Category 2 candidates were defined as species for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at the time. In the February 28, 1996, Candidate Notice of Review (CNOR) (61 FR 7596), we discontinued the designation of Category 2 species as candidates. Page springsnail became a candidate species (formerly known as Category 1 candidate) on February 28, 1996, with a listing priority number of 2 (61 FR 7596). The Page springsnail remained on the candidate list thereafter with no change in listing priority number. On April 12, 2002, we received a petition dated April 11, 2002, from the Center for Biological Diversity, requesting emergency listing and designation of critical habitat for the Page springsnail. We acknowledged receipt of the petition in a letter dated August 8, 2002. In that letter we stated the Service's policy to treat petitions on candidate species as second petitions, and that we consider all candidates as having been subject to both a positive 90-day finding and a warranted-but-precluded 12-month finding under section 4(b)(3)(B)(iii) of the Act. As such we did not make a separate 90-day or 12-month finding in response to the petition.

In 2011, the Service entered into two settlement agreements regarding species on the candidate list at that time (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)). This finding fulfills our obligations regarding the Page springsnail under those settlement agreements.

### Summary of Status Review

The Page springsnail is a small aquatic snail endemic to 10 populations in a complex of springs along Oak Creek and Spring Creek in Yavapai County, central Arizona. Like other members of the family Hydrobiidae, Page springsnails are strictly aquatic and often occur in abundance within suitable spring habitats. The Page springsnail occurs in springs, seeps, marshes, cienegas, spring brooks, spring pools, outflows, and diverse lotic (flowing) waters, supported by water discharged from a regional aquifer. Eight of the 10 known populations occur on land managed by Arizona Game and Fish Department (AGFD) as a fish hatchery.

The Page springsnail became a candidate species primarily due to habitat modifications at the springhead and spring run that resulted in changes to the habitat factors listed above, resulting in the extirpation of two populations. Subsequently, AGFD implemented a Candidate Conservation Agreement with Assurances that includes conservation measures that have resulted in the majority of Page springsnail populations being secure from spring modification, aquatic vegetation removal, and water contamination in the future. These management actions include coordinating with the Service and considering the needs of the Page springsnail when conducting aquatic vegetation control, management of nonnative fishes, chemical use, and addition of material into springs. AGFD has also restored much of the spring habitat on their lands; restoration activities include modifying springs, adding substrate preferred by springsnails, and eradicating nonnative species.

The Page springsnail needs multiple resilient populations distributed across its range to maintain viability into the future and to avoid extinction. In general, the more Page springsnail populations that occur across its range, the higher the viability of the species and the lower the risk of extinction. A number of factors influence whether Page springsnail populations will maximize habitat occupancy, which increases the resiliency of a population to stochastic events. These factors include (1) adequate spring discharge (water quantity), (2) sufficient water quality, (3) free-flowing spring ecosystems, and (4) appropriate substrate and aquatic vegetation within the springs.

In the future, the primary source of potential habitat loss is groundwater

depletion, which may result in reduced or eliminated spring flow. We are relatively certain that climate change and increased water consumption from increased human population levels in the Verde Valley will result in lowered groundwater levels. Though we are not certain of the specific relationship between base flow and spring discharge, it is likely that declines in groundwater levels in the Verde Valley subbasin and base flow in the Verde River will translate to some decline in spring flow. We therefore anticipate that the effect of groundwater declines on future levels of spring discharge is the primary factor influencing the future condition of the Page springsnail.

### Finding

Our review found that there are currently 10 existing Page springsnail populations, occurring in approximately the same geographic range that the species was known to occupy historically. To assess the current status of these populations, we grouped each of them into three categories of resiliency, which were based on spring flow rate, water quality, free-flowing spring runs, and vegetation and substrate quality. We categorized six populations as currently having high resiliency, three as currently having moderate resiliency, and one as currently having low resiliency. The best available data suggests that populations in high or moderate condition will be resilient populations at low risk of extirpation. In total, nine of the populations rank as high or moderate for the combined evaluation of the elements needed to maintain the species (water flow rate, water quality, free flowing, and aquatic vegetation and substrate). This current number of populations in high or moderate condition existing across the species' range provides resiliency (90 percent of populations considered sufficiently large to withstand stochastic events), redundancy (the populations exist across the historical range, although that range is inherently small, to withstand catastrophic events), and representation (multiple populations continuing to occur across the range of the species to maintain ecological and genetic diversity). Because this estimate of the condition and distribution of populations provides sufficient resiliency, representation, and redundancy for the species, we conclude that the current risk of extinction of the Page springsnail is sufficiently low that it does not meet the definition of an endangered species under the Act.

Looking into the foreseeable future, and considering that spring flows could decline somewhat by 2065, we forecasted that two populations would continue to have high resiliency, four would have moderate resiliency, and four would have low resiliency (Service 2015, p. 33). The best available data suggests that populations in high or moderate condition will be resilient populations at low risk of extirpation. This forecasted number of populations in good condition existing across the species' range would provide resiliency (60 percent of populations considered sufficiently large to withstand stochastic events), redundancy (the populations would exist across the historical range, although that range is inherently small, to withstand catastrophic events), and representation (multiple populations would continue to occur across the range of the species to maintain ecological and genetic diversity). Therefore, because this forecast of the number and distribution of populations under the spring flow scenario that we expect to occur provides sufficient resiliency, redundancy, and representation for the species, we conclude the species is likely to remain at a sufficiently low risk of extinction that it will not become in danger of extinction in the foreseeable future. Therefore, we find that the Page springsnail does not meet the definition of a threatened species under the Act.

Having found that the Page springsnail is not an endangered species or a threatened species throughout all of its range, we next consider whether there are any significant portions of its range in which the Page springsnail is in danger of extinction or likely to become so. We found no portions of its range where potential threats are significantly concentrated or substantially greater than in other portions of its range. Therefore, we find that factors affecting the species are essentially uniform throughout its range, indicating that no portion of the range of the Page springsnail warrants further consideration of possible endangered species or threatened species status under the Act.

In conclusion, because the number and distribution of Page springsnail populations provides sufficient resiliency, redundancy, and representation for the species now and in the foreseeable future, we find that the Page springsnail no longer warrants listing throughout all or a significant portion of its range, and consequently we are removing it from candidate status.

### Ramshaw Meadows Sand-Verbena (*Abronia alpina*)

#### Previous Federal Actions

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94–51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant species named in the Smithsonian's report and other species added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. Ramshaw Meadows sand-verbena was one of those species. In the February 21, 1990, Candidate Notice of Review (CNOR) (55 FR 6186), we identified the species as a category 1 candidate species. In the February 28, 1996, CNOR, we retained the species as a candidate and assigned it a listing priority number (LPN) of 8 (61 FR 7602). In the September 19, 1997, CNOR (62 FR 49404), we changed the LPN to 11. On May 11, 2004, we received a petition dated May 4, 2004, from the Center for Biological Diversity et al. requesting the listing of the Ramshaw Meadows sand-verbena as a threatened species with critical habitat. In subsequent annual CNOR publications, we maintained our determination of LPN of 11 for this species.

#### Summary of Status Review

*Abronia alpina* is a small perennial herb 1 to 6 inches across forming compact mats with lavender pink, trumpet-shaped, and generally fragrant flowers. The species is known from one main population center at Ramshaw Meadow and a smaller population at the adjacent Templeton Meadow on the Kern River Plateau (8,700-foot elevation) in the Sierra Nevada Mountains, California. The entire range of the species is approximately 15 acres (6.1 hectares) and is administered by the U.S. Forest Service (USFS) (Inyo National Forest, Tulare County, California). The species' population fluctuates from year to year without any clear trends with estimates ranging from approximately 150,000 to 50,000 plants (based on USFS survey results 1985–2012). *Abronia alpina* is currently categorized by the USFS as a "Sensitive Species" under the 1988 Land and Resource Management Plan (LRMP), but is proposed to be categorized as an "At-Risk Species" under the revised LRMP currently being developed.

Threats to *Abronia alpina* and its habitat identified at the time it was determined to be a candidate species



included cattle trailing, trampling by campers and packstock, deteriorated watershed conditions, and potential bank cutting of habitat. In response, the USFS has implemented a number of conservation measures that have been effective in reducing these adverse effects, including developing a livestock trailing strategy; exclosure fencing; establishing a monitoring program; discontinuing livestock grazing for a 10-year period (2001–2011); rerouting hiking and packstock trails; and conducting land exchanges of private land so that all *A. alpina* habitat is on Federal land.

The stressors currently acting upon *Abronia alpina* and its habitat include lodgepole pine encroachment; potential bank cutting of habitat; the effects of climate change; recreation (camping, packstock); and cattle trailing within meadow habitats. Past conservation actions by the U.S. Forest Service have reduced or eliminated the effects of most of these stressors on *A. alpina* and its habitat. In addition, the Inyo National Forest and U.S. Fish and Wildlife Service have developed and signed a conservation agreement to evaluate current stressors for *A. alpina* and update conservation actions that will be implemented by the Inyo National Forest to continue to protect and manage *A. alpina* and its habitat (Conservation Agreement and Species Management Guide for *Abronia alpina* (Ramshaw *abronia*) Tulare County, California, Dated: April 2015). The conservation agreement addresses ongoing management needs of *A. alpina* and its habitat, including management or monitoring of past and present stressors that have been identified. The past and current conservation actions and protection provided by the Inyo National Forest have been demonstrated to reduce and ameliorate the effect of stressors acting upon the species, and we anticipate those completed actions to have lasting, positive effects into the near future. While we are not basing our finding on the February 2015 conservation agreement, we anticipate that conservation measures and protections outlined in the Conservation Agreement will continue to build on the success that past actions have had and will continue to benefit *Abronia alpina* into the future.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat are not of sufficient imminence, intensity, or magnitude to indicate that *Abronia*

*alpina* is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. This finding is based on the past conservation actions and protections provided by the Inyo National Forest that have shown success in reduction and amelioration of the effect of stressors acting upon the species and its habitat. We found no concentration of stressors that suggests that the *Abronia alpina* may be in danger of extinction in any portion of its range. Therefore, we find that listing *A. alpina* as a threatened or an endangered species throughout all or a significant portion of its range or maintaining the species as a candidate is not warranted at this time, and we are removing it from candidate status.

### Sequatchie Caddisfly (*Glyphopsyche sequatchie*)

#### Previous Federal Actions

The Sequatchie caddisfly was first identified as a candidate for protection under the Act through our internal process in the October 25, 1999, Candidate Notice of Review published in the **Federal Register** (64 FR 57534), and the Service was subsequently petitioned on May 11, 2004, to list the species although no new information was provided with the petition. Threats to the species identified at that time were siltation; agricultural, chemical, and municipal runoff; vandalism; pollution from trash; and small population size. The Sequatchie caddisfly was assigned a listing priority number (LPN) of 5 (64 FR 57534), and that LPN was maintained until evaluation for listing this year.

#### Summary of Status Review

The Sequatchie caddisfly (*Glyphopsyche sequatchie*) was discovered in 1994 and first described by Etnier and Hix (1999, entire). This species is a member of the insect order Trichoptera, family Limnephilidae, subfamily Limnephilinae, and tribe Chilostigmini (Wiggins 1996, pp. 270, 310).

Despite extensive efforts to find additional sites (Moulton and Floyd, 2013, entire), the Sequatchie caddisfly has been observed at only three spring runs in the Sequatchie Valley, all in Marion County, Tennessee: Owen Spring Branch (the type locality); Martin Spring run in the Battle Creek system, and Clear Spring Branch (Etnier and Hix 1999, pp. 629–630; Walton 2011, pers. comm.). In July 2014, biologists with the Service, the Tennessee Department of Environment and Conservation (TDEC),

the University of Tennessee, and the Tennessee Wildlife Resources Agency completed quantitative surveys within a 20-meter (66-foot) reach at both the Owen Spring Branch and Martin Spring sites. During the Owen Spring Branch survey, a total of 269 Sequatchie caddisflies were observed within 29 0.25-square-meter (2.7-square-foot) quadrats (USFWS, unpublished data).

Using these data, we estimated the population size at 5,192–6,273 individuals (95% confidence interval) within the 20-meter (66-foot) sampling reach. Considering the amount of occupied habitat within Owen Spring Branch (approximately 280 meters (919 feet)), we extrapolated that the population size at Owen Spring exceeds 50,000 caddisflies. During the Martin Spring surveys, a total of 260 Sequatchie caddisflies were observed within 30 0.25-square-meter (2.7-square-foot) quadrats (USFWS, unpublished data). Using these data, we estimated the population size at 6,546–10,593 individuals (95% confidence interval) within the 20-meter (66-foot) sampling reach. Considering the amount of occupied habitat within Martin Spring (approximately 660 meters (2,165 feet)), we extrapolated that the population size at Martin Spring exceeds 100,000 caddisflies. Both the Owen Spring Branch and Martin Spring estimates are much larger than previous estimates, which were 1,500 to 3,000 individuals at Owen Spring Branch and characterized as “very rare,” with only 6 individuals found at Martin Spring (Moulton and Floyd (2013, pp. 8–9)). In 2010, a single larva was collected at Clear Spring Branch during routine water quality monitoring by TDEC (Walton 2011, pers. comm.). In subsequent surveys, no individuals were observed at the Clear Spring Branch site (Moulton and Floyd 2013, p. 8; USFWS, unpublished data). It is unclear whether the larva collected in 2010 was the result of a dispersal event or of a population that occurred at very low levels, and the site is now considered unoccupied by the species. Sedimentation, beaver activity, mowing/clearing, trampling/public access, and possibly watershed disturbance are all stressors to habitat (Factor A). All of these stressors occur at both the Owen Spring Branch and Martin Spring sites, except for beaver activity, which is only found at Owen Spring Branch. However, these stressors are largely abated by management practices that have been in place for over 3 years, such as beaver and erosion control measures currently being undertaken by TDEC and other partners. Nevertheless, our not-

warranted finding is not based on the implementation of these voluntary efforts.

### Finding

The Sequatchie caddisfly is found at only two sites in Marion County, Tennessee. However, population sizes are now estimated to be substantially larger than previously thought, and the best available information does not indicate any evidence of declines or inbreeding depression in either of the known populations at this time. Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that there are no stressors of sufficient imminence, intensity, or magnitude to indicate that the Sequatchie caddisfly is in danger of extinction (an endangered species), or likely to become so within the foreseeable future (a threatened species), throughout all of its range.

We consider the range of the Sequatchie caddisfly to include Martin Spring and Owen Spring in the Sequatchie Valley of Tennessee. We evaluated the current range of Sequatchie caddisfly to determine if there is any apparent geographic concentration of potential threats for this species. We examined potential threats from range curtailment, sedimentation, beaver activity, mowing/clearing, trampling/public access, watershed disturbance, collection, disease, predation by introduced rainbow trout, the inadequacy of existing regulatory mechanisms, and small population size effects and found no concentration that suggests that the Sequatchie caddisfly may be in danger of extinction in a portion of its range. While there is a higher level of trampling and public access at Owen Spring Branch, the best available data do not indicate that this stressor rises to the level of a threat to the species at this site, such that this portion meets the definition of an endangered or a threatened species. Furthermore, we found no other portions of the range where potential threats are significantly concentrated or substantially greater than in other portions of its range. Therefore, we find that the factors affecting Sequatchie caddisfly are essentially uniform throughout its range, indicating no portion of the range warrants further consideration of possible endangered species or threatened species status under the Act.

Our review of the best available scientific and commercial information indicates that the Sequatchie caddisfly is not in danger of extinction (an endangered species) and is not likely to become an endangered species within

the foreseeable future (a threatened species), throughout all or a significant portion of its range. Therefore, we find that listing Sequatchie caddisfly as an endangered or a threatened species under the Act is not warranted at this time, and we are removing it from candidate status.

### Siskiyou Mariposa Lily (*Calochortus persistens*)

#### Previous Federal Actions

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94–51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant species named in the Smithsonian's report and other species added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. Siskiyou mariposa lily was one of those species. In the February 21, 1990, Candidate Notice of Review (CNOR) (55 FR 6192), we first identified the species as a category 2 candidate. However, the February 28, 1996, CNOR (61 FR 7596) discontinued recognition of category 1 and 2 species, so Siskiyou mariposa lily was no longer considered candidate species after that date. On September 10, 2001, we received a petition dated August 24, 2001, from Klamath-Siskiyou Wildlands Center, Oregon Natural Resources Council, and Barbara Knapp requesting that the Siskiyou mariposa lily be listed as an endangered species under the Act and that critical habitat be designated. In the June 13, 2002, CNOR (67 FR 40662), we once again added the species as a candidate with a listing priority number (LPN) of 2. In the May 11, 2005, CNOR, we changed the LPN to 5 (70 FR 24932). In subsequent annual CNOR publications, we maintained our determination of LPN of 5 for this species.

#### Summary of Status Review

*Calochortus persistens* is a perennial flowering bulb with one to two large showy, pink to lavender, erect, bell-shaped flowers with yellow fringes. *Calochortus persistens* is restricted to three disjunct areas in the Klamath-Siskiyou Mountain Range at elevations of 4,300 feet (ft) to 6,000 ft, on the California-Oregon border (Gunsight-Humbug Ridge and Cottonwood Peak Area, west of Yreka, Siskiyou County, California (two locations), and Bald Mountain site, west of Ashland, Jackson County, Oregon). Land ownership for

the three sites is a combination of U.S. Forest Service (USFS), Bureau of Land Management (BLM), and private lands. Population numbers for the species varies by location and numbers from 5 to 100,000 plants. Past numbers of *Calochortus persistens* plants in each area may have been underestimated depending on survey timing.

Between 1982 and 2013, numerous conservation initiatives and management plans have been developed to conserve *Calochortus persistens*. The most recent is the "Conservation Agreement between the U.S. Fish and Wildlife Service and the U.S. Forest Service and U.S. Bureau of Land Management for *Calochortus persistens* (Siskiyou mariposa lily)" (*Calochortus persistens* Conservation Agreement) that was finalized and approved on November 19, 2013. The conservation agreement identifies completed, ongoing, and future actions to remove or reduce the stressors to *C. persistens* across all occupied Federal lands. The USFS and BLM have also identified *Calochortus persistens* as a "Sensitive Species." Based on the successful track record of managing the species as provided for with the conservation initiatives, including the 2013 conservation agreement, we conclude that management of the species will provide for diverse plant communities by maintaining viable populations of plants and for conservation of the species by ensuring continued existence of viable populations that will prevent a trend towards listing under the Act. The USFS has issued management guidelines for *C. persistens* and has designated 1,005 acres (407 hectares) as a Special Habitat Management Area for the species.

The major stressor to *Calochortus persistens* habitat has been competition from the nonnative plant *Isatis tinctoria* (dyer's woad). *Isatis tinctoria* was reported to have spread throughout the Gunsight-Humbug Ridge and Cottonwood Peak occurrences to varying degrees. However, surveys have demonstrated that juvenile recruitment is evident and plants of all ages occur in each population. In 2003, the USFS initiated removal of *I. tinctoria*. In 2006, a second population of *C. persistens* was found at Cottonwood Peak consisting of more than 15,900 plants. This area does not contain any *I. tinctoria*. Because the existing occurrences for *I. tinctoria* are being managed, and some populations or occurrences within populations are not subject to the impacts from *I. tinctoria*, we have determined that the severity of the impacts from nonnative plants has been greatly decreased and is not resulting in significant impacts to *C.*

*persistens* at the range wide or local population level at this time nor do we expect it to in the foreseeable future.

Other stressors identified include fire and fire suppression activities, habitat disturbance activities, roads, off-highway vehicle use, grazing activities, collection, predation, low recruitment, and the species' relatively small, disjunct distribution. In our candidate assessment, we evaluated these stressors and determined that they are not resulting in significant population-level impacts to *Calochortus persistens* nor are they likely to do so into the foreseeable future. Our finding is based partly on management activities and because evidence review of the best available data does not suggest that there is a decline in the *C. persistens* populations at any of the three locations.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat are not of such imminence, intensity, or magnitude to indicate that *Calochortus persistens* is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. We also found no portion of its range where the threats are significantly concentrated or substantially greater than in any other portion of its range. Therefore, we find that listing *Calochortus persistens* as a threatened or an endangered species or maintaining the species as a candidate is not warranted throughout all or a significant portion of its range at this time, and consequently we are removing it from candidate status.

### Shawnee Darter (*Etheostoma tecumsehi*)

#### Previous Federal Action

On April 20, 2010, we received, via email, a petition from the Center for Biological Diversity, Alabama Rivers Coalition, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, West Virginia Highlands Conservancy, Tierra Curry, and Noah Curry, requesting to list 404 aquatic, riparian, and wetland species, including the Shawnee darter, as an endangered or a threatened species and to designate critical habitat concurrent with listing. We subsequently published a notice of a 90-day petition finding in the **Federal Register** (76 FR 59836; September 27, 2011), concluding that the petition to

list the Shawnee darter, among other species, presented substantial scientific or commercial evidence that listing may be warranted.

### Summary of Status Review

The Shawnee darter occurs within the Pond River system of the Green River in parts of four western Kentucky counties (Christian, Todd, Muhlenberg, and Hopkins). The species is broadly distributed across its range, inhabiting high-gradient headwater streams with abundant sand, gravel, and cobble riffles. Color characteristics of the females and non-breeding males of this species are similar to other members of the orangethroat darter group, and the largest specimens reach over 2 inches for males and up to 1.8 inches for females.

Destruction and modification of habitat have been identified as potential threats to the Shawnee darter. Streams within the Pond River system have been degraded by a variety of past and current activities such as dredging, channelization, impoundment, riparian zone removal and others. Much of the stream modification in the Pond River system occurred decades ago for agricultural and flood control purposes. While these manipulations occurred in the past, the habitat and water quality impacts persist, and siltation/sedimentation is considered a primary source of degradation within the Shawnee darter's range. While there are numerous dams across the range of the Shawnee darter, constructed mostly for flood control in the 1960s and 1970s, only eight occur between known species occurrences.

Historical and ongoing land uses (e.g., agriculture, natural resource extraction, etc.) have also affected and continue to affect stream habitats as well as water quality. Residential and agricultural land uses may result in increases in nutrients (e.g., fecal coliforms) that can be detrimental to aquatic fauna, and the Shawnee darter is often absent from streams with high nutrient levels. However, these impacts do not appear to be widespread within the species' range. Coal mining historically occurred, to a limited extent, in the northernmost edge of the species' range but has not reduced the species' distribution or occurrences. While oil and gas extraction is widespread within the range, it does not appear to be causing any broad changes to stream habitat or water quality. Reviews of permitted activities (e.g., coal mining) and digital land use coverages over the years do not indicate any significant changes in land use; despite these historical and ongoing impacts, survey

efforts in 2007 and 2013 indicate that the Shawnee darter is maintaining its populations and remains one of the most abundant darter species in the streams where it occurs.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat are not of such imminence, intensity, or magnitude to indicate that the Shawnee darter is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. We also found no portion of its range where the stressors are significantly concentrated or substantially greater than in any other portion of its range. Therefore, we find that listing the Shawnee darter as a threatened species or an endangered species throughout all or a significant portion of its range is not warranted at this time.

### Sleeping Ute Milkvetch (*Astragalus tortipes*)

#### Previous Federal Actions

Sleeping Ute milkvetch became a candidate species in the Candidate Notice of Review (CNOR) of 1996, with a listing priority number (LPN) of 11, after approximately 3 percent of the species' range was disturbed during construction of an irrigation canal (61 FR 7596; February 28, 1996). Between 1997 and 2006, the LPN was changed various times, and ultimately returned to LPN 11, because the threats were considered non-imminent (62 FR 49398, September 19, 1997; 66 FR 54808, October 30, 2001; 71 FR 53756, September 12, 2006). We received a petition in 2004 from the Center for Biological Diversity and others to list 225 species, including Sleeping Ute milkvetch. We reported in the 2005 CNOR that the petition contained no new information regarding Sleeping Ute milkvetch, and maintained it as a candidate (60 FR 24870, May 11, 2005). The species was maintained as a candidate with LPN 11 through the 2014 CNOR (79 FR 72450, December 5, 2014).

### Summary of Status Review

Sleeping Ute milkvetch is a perennial plant that grows only on the Smokey Hills layer of the Mancos Shale Formation on Ute Mountain Ute Tribal land in Montezuma County, Colorado. Very few formal surveys have been done for Sleeping Ute milkvetch, so we have no information on long-term population

trends. However, surveys in 2000 indicated the presence of 3,744 plants at 24 locations covering 500 acres (202 hectares) within an overall range of 6,400 acres (2,590). The Tribe received a grant in 2015 that enabled them to document the current status of the species. The 2015 plant surveys and impact assessment report show that the population has increased to 14,929 individual plants that were counted, plus an additional 5,000 that were estimated to occur within the same range.

We evaluated all known potential impacts to the plant, including impacts from the Towaoc Highline Canal construction, rifle range use, off-highway vehicles (OHVs), cattle grazing, and a prairie dog colony. While these impacts were previously believed to pose a threat to the species, and some may have caused losses of individual plants or habitat in the past, we received updated information from the Tribe that has improved our understanding of how these factors currently affect the species. For example, there are currently no plans for oil and gas development within the plant's habitat. The design and operation of the canal has not opened the area to increased vehicle use and associated ground disturbance as previously anticipated; the entire length of the canal and its maintenance roads are fenced; and access points from roads are gated and locked. The presence of a rifle range has introduced OHV use and outdoor recreation that has negatively affected individual plants and habitat, but these effects have been limited to one location, while the majority of populations remain unaffected. The Tribe has taken significant steps to reduce the impact of feral livestock, removing more than 400 head of feral livestock in 2013 and 2014, leaving only around 50 head remaining. Herbivory was reported, but the effects on reproduction were not determined.

Overall, current information indicates an increase in abundance from past surveys; that most stressors are speculative and any actual impacts have been at the individual, not population or species level; and that no impacts individually or cumulatively rise to the level of a threat so significant that it contributes to putting the species in danger of extinction or likely to become so in the foreseeable future. In addition, the Tribe believes that the health and existence of the species is in part due to its location on Tribal land, where all activities are controlled by the Tribe and no public access is allowed without permission.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat are not of such imminence, intensity, or magnitude to indicate that Sleeping Ute milkvetch is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. We also found no portion of its range where the stressors are significantly concentrated or substantially greater than in any other portion of its range. Therefore, we find that listing Sleeping Ute milkvetch as a threatened species or an endangered species is not warranted throughout all or a significant portion of its range at this time, and we have removed it from candidate status.

### Southern Idaho Ground Squirrel (*Urocitellus Endemicus*)

#### *Previous Federal Actions*

The southern Idaho ground squirrel was recognized as a Category 2 candidate species in the 1985 Candidate Notice of Review (CNOR) (50 FR 37958; September 18, 1985). Category 2 species were those species for which listing as an endangered species or as a threatened species was possibly appropriate, but for which biological information sufficient to support a proposed rule was lacking. However, the February 28, 1996, CNOR (61 FR 7596) discontinued recognition of category 1 and 2 species, so the southern Idaho ground squirrel was no longer considered a candidate species after that date.

On January 29, 2001, we received a petition dated January 26, 2001, from Biodiversity Legal Foundation, requesting that the southern Idaho ground squirrel, at the time classified taxonomically as a subspecies, be listed as an endangered or a threatened species under the Act and that critical habitat be designated. Included in the petition was supporting information regarding the species' taxonomy, historical and current distribution, habitat, life history, present status, and threats to the species. We acknowledged the receipt of the petition in a letter to the Biodiversity Legal Foundation, dated February 26, 2001. In that letter we also stated that due to court orders and judicially approved settlement agreements for other listing and critical habitat determinations under the Act that required nearly all of our listing and critical habitat funding for fiscal year (FY) 2001, we would not be able to

address the petition further at that time but would complete the action in FY 2002. We also stated that an initial review of the petition did not indicate that an emergency listing was warranted.

In the October 30, 2001, CNOR (66 FR 54808), we again identified the southern Idaho ground squirrel as a candidate for listing and assigned it a listing priority number (LPN) of 3, which reflects a subspecies facing threats of a high magnitude that are considered imminent.

On May 4, 2004, we continued to identify the southern Idaho ground squirrel as a candidate for listing in the CNOR (69 FR 24876), but we changed the LPN to 6, which reflects a subspecies facing threats of a high magnitude that are not considered imminent. This change was the result of conservation actions that had been implemented and that had reduced the imminence of threats, along with commitments from various agencies and parties to initiate and implement conservation actions for the squirrel. We acknowledged in this CNOR that although the magnitude of threats was still high, it was trending toward a moderate-to-low range.

On June 21, 2004, the U.S. District court for the District of Oregon (*Center for Biological Diversity v. Norton*, Civ. No. 03-111-AA) found that our resubmitted petition findings for three species, including the southern Idaho ground squirrel, that we published as part of the CNOR on May 4, 2004 (69 FR 24876), were not sufficient because we did not provide adequate information to support our warranted but precluded determinations. The court ordered that we publish updated findings. On December 27, 2004, in response to the court's order, we published a 12-month finding (69 FR 77167) on resubmitted petitions to list the three species. In response to ongoing conservation actions, we also changed the LPN to 9, which reflects a subspecies facing threats of a moderate to low magnitude that are considered imminent.

On November 22, 2013, we continued to identify the southern Idaho ground squirrel as a candidate for listing in the CNOR (78 FR 70104), but changed the LPN to 8 to reflect a change in taxonomy from subspecies to species. The most recent CNOR dated December 5, 2014 (79 FR 72450), continued to reflect the species' status as a candidate species with an LPN of 8.

### Summary of Status Review

The southern Idaho ground squirrel is endemic to four counties in southwest Idaho; its total known range is

approximately 718,318 acres (290,693 hectares). Threats to southern Idaho ground squirrels identified in the January 26, 2001, listing petition include: Habitat degradation from invasive exotic annual vegetation and future loss of habitat from urban development; direct killing from shooting, trapping, or poisoning; competition with Columbian ground squirrels; inadequacy of existing regulatory mechanisms; and low population numbers.

Habitat across the range of the southern Idaho ground squirrel is degraded from nonnative vegetation, primarily by nonnative annuals such as *Bromus tectorum* (cheatgrass) and *Taeniatherum caput-medusae* (medusahead). Nonnative annuals provide inconsistent forage quality for southern Idaho ground squirrels compared to native vegetation. Although their habitat is degraded, squirrels have been at a peak in their population cycle for the past several years and are well distributed throughout most of their historical range, which has led to an increase in gene flow among populations. Additionally, based on a Geographic Information Systems analysis, we found that the fire-return interval of 80 years has not changed and falls within the range of historical levels.

The 2001 listing petition cited rapid urban development as a threat to southern Idaho ground squirrels; however, very little urban development has occurred in the range of the squirrel in the past 14 years. Although urban development will likely occur in the future, we are not aware of any large-scale development plans at this time.

Recreational shooting and other direct killing of southern Idaho ground squirrels is being regulated and monitored. Authorized control actions and trapping/translocation efforts in areas where local abundance is high results in a temporary decrease of the local population, but not the extermination of the population. Competition with Columbian ground squirrels does not result in a substantial impact to the species due to limited overlap in their distributions. Climate change models predict increased temperatures that could have both positive and possibly negative effects on squirrels, and we do not have enough information at this time to determine what the actual impact, if any, will be on this species, although we note there is evidence that southern Idaho ground squirrels may be phenotypically plastic, similar to other species, which should enable them to adapt more readily to a

changing climate through changes such as earlier emergence from their burrows.

A programmatic Candidate Conservation Agreement with Assurances (CCAA) was completed for this species in 2005 and contains conservation measures that minimize ground-disturbing activities, allow for the investigation of methods to restore currently degraded habitat, provide for additional protection to southern Idaho ground squirrels from recreational shooting and other direct killing on enrolled lands, and allow for the translocation of squirrels to or from enrolled lands, if necessary. The acreage enrolled through the programmatic CCAA encompasses approximately 9 percent of the known range of the species. A more recent CCAA is expected to be completed by the fall of 2015.

Therefore, despite changes in habitat conditions and localized stressors (agricultural control, competition), squirrels continue to persist throughout the majority of their historical range and populations appear stable. Although we recognize that current conditions do not provide ideal habitat for the species, we anticipate that southern Idaho ground squirrels will continue to demonstrate resilience and persist in these degraded habitat conditions in the future.

#### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat are not of such imminence, intensity, or magnitude to indicate that the southern Idaho ground squirrel is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. We also found no portion of its range where the stressors are significantly concentrated or substantially greater than in any other portion of its range. Therefore, we find that listing the southern Idaho ground squirrel as a threatened species or an endangered species is not warranted throughout all or a significant portion of its range at this time, and we have removed it from candidate status.

#### Tahoe Yellow Cress (*Rorippa Subumbellata*)

##### Previous Federal Actions

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94–51. We published a notice in the **Federal**

**Register** on July 1, 1975 (40 FR 27823), in which we announced that we would review more than 3,000 native plant species named in the Smithsonian's report and other species added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants. Tahoe yellow cress was one of those species. In the September 27, 1985, Candidate Notice of Review (CNOR) (50 FR 39526; supplementary information page 18), Tahoe yellow cress was added to the candidate list as a category 3C species. Category 3C species were those species that were proven to be more abundant or widespread than previously believed or those that are not subject to identifiable threats. In the September 30, 1993, CNOR (58 FR 51184), we changed the candidate status to category 1: Category 2 species were those species for which listing as endangered or threatened species was possibly appropriate, but for which biological information sufficient to support a proposed rule was lacking. In the February 28, 1996, CNOR (61 FR 7612), we no longer recognized category 1 and 2 species as candidates and, therefore, most of those species, including Tahoe yellow cress, were removed from candidate status.

On December 27, 2000, we received a petition from the Southwest Center for Biological Diversity requesting the Tahoe yellow cress be listed as an endangered species with critical habitat. On December 27, 2004 (69 FR 77167), we published a notice of resubmitted petition findings including the Tahoe yellow cress. In that document, we announced the change of LPN from 2 to 8. In subsequent annual CNOR publications, we maintained our determination of LPN of 8 for this species.

#### Summary of Status Review

Tahoe yellow cress is a member of the mustard family (Brassicaceae) known only from the shores of Lake Tahoe in California and Nevada. The species is a low-growing, herbaceous perennial with yellow flowers. Flowering and fruiting occurs between late May and late October.

Tahoe yellow cress is well adapted to its dynamic shorezone environment and is capable of recolonizing sites after periods of inundation. This ability is evident by the demonstrated natural fluctuations in the number of Tahoe yellow cress that coincide with lake elevation and available habitat. Since 2001, the population numbers (number of stems) have ranged from a low of approximately 4,500 stems in 2006 (high lake level year (1,898-meter (m) elevation)) to more than 30,000 stems in

2014 (low lake level (1,897 m)). At this time, the most significant stressor to Tahoe yellow cress and its habitat is recreational activities on public beaches and adjacent habitat around the shore of Lake Tahoe; however, impacts from this stressor are being addressed by ongoing management actions that include fencing, signage, and adherence to beach-raking guidelines on public lands. Beach raking on private lands remains a concern, because guidelines are voluntary and cannot be enforced. However, this stressor is not of such magnitude as to present a population-level risk to the species. Impacts from shorezone development are being effectively managed by ongoing and effective implementation of applicable shorezone ordinances.

Since 1999, the Adaptive Management Working Group has developed and implemented conservation actions for Tahoe yellow cress. A conservation strategy coupled with a memorandum of understanding/conservation agreement (MOU/CA) between numerous Federal, State, and local agencies and environmental organizations has been implemented to address the stressor to Tahoe yellow cress. The MOU/CA was again signed in 2013 for a period of 10 years, and an updated conservation strategy is expected in 2015. An annual monitoring plan is in place, and propagation, transplanting, and translocation strategies have been examined and successfully initiated. Based on the successful track record of numerous parties implementing these conservation actions together, we conclude that ongoing implementation of those actions is managing and avoiding or mitigating identified impacts.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat are not of sufficient imminence, intensity, or magnitude to indicate that Tahoe yellow cress is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range. Because the distribution of the species is limited to the shoreline areas of Lake Tahoe and stressors are similar throughout the species' range, we found no concentration of stressors that suggests that Tahoe yellow cress may be in danger of extinction in any portion of its range. Therefore, we find that listing Tahoe yellow cress as a threatened species or as an endangered species throughout all of or a significant

portion of its range is not warranted at this time, and consequently we are removing it from candidate status.

**6 Tennessee Cave Beetles: Baker Station (=Insular) Cave Beetle (*Pseudanophthalmus Insularis*); Coleman Cave Beetle (*Pseudanophthalmus Colemanensis*); Fowler's Cave Beetle (*Pseudanophthalmus Fowlerae*); Indian Grave Point (=Soothsayer) Cave Beetle (*Pseudanophthalmus Tiresias*); Inquirer Cave Beetle (*Pseudanophthalmus Inquisitor*); and Noblett's Cave Beetle (*Pseudanophthalmus Paulus*)**

### Previous Federal Actions

The Service provided notification letters of status review for the Noblett's Cave beetle on June 22, 1990, and for the Fowler's Cave beetle, inquirer cave beetle, Baker Station Cave beetle, Noblett's Cave beetle, and Indian Grave Point Cave beetle on November 8, 1993. These letters were provided to species experts, representatives of resource agencies, and other interested parties to request information and comments regarding potential listing of the species as endangered species or threatened species.

Fowler's Cave beetle, inquirer cave beetle, Baker Station Cave beetle, Noblett's Cave beetle, and Indian Grave Point Cave beetle were added to the Federal list of candidate species in the 1991 Candidate Notice of Review (CNOR) (56 FR 58804) as category 2 species. Category 2 species were those species for which listing as an endangered species or a threatened species was possibly appropriate, but for which biological information sufficient to support a proposed rule was lacking. The category 2 status of these five species was confirmed in 1994 (59 FR 58982). However, the February 28, 1996, CNOR (61 FR 7596) discontinued recognition of category 1 and 2 species, so the Fowler's Cave beetle, inquirer cave beetle, Baker Station Cave beetle, Noblett's Cave beetle, and Indian Grave Point Cave beetle were no longer considered candidate species after that date.

The Service received a petition from the Center for Biological Diversity and others, dated May 4, 2004, to list as endangered species, 225 species, including the inquirer cave beetle, and to designate critical habitat for the species. The Service received another petition on May 11, 2004, to list eight cave beetles, including the inquirer cave beetle. The Service had already determined, in the October 30, 2001, CNOR that the inquirer cave beetle was a candidate for listing (66 FR 54808),

and therefore, we did not need to issue a new 90-day or 12-month finding in response to the petition. The Coleman Cave beetle, Fowler's Cave beetle, Baker Station Cave beetle, Indian Grave Point Cave beetle, and Noblett's Cave beetle became candidates for listing in the May 4, 2004, CNOR (69 FR 24876).

On April 20, 2010, the Center for Biological Diversity and others petitioned the Service to list as threatened or endangered 404 species, including the Coleman Cave beetle, and to designate critical habitat for those species. Because this species was already a candidate for listing, we were not required to issue a new 90-day or 12-month finding in response to the petition.

Each of the six species addressed in this finding has been included by the Service in every CNOR since the petitions were received in 2004, as species for which listing is warranted but precluded by higher priority listing actions.

The 2011 Multi-District Litigation (MDL) settlement agreement specified that the Service will systematically, over a period of 6 years, review and address the needs of 251 candidate species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants. The six beetle species included in this finding were on that list of candidate species. This finding completes the Service's requirements under the MDL agreement with respect to these six beetle species.

### Summary of Status Review

The six species are small (3 to 8 millimeters in length) predatory cave beetles that occupy moist habitats containing organic matter transported from sources outside the inhabited caves. Members of the *Pseudanophthalmus* genus vary in rarity from fairly widespread species that are found in many caves, to species that are extremely rare and commonly restricted to only one cave or, at most, two or three caves. The six beetles addressed by this finding are found entirely within Tennessee, and two of the species (*i.e.*, inquirer cave beetle and Noblett's Cave beetle) are currently known from only one cave. Fowler's Cave beetle and Indian Grave Point Cave beetle are known to occur in two caves; Baker Station Cave beetle has been documented from three caves; and the Coleman Cave beetle is known from four caves and a possible fifth. Surveys conducted during a status update for the six cave beetles during the period 2013–2015 resulted in findings of three of the beetles that had not been seen in decades (*i.e.*, Fowler's Cave beetle,

Baker Station Cave beetle, and Noblett's Cave beetle). Although usually zero to three individuals of any of the six species are found during most surveys, 97 Coleman Cave beetles were also found during a 2013 site visit.

Various populations of the six cave beetles were historically believed to have been subjected to stressors such as water quality impacts associated with a landfill, erosion due to construction, livestock operations, various aspects of human visitation of caves, and possible impacts to cave food webs resulting from interruption of organic energy inputs. The greatest potential stressors to the beetles appear recently to have been human trampling of beetles and their habitats, curtailing the input of organic materials to caves, excavation of cave habitats, and predation. However, actual impacts from these potential sources appear to be minimal. We have no information indicating that these stressors are adversely affecting the species at this time, either individually or cumulatively, at a level that warrants their listing under the Act.

Abatement of stressors has been initiated for the Coleman Cave beetle, Fowler's Cave beetle, and inquirer cave beetle through development of cooperative management agreements (CMAs) with private landowners and coordination between State property managers, nongovernmental organizations, and the Service. Implementation of CMAs is likely resulting in reduction of the impacts of potential stressors to these three beetles. However, our not-warranted finding is not based on the implementation of these voluntary efforts. For the Baker Station Cave beetle, Indian Grave Point Cave beetle, and Noblett's Cave beetle, the stressors appear minimal.

There has been a perception since the 1960s that population trends of the six beetles could possibly be decreasing, but that perception is likely due in part to the low level of survey effort expended for these species and difficulty in collecting them. The recent evidence of continued persistence of these species, in conjunction with the lack of evidence that stressors are negatively affecting these cave beetles, lead us to conclude that these species are more stable than previously thought.

### Finding

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the species and its habitat are not of sufficient imminence, intensity, or magnitude to conclude that the Coleman Cave beetle, Fowler's Cave beetle,

inquirer cave beetle, Baker Station Cave beetle, Indian Grave Point Cave beetle, or Noblett's Cave beetle are in danger of extinction (endangered species), or likely to become endangered within the foreseeable future (threatened species), throughout all of their respective ranges. We evaluated the current range of the six beetles to determine if there is any apparent geographic concentration of stressors for any of the species. The six beetles have relatively small ranges that are limited to the local cave systems where they are currently found. We examined potential stressors including human visitation, livestock grazing, commercial and residential development, disease, predation, and sources of water quality impairment. We found no concentration of stressors that suggests that any of these six species of cave beetles may be in danger of extinction in a portion of their respective ranges. Therefore, we find that listing the Coleman Cave beetle, Fowler's Cave beetle, inquirer cave beetle, Baker Station Cave beetle, Indian Grave Point Cave beetle, or Noblett's Cave beetle as threatened species or endangered species throughout all or a significant portion of their respective ranges is not warranted at this time, and consequently we are removing Coleman Cave beetle, Fowler's Cave beetle, inquirer cave beetle, Baker Station Cave beetle, Indian Grave Point Cave beetle, and Noblett's Cave beetle from candidate status.

### New Information

We request that you submit any new information concerning the status of, or stressors to, the American eel, Cumberland arrow darter, the Great Basin distinct population segment of the Columbia spotted frog, Goose Creek milkvetch, Nevares spring bug, Page springsnail, Ramshaw meadows sand-verbena, Sequatchie caddisfly, Shawnee darter, Siskiyou mariposa lily, Sleeping ute milkvetch, Southern Idaho ground squirrel, Tahoe yellow cress, and six Tennessee cave beetles (Baker Station, Coleman, Fowler's, Indian Grave Point, inquirer, and Noblett's cave beetles) to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and encourage their conservation. If an emergency situation develops for any of these species, we will act to provide immediate protection.

### References Cited

Lists of the references cited in the petition findings are available on the Internet at <http://www.regulations.gov>

and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

### Author(s)

The primary author(s) of this notice are the staff members of the Branch of Listing, Ecological Services Program.

### Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 23, 2015.

**Gary Frazer,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2015-25058 Filed 10-7-15; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R1-ES-2014-0045; FXES11130900000C6-156-FF09E42000]

RIN 1018-BA30

### Endangered and Threatened Wildlife and Plants; Reclassifying the Columbian White-Tailed Deer From Endangered to Threatened With a Rule Under Section 4(d) of the Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Columbia River distinct population segment (DPS) of Columbian white-tailed deer (*Odocoileus virginianus leucurus*) from endangered to threatened, and we propose a rule under section 4(d) of the Act to enhance conservation of the species through range expansion and management flexibility. This proposal is based on a thorough review of the best available scientific data, which indicate that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range. We seek information, data, and comments from the public regarding the Columbian white-tailed deer and this proposal.

**DATES:** We will accept comments received or postmarked on or before December 7, 2015. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for

submitting an electronic comment is 11:59 p.m. Eastern Time on this date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 23, 2015.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R1-ES-2014-0045, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!" Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R1-ES-2014-0045; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3808.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Requested section, below, for more information).

*Document availability:* The proposed rule is available on <http://www.regulations.gov>. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Portland, OR 97266; telephone 503-231-6179. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800-877-8339.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, State Supervisor, telephone: 503-231-6179. Direct all questions or requests for additional information to: Columbian White-tailed Deer Information Request, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Portland, OR 97266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

*Why we need to publish a rule.* Under the Act, a species may warrant reclassification from endangered to threatened if it no longer meets the

definition of endangered (in danger of extinction). The Columbia River DPS of Columbian white-tailed deer (CWTD) is listed as endangered, and we are proposing to reclassify the DPS as threatened because we have determined it is no longer in danger of extinction. Reclassifications can only be made by issuing a rulemaking. Furthermore, changes to the take prohibitions in section 9 of the Act, such as those we are proposing for this species under a section 4(d) rule, can only be made by issuing a rulemaking.

*The basis for our action.* Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the CWTD is no longer at risk of extinction and therefore does not meet the definition of endangered, but is still impacted by habitat loss and degradation of habitat to the extent that the species meets the definition of a threatened species (a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range) under the Act.

*We are proposing to promulgate a section 4(d) rule.* We are considering whether to exempt from the Act's take prohibitions (under section 9), certain activities conducted on State, Tribal, and private lands where CWTD occur or where they would occur if we were to reintroduce them to areas of their historic distribution. Under the proposed 4(d) rule, take of CWTD caused by CWTD damage management activities (such as hazing, use of non-lethal projectiles, or lethal control), and accidental misidentification during damage management activities and hunting of Columbian black-tailed deer (*Odocoileus hemionus columbianus*) (black-tailed deer) would be exempt from section 9 of the Act. The proposed 4(d) rule targets these activities to provide protective mechanisms to private landowners and State and Tribal agencies so they may continue with normal activities in the presence of CWTD and therefore facilitate the natural movement, translocation, and range expansion of CWTD.

##### **Public Hearing**

Section 4(b)(5)(E) of the Act provides for a public hearing on this proposal, if requested. We must receive a request for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date specified in the **DATES** section. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the hearing.

##### **Peer Review**

In accordance with our policy, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," which published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. This assessment will be completed during the public comment period. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

##### **Information Requested**

We intend that any final action resulting from this proposal will be based on the best available scientific and commercial data and will be as accurate and as effective as possible. Therefore, we invite Native American Tribes, governmental agencies, the scientific community, industry, or any other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible. We are specifically requesting comments on:

(1) The appropriateness of our proposal to reclassify this CWTD DPS from endangered to threatened.

(2) The factors that are the basis for making a reclassification determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;



(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this DPS and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.

(6) Any information on foreseeable changes to land use or County land use planning within the boundaries of the DPS that may affect future habitat availability for CWTD.

(7) The appropriateness of a rule to exempt certain take prohibitions of CWTD under section 4(d) of the Act.

(8) Any additional information pertaining to the promulgation of a rule to exempt certain take prohibitions of CWTD under section 4(d) of the Act.

(9) Relevant data on climate change and potential impacts to CWTD and its habitat.

We will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is

made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

We will post all hardcopy submissions on <http://www.regulations.gov>. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Previous Federal Action

On March 11, 1967, the Secretary of the Interior identified the CWTD as an endangered species (32 FR 4001), under the authority of the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926; 16 U.S.C. 668aa(c)). On March 8, 1969, the Secretary of the Interior again identified the CWTD as an endangered species (34 FR 5034) under section 1(c) of the Endangered Species Preservation Act of 1966. On August 25, 1970, the Acting Secretary of the Interior proposed to list the CWTD as an endangered subspecies (35 FR 13519) under the authority of the new regulations implementing the Endangered Species Conservation Act (ESCA) of 1969. On October 13, 1970, the Director of the Bureau of Sport Fisheries and Wildlife listed the CWTD as an endangered subspecies (35 FR 16047) under the authority of the new regulations implementing the ESCA of 1969. Species listed as endangered under the ESCA of 1969 were automatically included in the List of Endangered and Threatened Wildlife when the Endangered Species Act was enacted in 1973. In December 1971, the Service established the Julia Butler Hansen Refuge for CWTD (JBHR), in Cathlamet, Washington.

On October 21, 1976, the Service released the CWTD Recovery Plan. On June 14, 1983, the Service released the Revised CWTD Recovery Plan. The plan addressed the two main populations of CWTD, Columbia River and Douglas County, separately. On July 24, 2003, the Service published a rule (68 FR 43647) that: (1) Recognized the Douglas County and Columbia River populations as DPSs under the Service's 1996 Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (see 61 FR 4722; February 7, 1996), and (2) removed the Douglas County population of CWTD from the List of Endangered and Threatened

Wildlife. It was determined that recovery criteria for the Douglas County population had been met, as it achieved benchmarks in both population size and amount of secure habitat.

A 5-year status review of the Columbia River DPS was completed on November 5, 2013 (U.S. Fish and Wildlife Service 2013a); this review concluded that CWTD's status had substantially improved since listing, that the DPS no longer met the definition of an endangered species under the Act, and recommended the DPS should be downlisted from endangered to threatened.

#### Species Information

The Columbian white-tailed deer is the westernmost representative of 38 subspecies of white-tailed deer in North and Central America (Gavin 1984, p. 6). It resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lb)) for females and 52 to 68 kg (115 to 150 lb) for males (Oregon Department of Fish and Wildlife 1995, p. 2). Generally, the species displays a red-brown color in summer and gray in winter, with distinct white rings around the eyes and a white ring just behind the nose (Oregon Department of Fish and Wildlife 1995, p. 2). Its tail is relatively long, brown on top with a white fringe and white underneath (Verts and Carraway 1998, p. 479).

Although white-tailed deer can live up to 20 years, their mean lifespan is probably closer to 6 years, though 9- to 12-year olds are common. One Service study showed a median age at death of 3 years for bucks and 5 years for does (Gavin 1984, p. 490). More recent data from CWTD translocated in 2013 and 2014 showed a median age at death of 5 years for bucks and 9 years for does. Does can reach sexual maturity by 6 months of age or when their weight reaches approximately 36 kg (80 lb), however their maturation and fertility depends on the nutritional quality of available forage (Verme and Ullrey 1984, p. 96). Breeding will occur from mid-September through late February, and the peak of the breeding season, or rut, occurs in November. Fawns are born in the early summer after an approximate 200-day gestation period. In their first pregnancy, does usually give birth to a single fawn, although twins are common in later years if adequate forage is abundant (Verme and Ullrey 1984, p. 96).

The subspecies was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern

Washington (Bailey 1936, p. 92; Verts and Carraway 1998, p. 479). Although white-tailed deer are considered generalist browsers that also graze on grasses and forbs, Suring and Vohs (1979, p. 616) and Gavin *et al.* (1984, p. 13) reported that CWTD on the JBHR Mainland Unit were primarily grazers. This probably reflects browse and forage availability rather than a predisposition toward forage. Observations by JBHR biologists suggest fawns on the JBHR Mainland Unit are most often associated with pastures of tall, dense reed canary grass (*Phalaris arundinacea* L.) and tall fescue (*Festuca arundinacea*), as well as mixed deciduous and Sitka spruce (*Picea sitchensis*) forest (U.S. Fish and Wildlife Service 1983, p. 10; Brookshier 2004, p. 2).

Early accounts indicate that CWTD were locally common, particularly in riparian areas along major rivers (Crews 1939, p. 5). The subspecies occupied a

range of approximately 60,000 square kilometers (km<sup>2</sup>) (23,170 square miles (mi<sup>2</sup>)) west of the Cascades Mountains: From the Dalles, Oregon, in the east, to the Pacific Ocean in the west; and Lake Cushman in Mason County, Washington, in the north, to Grants Pass, Oregon, in the south (Crews 1939, p. 3; Smithsonian 2014, p. 1). The decline in CWTD numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys (Crews 1939, p. 2). Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors apparently caused the extirpation of this deer over most of its range by the early 1900s (Crews 1939, pp. 2, 5). By 1940, a population of 500 to 700 animals along the lower Columbia River in Oregon and Washington, and a disjunct population

of 200 to 300 in Douglas County, Oregon, survived (Crews 1939, p. 3; Gavin 1984, p. 487; Verts and Carraway 1998, p. 480). These two remnant populations remain geographically separated by about 320 km (200 mi), much of which is unsuitable or discontinuous habitat. The Columbia River DPS has a discontinuous current range of approximately 240 km<sup>2</sup> (93 mi<sup>2</sup>) or about 24,281 hectares (ha) (60,000 acres (ac)) (Smith 1985, p. 247) (Figure 1) in limited areas of Clatsop and Columbia Counties in Oregon, and Cowlitz, Wahkiakum, and Clark Counties in Washington. Within that range, CWTD currently occupy an area of approximately 6,475 ha (16,000 ac) (U.S. Fish and Wildlife Service 2013a, p. 7), with a 2014 population estimate of about 830 deer (U.S. Fish and Wildlife Service, unpublished data).

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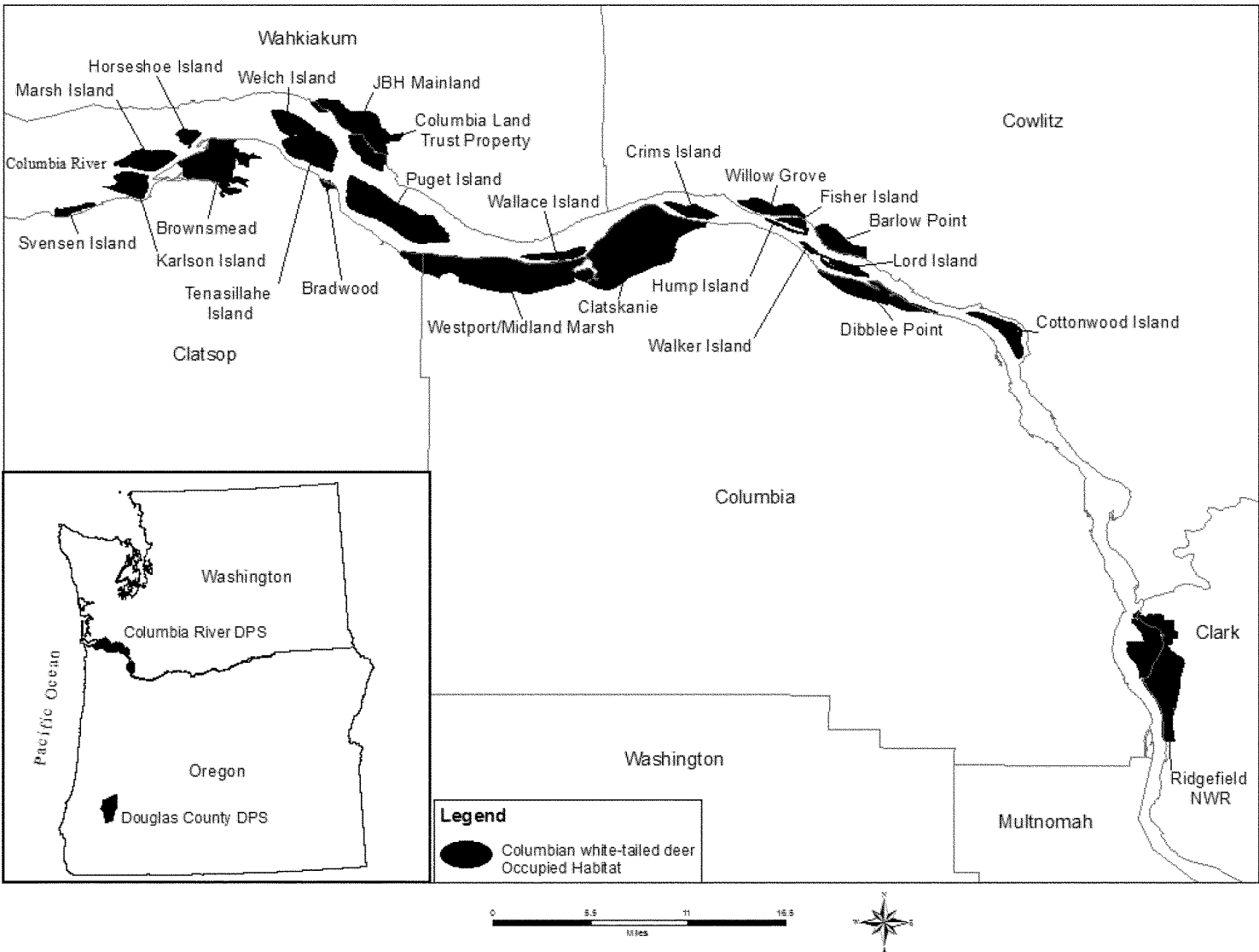


Figure 1. Current range of the Columbia River DPS of CWTD including subpopulations, as well as known CWTD occurrence. Inset map shows the geographic isolation between the Columbia River DPS (Top) and the delisted Douglas County DPS (bottom).

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**Review of the Recovery Plan**

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of

endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum

extent practicable, include "objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act], that the species

be removed from the list.” However, revisions to the Lists of Endangered and Threatened Wildlife and Plants (adding, removing, or reclassifying a species) must be based on determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made “solely on the basis of the best scientific and commercial data available.” While recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species on, or to remove a species from, the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may

change the extent to which criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

In the 1983 Revised Recovery Plan for CWTD (U.S. Fish and Wildlife Service 1983), the Service established the following criteria for downlisting the Columbia River DPS from endangered to threatened: (1) Maintain a minimum of at least 400 CWTD across the Columbia River DPS; and (2) maintain 3 viable subpopulations, 2 of which are located on secure habitat (U.S. Fish and Wildlife Service 1983, pp. 31–33). Viable is defined as a minimum November population of 50 individuals or more. Secure habitat is defined as free from adverse human activities in the foreseeable future and relatively safe from natural phenomena that would destroy the habitat’s value to CWTD.

The recovery plan established the following criteria for delisting (*i.e.*, removing the species from the Federal List of Endangered and Threatened Wildlife): (1) Maintain a minimum of at least 400 CWTD across the Columbia River DPS; and (2) maintain 3 viable subpopulations, all located on secure habitat. Recovery actions specified in the recovery plan to achieve the downlisting and delisting goals include management of existing subpopulations and protection of their habitat, establishment of new subpopulations, and public education and outreach to foster greater understanding of CWTD and its place in the natural environment of its historic range (U.S. Fish and Wildlife Service 1983, pp. 31–33).

*Recovery Plan Implementation for the Columbia River DPS.* At the time of the Revised Recovery Plan’s publication, the JBHR Mainland Unit subpopulation was the only subpopulation considered viable and secure. The Revised Recovery Plan recommended increasing the Tenasillahe Island subpopulation to a minimum viable herd of 50 deer, maintaining a total population

minimum of 400 deer, and securing habitat for one additional subpopulation (U.S. Fish and Wildlife Service 1983, p. 31).

Forty-eight years have passed since the CWTD was federally listed as endangered, and the species is now more abundant and better distributed throughout the lower Columbia River Valley. The improvement is due in part to the support and augmentation of existing subpopulations, and the establishment of new subpopulations via successful translocations within the species’ historical range. Currently, there are six main CWTD subpopulations: JBHR Mainland Unit (88 deer), Tenasillahe Island (154 deer), Upper Estuary Islands (39 deer), Puget Island (227 deer), Westport/Wallace Island (154 deer), and Ridgefield National Wildlife Refuge (NWR) (48 deer) (see Table 1, below). Threats to the species have been substantially ameliorated and CWTD have met all of the criteria for downlisting to threatened in the Revised Recovery Plan. A review of the species’ current status relative to the downlisting criteria follows.

**Downlisting Criterion 1:** Maintain a minimum of at least 400 CWTD across the Columbia River DPS. This criterion has been met. The total population of the Columbia River DPS has been maintained at over 400 deer annually since regular surveys began in 1984, and the population estimate for 2014 is more than double this figure. See Table 1, below, for CWTD subpopulations and their current population sizes.

**Downlisting Criterion 2:** Maintain three viable subpopulations, two of which are located on secure habitat. This criterion has been met. There are currently four viable subpopulations of CWTD: Tenasillahe Island at 154 deer, Puget Island at 227 deer, Westport/Wallace Island at 154 deer, and the JBHR Mainland Unit at 88 deer (see Table 1, below). The Tenasillahe Island and Puget Island subpopulations are located on secure habitat, as explained in the following status discussion.

TABLE 1—ESTIMATED POPULATION SIZE OF THE COLUMBIA RIVER DPS OF CWTD BY SUBPOPULATION  
[U.S. Fish and Wildlife Service 2013a, p. 7; U.S. Fish and Wildlife Service, unpublished data]

Year	Puget Island	Tenasillahe Island	Westport/Wallace Island	JBHR Mainland unit	Upper Estuary Islands <sup>c</sup>	Ridgefield NWR	Total
1984 .....	170	40	150	360	0	0	720
1985 .....	215	40	125	480	0	0	860
1986 .....	195	55	125	500	0	0	875
1987 .....	185	70	150	500	0	0	905
1988 .....	205	80	150	410	0	0	845
1989 .....	205	90	150	375	0	0	820
1990 .....	200	105	150	345	0	0	800
1991 .....	200	130	150	280	0	0	760

TABLE 1—ESTIMATED POPULATION SIZE OF THE COLUMBIA RIVER DPS OF CWTD BY SUBPOPULATION—Continued  
[U.S. Fish and Wildlife Service 2013a, p. 7; U.S. Fish and Wildlife Service, unpublished data]

Year	Puget Island	Tenasillahe Island	Westport/Wallace Island	JBHR Mainland unit	Upper Estuary Islands <sup>c</sup>	Ridgefield NWR	Total
1992	200	165	175	280	0	0	820
1993	200	195	200	175	0	0	770
1994	200	205	225	140	0	0	770
1995	200	205	225	120	0	0	750
1996	200	125	225	51	0	0	610
1997	200	150	200	100	0	0	650
1998	200	200	200	110	0	0	710
1999	150	160	140	110	25	0	585
2000	150	135	150	120	55	0	610
2001	125	135	150	120	55	0	585
2002	125	100	140	125	55	0	545
2003	125	100	140	115	80	0	560
2004	110	100	140	110	95	0	555
2005	125	100	140	100	100	0	565
2006 <sup>a</sup>	n/a	86	104	81	67	0	
2007 <sup>a</sup>	n/a	82	n/a	59	<sup>e</sup> 41	0	
2009 <sup>a</sup>	138	<sup>b</sup> 97	146	<sup>b</sup> 74	28	0	<sup>d</sup> 593
2010 <sup>a</sup>	n/a	143	164	68	39	0	<sup>d</sup> 630
2011	171	90	n/a	83	<sup>f</sup> 18	0	<sup>d</sup> 603
2014	227	154	<sup>g</sup> 154	88	39	48	<sup>d</sup> 830

<sup>a</sup> Estimates from 2006–2010 are derived from Forward-Looking Infrared (FLIR) survey results, but survey results from 2008 produced anomalous data because an alternative technique was used. These data are not considered representative of actual numbers, and are thus not included in this table.

<sup>b</sup> Numbers reflect a post-survey translocation of 16 deer from Tenasillahe Island to the Refuge mainland.

<sup>c</sup> Includes Lord, Walker, Fisher, Hump, and Crims Islands.

<sup>d</sup> Includes estimates from residual populations in Cottonwood Island, Clatskanie Flats, Brownsmead, Willow Grove, Barlow Point, and Rainier.

<sup>e</sup> Does not include Fisher and Hump Islands.

<sup>f</sup> Assuming a white-tailed:black-tailed deer ratio of 20:1; this includes only Crims Island.

<sup>g</sup> Approximate population estimate after 2014 translocation.

**Note:** Totals are not given in 2006 and 2007 due to incomplete data, and no surveys were conducted in 2012 or 2013.

At the time of the CWTD Revised Recovery Plan publication in 1983, the number of deer in the Columbia River DPS was thought to be 300 to 400. The first comprehensive survey effort in 1984 resulted in an estimate of 720 deer, suggesting that prior estimates were probably low. Beginning in 1996, the Service began using Forward-Looking Infrared (FLIR) thermography camera systems affixed to a helicopter (or, in 2008, a fixed-wing Cessna 206) to conduct aerial CWTD surveys within the Columbia River DPS, in addition to annual fall ground counts. Fall ground counts have been conducted since 1985, and have been used to provide more clarity in establishing long-term population trends by indicating gross population changes. In years when FLIR surveys were not completed, ground counts were used to estimate whether there had been any unusual decrease or increase in a subpopulation. The current estimate (2014) of the Columbia River DPS population is approximately 830 deer (Table 1).

The JBHR Mainland Unit subpopulation has fluctuated in numbers since regular surveys began, with a high of 500 deer in 1987 to a low of 51 deer in 1996 (after a catastrophic

flood event). The declining population trend seen in the JBHR Mainland Unit subpopulation over the last 30 years (Table 1) is likely the result of overpopulation that occurred after the area became a refuge in 1971. With the protected status of the refuge and the cessation of hunting, the deer increased in numbers to levels that were unsustainable given the amount of available habitat, culminating with the peak of 500 CWTD. Refuge biologists established a goal of approximately 125 deer for the JBHR Mainland Unit to maintain long-term stability (U.S. Fish and Wildlife Service 2010, p. 2:62). Flooding on the JBHR Mainland Unit has occurred three times over the history of the refuge, in 1996, 2006 and 2009. Although the refuge saw short-term population declines after each flood, the numbers returned to prior levels within a few years. From 1997 to the present, the JBHR Mainland Unit subpopulation stabilized and consistently maintains population numbers above the recovery criteria minimum of 50 deer (Table 1).

In March of 2011, JBHR personnel discovered erosion of the dike that protects the Mainland Unit from flooding by the Columbia River. The

progressive erosion led to the closure of Steamboat Slough Road, which runs on top of the dike. A geotechnical assessment determined that the dike was at “imminent risk” of failure (U.S. Fish and Wildlife Service 2013b, p. 2) and a breach at that location would result in the flooding of the JBHR Mainland Unit at high tides. In response to this threat, the Service conducted an emergency translocation of 37 CWTD from the JBHR Mainland Unit to unoccupied but suitable habitat at Ridgefield NWR in early 2013 (U.S. Fish and Wildlife Service 2013c, p. 8). The U.S. Army Corps of Engineers subsequently constructed a set-back levee on JBHR to prevent flooding of the refuge and to restore salmonid habitat (U.S. Army Corps of Engineers 2013, p. 11). Though the set-back dike, completed in fall 2014, reduces available CWTD habitat on the JBHR Mainland Unit by approximately 28 ha (70 ac), or approximately 3.5 percent of the total 797 ha (1,970 ac), it will restore the stability of the remaining habitat for the Mainland Unit subpopulation. After the removal of 37 CWTD in 2013, the population of the JBHR Mainland Unit has rebounded quickly to an estimated 88 deer (2014).

The JBHR also includes Tenasillahe Island in Oregon. The 1983 Revised Recovery Plan recommended increasing the Tenasillahe Island subpopulation to a minimum viable herd of 50 deer. The Service has accomplished this recovery goal through several translocation efforts and habitat enhancement, and the island's subpopulation, though still affected by flood events, has remained relatively stable. The most current FLIR survey at this location (in 2014) estimated the population at 154 deer (Table 1).

The Revised Recovery Plan identified a series of islands near Longview, Washington, as suitable habitat to create a third subpopulation. These islands, known as the Upper Estuary Islands, included Fisher, Hump, Lord, and Walker, with a total area of 400 ha (989 ac), under a mix of private and State ownership. Fisher Island is a naturally occurring tidal wetland dominated by black cottonwood (*Populus trichocarpa*), willow (*Salix* spp.), and dogwood (*Cornus nuttallii*) (U.S. Fish and Wildlife Service 2005, p. 1). The remaining three islands are dredge material sites with dense cottonwood and shrub habitat. Translocations of CWTD to Fisher/Hump and Lord/Walker Islands began in 2003, and a total of 66 deer (33 to each set of islands) have been relocated there to date (U.S. Fish and Wildlife Service 2013a, p. 23). The population goal for the 4-island complex is at least 50 CWTD (U.S. Fish and Wildlife Service 2005, p. 1), but as a unit, this complex has yet to maintain the target population of 50 deer. The 4-island complex currently contains 10 CWTD. It is suspected that the low numbers of CWTD in the complex are a result of deer finding higher quality habitat in areas adjacent to the island complex. Telemetry data indicate that CWTD frequently move between the island complex and adjacent areas of Willow Grove, the Barlow Point industrial area, and Dibblee Point (U.S. Fish and Wildlife Service 2005, p. 3), so many of the translocated deer may be in these other locations. These adjacent areas averaged 44 CWTD between 2009 and 2011 (U.S. Fish and Wildlife Service 2013a, p. 23). However, further range expansion in this region is limited by its direct proximity to urban development. The potential for problems associated with translocations, particularly damage to private gardens and commercial crops, remains an issue with local landowners and therefore limits CWTD range expansion at this time.

Crims Island was also designated in the Revised Recovery Plan as a suitable translocation site and has subsequently

been added to the Upper Estuary Islands subpopulation for recovery purposes. Crims Island lies 1.6 km (1 mi) downstream from the original Upper Estuary Islands, and contributes to the interchange among CWTD of neighboring islands and mainland subpopulations (U.S. Fish and Wildlife Service 2005, p. 4). It was secured for CWTD recovery in a 1999 agreement between the Bonneville Power Administration, the Columbia Land Trust, and the Service (U.S. Fish and Wildlife Service 2010, p. 1:19). Crims Island has received 66 CWTD through several translocation efforts (U.S. Fish and Wildlife Service 2013a, p. 21). The protected portion of the island (approximately 191 ha (473 ac)) contains about 121 ha (300 ac) of deciduous forest (black cottonwood, Oregon ash (*Fraxinus latifolia*), and willow), pasture, and marsh. Crims Island was formerly grazed but remains undeveloped. This area was originally considered able to support 50 to 100 deer (U.S. Fish and Wildlife Service 2000, p. 2) but has only supported between 8 and 33 deer since 2000, with the latest population estimate at 29 deer in 2014.

Puget Island has supported one of the largest and most stable subpopulations of CWTD. While densities have historically been lower than refuge lands, the size of Puget Island (about 2,023 ha (5,000 ac)) has enabled it to support a healthy number of deer. Since regular surveys began in 1984, the population at Puget Island has averaged between 175 and 200 deer. The latest survey (2014) estimated the population at a high of 227 deer. Eleven deer were removed from the area for the 2014 translocation to Ridgefield NWR. Puget Island is a mix of private and public land. The private land consists mainly of pasture for cattle and goats, residential lots, and hybrid cottonwood plantations that provide food and shelter for the deer. Farmers and ranchers on the island often implement predator (coyote, *Canis latrans*) control on their lands to protect poultry and livestock, and this management activity likely benefits the CWTD population on the island.

The Westport/Wallace Island subpopulation has also been stable and relatively abundant since regular surveys began. After reaching a peak of approximately 225 deer in 1995, the subpopulation's last estimate from 2010 was 164 deer (Table 1). However, 10 deer were removed from the area for the 2014 translocation to Ridgefield NWR, so the most current estimate is approximately 154 deer. Habitat in the Westport area consists mainly of

cottonwood/willow swamp and scrub-shrub tidal wetlands. In 1995, Wallace Island, Oregon, was purchased by the Service for CWTD habitat. Though the habitat is now protected for the recovery of CWTD, the 227-ha (562-ac) island alone is considered too small to support a viable population (U.S. Fish and Wildlife Service 2010, p. 4:39). Because it is located adjacent to Westport, Oregon, Wallace Island is considered part of the Westport/Wallace Island CWTD subpopulation. Acquisitions by JBHR also include a 70-ha (173-ac) area of Westport called the Westport Unit.

Ridgefield NWR is located in Clark County, Washington, approximately 108 km (67 mi) southeast of JBHR, and is comprised of 2,111 ha (5,218 ac) of marshes, grasslands, and woodlands with about 1,537 ha (3,800 ac) of upland terrestrial habitat. As part of the 2013 emergency translocation, the Service moved 37 deer from the JBHR Mainland Unit to Ridgefield NWR in Clark County, Washington (U.S. Fish and Wildlife Service 2013c, p. 8). Eleven of the deer suffered either capture-related mortality or post-release mortality within 2 months, mainly due to predation (U.S. Fish and Wildlife Service, unpublished data). In 2014, another 21 deer were translocated to Ridgefield NWR from Puget Island and Westport, and the current estimated population based on FLIR surveys is 48 deer (Table 1).

Cottonwood Island lies approximately 1.6 km (1 mi) upriver from Dibblee Point on the Washington side of the Columbia River. The 384-ha (948-ac) island was considered in the Revised Recovery Plan as a potential relocation site; it was thought that the island could support up to 50 deer. The island is a recreational site for camping and fishing with the surrounding waters used for waterfowl hunting. Cottonwood Island has multiple landowners, primarily a coalition of ports administered by the Port of Portland, but there are no people living on the island and no commercial interests (U.S. Fish and Wildlife Service 2013b, p. 15). In the fall of 2010, 15 deer were moved to Cottonwood Island from the Westport population in Oregon (Cowlitz Indian Tribe 2010, p. 1). Seven confirmed mortalities resulted from vehicle collisions as CWTD dispersed off the island (Cowlitz Indian Tribe 2010, p. 3). Telemetry monitoring by Washington Department of Fish and Wildlife (WDFW) personnel in the spring of 2011 detected three radio-collared CWTD on Cottonwood Island and two on the Oregon mainland near Rainier, Oregon. A second translocation of 12 deer to Cottonwood Island (from Puget Island) occurred in conjunction

with the 2013 emergency translocation effort (U.S. Fish and Wildlife Service 2013a, p. 24). All but four of these new CWTD subsequently died or moved off the island, with five deer dying from vehicle strikes (U.S. Fish and Wildlife Service, unpublished data). Habitat quality may be a factor in the movement of CWTD off the island, so habitat restoration of about 6 ha (15 ac) was conducted in 2013. Staff at JBHR and the Cowlitz Indian Tribe are conducting periodic monitoring of CWTD translocated to Cottonwood Island.

While the overall population trend for the Columbia River DPS appears to decline over time along a similar trajectory as the JBHR Mainland Unit subpopulation until 2006, closer examination reveals that the overall trend is strongly influenced by the decline of the unsustainable highs that the JBHR Mainland Unit experienced in the late 1980s. The other subpopulations did not undergo a similar decline, and when the JBHR Mainland Unit is left out of the analysis, the overall Columbia River DPS population demonstrates a more positive trend.

Page 37 of the Revised Recovery Plan states, “. . . protection and enhancement (of off-refuge CWTD habitat) can be secured through local land use planning, zoning, easement, leases, agreements, and/or memorandums of understanding” (U.S. Fish and Wildlife Service 1983, p. 37). In the 30 years following the development of the Revised Recovery Plan, the Service interpreted this to mean that the only acceptable methods of securing habitat in order to meet recovery criteria were the ones listed in the above citation. This led the Service to focus most CWTD recovery efforts on increasing and maintaining the subpopulations within the boundaries of the JBHR rather than working in areas that did not meet the narrow interpretation of “secure” habitat. These efforts resulted in some successful recovery projects such as growing and stabilizing the subpopulation on Tenasillahe Island, which is part of JBHR and currently one of the largest subpopulations in the Columbia River DPS. However, it also led the Service to put significant resources and time toward efforts that have shown less consistent success, such as establishing viable and stable herds on the Upper Estuary islands. At present, a total of 314 deer have been translocated in an effort to move CWTD to “secure” habitats. As discussed earlier in this section, some translocations yielded success (Ridgefield) and some failed to increase subpopulation numbers

(Cottonwood Island and the Upper Estuary Islands).

Two subpopulations, Puget Island and Westport/Wallace Island, have maintained relatively large and stable numbers over the last 3 decades even though these areas are not under conservation ownership or agreement. The number of CWTD in these two areas clearly demonstrates a measure of security in the habitat regardless of the ownership of the land. If we look at population trends and stability, these two locations have provided more biological security to CWTD than the flood prone JBHR Mainland Unit, which is protected for the conservation of CWTD.

The 30-year population trends from Puget Island and Westport/Wallace Island make it clear that CWTD can maintain secure and stable populations on suitable habitat that is not formally set aside by acquisition, conservation easement, or agreement for the protection of the species. Within this context, we have re-evaluated the current status of CWTD under a broadened framework for what constitutes “secure” habitat. This now includes locations that, regardless of ownership status, have supported viable subpopulations of CWTD for 20 or more years, and have no anticipated change to land management in the foreseeable future that would make the habitat less suitable to CWTD.

While Puget Island and Westport/Wallace Island had previously not been considered “secure” habitat, they have been supporting two of the largest and most stable subpopulations in the Columbia River DPS since listing. Although CWTD numbers at these 2 locations have fluctuated, the Westport/Wallace Island subpopulation had 150 deer in 1984 and 164 deer in 2010, and the Puget Island population had 170 deer in 1984 and 227 deer in 2014 (Table 1). The Revised Recovery Plan identified Puget Island and the Westport area as suitable sources for CWTD translocations due in large part to their population stability. Subsequently, these two locations have been the donor source for numerous translocations over the last 30 years, including the removal of 23 deer from Puget Island and 10 deer from Westport as part of the 2013–2014 translocation effort. Removal of CWTD from these two locations on multiple occasions for the purpose of translocation has not resulted in any decrease in donor population numbers.

Since the late 1980s, the total acreage of tree plantations on Puget Island decreased by roughly half (Stonex 2012, pers. comm.). However, a proportional decrease in the numbers of CWTD did

not occur. Furthermore, though Puget Island has experienced changes in land use and increases in development over time, such as the break-up of large agricultural farms into smaller hobby farms, the changes have not inhibited the ability of CWTD to maintain a very stable population on the island. The Wahkiakum Comprehensive Plan (2006) anticipates that future development on Puget Island will continue to be tree farms, agricultural farms, and rural residential (both low density with 1- to 2-ha (2.5- to 5-ac) lots and medium density with 0.4- to 1-ha (1- to 2.5-ac) lots), with a goal of preserving the rural character of the area (Wahkiakum County 2006, p. 392). Puget Island’s population has grown at a nominal rate of 1 to 1.5 percent over the past 15 years; that past rate along with building permit growth over the last 5 years leads Wahkiakum County to project a population growth rate on the island of 1.5 percent through the 20-year “plan horizon” that extends through the year 2025 (Wahkiakum County 2006, p. 379). Because CWTD have demonstrated the ability to adapt to the type of development on the island, continued development of this type is not expected to impact CWTD on the island in the foreseeable future (Meyers 2013, pers. comm.). Therefore, the Service considers Puget Island secure habitat.

Apart from Wallace Island and the Westport Unit, most of the area where the Westport/Wallace Island subpopulation is located is under private ownership and a large portion of that land is owned and managed by one individual family. The family has managed the land for duck hunting for many years, implementing intensive predator control and maintaining levees as part of their land management activities. The Service suspects that CWTD reproduction in the Westport/Wallace Island subpopulation has benefited from this intensive predator control (Meyers 2013, pers. comm.). If the property owners alter the management regime or the property should change hands, the Westport/Wallace Island subpopulation could be negatively affected, particularly if the owners decide to remove the current levees, thereby inundating some of the CWTD habitat (Meyers 2013, pers. comm.). Because the stability of CWTD in this area appears to be so closely tied to one private landowner and their land management choices, there is less certainty as to the long-term security of this subpopulation and its associated habitat. As a result, although a small portion of the habitat for this subpopulation is protected for CWTD,

the Service does not currently recognize Westport/Wallace Island as secure habitat. However, given that the area has supported a healthy subpopulation of CWTDD for several decades, the Service should consider securing this property through purchase or conservation agreement to ensure a stable management regime, thereby increasing recovery prospects for the Columbia River DPS.

With respect to the species' recovery criteria (U.S. Fish and Wildlife Service 1983, pp. 31–33), we currently have 4 viable subpopulations of CWTDD: (1) Tenasillahe Island at 154 deer, (2) Puget Island at approximately 227 deer, (3) Westport/Wallace Island at 154 deer, and (4) the JBHR Mainland Unit at 88 deer (Table 1). Furthermore, because two of these viable subpopulations, Tenasillahe Island and Puget Island, are now considered secure, the Columbia River DPS has met the recovery criteria for downlisting to threatened status under the Act. The Westport/Wallace Island subpopulation has shown consistent stability over the last 30 years, on par with Puget Island and Tenasillahe Island, but its long-term security is less certain. The JBHR Mainland Unit has already rebounded in numbers to over 50 animals (2014 population estimate was 88 deer), and the set-back dike is in place to restore the stability of the habitat. In order for the Service to determine that the population has regained its secure status, several years of monitoring will be necessary to accurately assess the long-term response of the JBHR Mainland Unit population to both the removal of half its numbers in 2013, and the reduction in habitat from the construction of the setback dike.

#### Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D)

the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in reclassifying (*i.e.*, downlisting) a species. We may downlist a species if the best available scientific and commercial data indicate that the species no longer meets the definition of endangered, but instead meets the definition of threatened due to: (1) The species' status has improved to the point that it is not in danger of extinction throughout all or a significant portion of its range, but the species is not recovered (as is the case with the CWTDD); or (2) the original scientific data used at the time the species was classified were in error.

Determining whether a species has improved to the point that it can be downlisted requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is "endangered" for purposes of the Act if it is in danger of extinction throughout all or a "significant portion of its range" and is "threatened" if it is likely to become endangered within the foreseeable future throughout all or a "significant portion of its range." The word "range" in the significant portion of its range (SPR) phrase refers to the general geographical area in which the species occurs at the time a status determination is made. We published a final policy interpreting the phrase "Significant Portion of its Range" (SPR) (79 FR 37578). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered species or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is "significant" if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to

be the general geographical area within which that species can be found at the time Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies. For the purposes of this analysis, we will evaluate whether the currently listed species, the Columbia River DPS of CWTDD, continues to meet the definition of endangered or threatened.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the five-factor analysis, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.*, it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

In the following analysis, we evaluate the status of the Columbia River DPS of CWTDD throughout all its range as indicated by the five-factor analysis of threats currently affecting, or that are likely to affect, the species within the foreseeable future.

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

CWTDD evolved as a prairie edge/ woodland-associated species with historically viable populations that were not confined to river valleys (Bailey 1936, pp. 92–93). CWTDD were then extirpated in all but two areas of their historical range: the Columbia River DPS area and the Douglas County DPS area. The remnant Columbia River DPS population was forced by anthropogenic factors (residential and commercial development, roads, agriculture, etc., causing fragmentation of natural habitats) into the lowland areas it now



inhabits. Urban, suburban, and agricultural areas now limit population expansion, and existing occupied areas support densities of CWTD indicative of low-quality habitats, particularly lower lying and wetter habitat than where the species would typically be found.

Loss of habitat is suspected as a key factor in historical CWTD declines; 12,140 ha (30,000 ac) of habitat along the lower Columbia River were converted for residential and large-scale agricultural use from 1870 to 1970 (Northwest Power and Conservation Council 2004, p. B4:13). Over time, CWTD were forced into habitat that was fragmented, wetter, and more lowland than what would be ideal for the species. The recovery of the Douglas County DPS reflects the availability of more favorable habitat (a mix of conifer and hardwood-dominated vegetation communities, including oak woodlands and savannah) and compatible land use practices, such as intensive sheep grazing (Franklin and Dyrness 1988, p. 110).

Though limited access to high-quality upland habitat in the Columbia River DPS remains the most prominent hindrance to CWTD dispersal and recovery today, the majority of habitat loss and fragmentation has already occurred. The most dramatic land use changes occurred during the era of hydroelectric and floodplain development in the Columbia River basin, beginning with the construction of Willamette Falls Dam in 1888 and continuing through the 1970s (Northwest Power and Conservation Council 2013, p. 1). Compared to the magnitude of change that occurred to CWTD habitat through activities associated with these types of development (e.g., dredging, filling, diking, and channelization) (Northwest Power and Conservation Council 2004, p. III, 13–15), significant future changes to currently available habitat for the Columbia River DPS are not anticipated.

Recovery efforts for CWTD have, in large part, focused on formally protecting land for the recovery of the species through acquisitions and agreements such as JBHR, Crims Island, Cottonwood Island, and Wallace Island, as well as restoration activities to increase the quality of existing available habitat. To date, the Service has worked to conserve 3,604 ha (8,918 ac) of habitat for the protection of CWTD (U.S. Fish and Wildlife Service 2013, p. 20). Habitat restoration and enhancement activities on JBHR have improved the quality of habitat since the publication of the Revised Recovery Plan in 1983, and Ridgefield NWR now has an active habitat enhancement program in place

to support the translocated CWTD. These efforts have added to the available suitable habitat for the Columbia River DPS and helped to offset some of the impacts from previous habitat loss.

Though much of the occupied habitat in the Columbia River DPS is fragmented, wetter than the species prefers, and more vulnerable to flooding, many variables influence CWTD survival. A mosaic of ownerships and protection levels does not necessarily hinder the existence of CWTD when land-use is compatible with the habitat needs of the deer. For example, on Puget Island, which is not formally set aside for the protection of CWTD, the fawn:doe (F:D) ratios are higher than on the protected JBHR Mainland Unit, and the area has supported a stable CWTD population without active management in the midst of continued small-scale development for several decades. Additionally, the Westport/Wallace Island subpopulation has long maintained stable numbers, even though most of the area is not managed for the protection of CWTD. The level of predation, level of disturbance, and condition of habitat all influence how CWTD can survive in noncontiguous habitats.

Flooding is a threat to CWTD habitat when browsing and fawning grounds become inundated for prolonged periods. In the past, significant flooding events have caused large-scale CWTD mortality and emigration from the JBHR Mainland Unit (U.S. Fish and Wildlife Service 2007, p. 1). The JBHR Mainland Unit experienced three major storm-related floods in 1996, 2006, and 2009. These flooding events were associated with a sudden drop in population numbers, followed by population recovery in the next few years. During some historical flooding events, CWTD abandoned and have not returned to low-lying areas that became inundated, particularly areas that continued to sustain frequent flooding such as Karlson Island.

A large proportion of all occupied CWTD habitat is land that was reclaimed from tidal inundation in the early 20th century by construction of dikes and levees for agricultural use (U.S. Fish and Wildlife Service 2010, p. 1:17). In recent years, there has been interest in restoring the natural tidal regime to some of this land, mainly for fish habitat enhancement. This restoration could reduce habitat for CWTD in certain areas where the majority of the subpopulation relies upon the reclaimed land. Since 2009, three new tide gates were installed on the JBHR Mainland Unit to improve fish

passage and facilitate drainage in the event of large-scale flooding. When the setback levee on the refuge was completed in fall 2014, the original dike under Steamboat Slough Road was breached and the estuarine buffer created now provides additional protection from flooding to the JBHR Mainland Unit. However, it has also resulted in the loss or degradation of about 28 ha (70 ac) of CWTD habitat, which amounts to approximately 3.5 percent of the total acreage of the JBHR Mainland Unit.

The persistence of invasive species, especially reed canary grass, has reduced forage quality over much of CWTD's range, but it remains unclear as to how much this change in forage quality is affecting the overall status of CWTD. While CWTD will eat the grass, it is only palatable during early spring growth, or about 2 months in spring, and it is not a preferred forage species (U.S. Fish and Wildlife Service 2010, p. 3:12). Cattle grazing and mowing are used on JBHR lands to control the growth of reed canary grass along with tilling and planting of pasture grasses and forbs. This management entails a large effort that will likely be required in perpetuity unless other control options are discovered. Reed canary grass is often mechanically suppressed in agricultural and suburban landscapes, but remote areas, such as the upriver islands, experience little control. Reed canary grass thrives in wet soil and excludes the establishment of other grass or forb vegetation that is likely more palatable to CWTD. Increased groundwater due to sea level rise or subsidence of diked lands may exacerbate this problem by extending the area impacted by reed canary grass. However, where groundwater levels rise high enough and are persistent, reed canary grass will be drowned out and may be eradicated, though this rise in water level may also negatively affect CWTD. The total area occupied by reed canary grass in the future may therefore decrease, remain the same, or increase, depending on topography, land management, or both.

Competition with elk (*Cervus canadensis*) for forage on the JBHR Mainland Unit has historically posed a threat to CWTD (U.S. Fish and Wildlife Service 2004, p. 5). To address these concerns, JBHR staff trapped and removed 321 elk during the period from 1984 to 2001. Subsequently, JBHR staff conducted two antlerless elk hunts, resulting in a harvest of eight cow elk (U.S. Fish and Wildlife Service 2004, p. 13). The combination of these efforts and elk emigration reduced the elk population to fewer than 20 individuals.

The JBHR considers their elk reduction goal to have been met. Future increases in the population above 20 individuals may be controlled with a limited public hunt (U.S. Fish and Wildlife Service 2010, p. B–20). In a related effort, JBHR personnel have constructed roughly 4 miles (6.4 km) of fencing to deter elk immigration onto the JBHR (U.S. Fish and Wildlife Service 2004, p. 10).

#### Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). “Climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (Intergovernmental Panel on Climate Change 2013, p. 1450). The term “climate change” thus refers to a change in the mean or variability of one or more measures of climate (*e.g.*, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (Intergovernmental Panel on Climate Change 2013, p. 1450). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.*, habitat fragmentation) (Intergovernmental Panel on Climate Change 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Environmental changes related to climate change could potentially affect CWTD occupying low-lying habitat that is not adequately protected by well-maintained dikes. Furthermore, even in areas that have adequate dikes built, the integrity of those dikes could be at risk of failure from climate change. Climatic models have predicted significant sea-level rise over the next century (Mote *et al.* 2014, p. 492). Rising sea levels could degrade or inundate current habitat, forcing some subpopulations of CWTD to move out of existing habitat along the Columbia River into marginal or more developed habitat. A rise in groundwater levels could alter vegetation regimes, lowering forage quality of CWTD habitat and allowing invasive plants to expand their range

into new areas of CWTD habitat. The increase in ground water levels due to sea-level rise could also allow the threat of hoof rot to persist or increase.

Maintaining the integrity of existing flood barriers that protect CWTD habitat will be important to the recovery of the Columbia River DPS until greater numbers of CWTD can occupy upland habitat through recruitment, additional translocations, and natural range expansion. The JBHR Mainland Unit has experienced three major storm-related floods since 1996. While this could be a cluster of storms in the natural frequency of occurrence, it could also indicate increased storm intensity and frequency due to climate change effects. These flooding events have been associated with a sudden drop in the CWTD population (Table 1), which then slowly recovers. An increased rate of occurrence of these events, however, could permanently reduce the size of this subpopulation. The potential for increased numbers of flood events could also lead to increases in the occurrence of hoof rot and other deer maladies.

The National Wildlife Federation has employed a model to predict changes in sea level in Puget Sound, Washington, and along areas of the Oregon and Washington coastline. The study predicted an average rise of 0.28 m (0.92 ft) by 2050, and 0.69 m (2.26 ft) by 2100, in the Columbia River region (Glick *et al.* 2007, p. 73). A local rise in sea level would translate into the loss of some undeveloped dry land and tidal and inland fresh marsh habitats. By 2100, projections show that these low-lying habitats could lose from 17 to 37 percent of their current area due to an influx of saltwater. In addition, since the JBHR Mainland Unit and Tenasillahe Island were diked in the early 1900s, the land within the dikes has subsided and dropped to a level near or below groundwater levels. This in turn has degraded CWTD habitat quality in some areas. Although salt-water intrusion does not extend this far inland, the area experiences 2- to 2.5-m (7- to 8-ft) tidal shifts due to a backup of the Columbia River. Sea-level rise may further increase groundwater levels on both of these units, as levees do not provide an impermeable barrier to groundwater exchange.

Due to the reasons listed above, we find the effects of climate change to be a potential threat to some subpopulations of CWTD in the future, particularly the JBHR Mainland Unit and Tenasillahe Island subpopulations, but not the entire Columbia River DPS. Because of the low-lying nature of some currently occupied CWTD habitat in the Columbia River DPS, the long-term

stability of the subpopulations in those areas may rely on the availability of and access to high-quality upland habitat protected from the effects of projected sea-level rise. The Columbia River DPS would benefit from the identification of additional suitable high-quality upland habitat and the development of partnerships with State wildlife agencies to facilitate the translocation of CWTD to these areas, as well as securing land with existing stable subpopulations, such as the Westport area.

#### Summary of Factor A

Habitat loss still remains a threat today, though a greater understanding of CWTD adaptation and persistence clearly indicates that the severity of the threat is less than previously thought. Stable populations of the species do persist in habitat that was previously dismissed as inadequate for long-term survival such as the subpopulations on Puget Island, Washington, and in Westport, Oregon (Westport/Wallace Island subpopulation). Historical habitat loss was largely a result of development and while this activity is still a limiting factor, we now understand that the type of development influences how CWTD respond. Areas such as Puget Island have been and are expected to continue experiencing the breakup of large agricultural farms into smaller hobby farms with a continued focus on low- to medium-density rural residential development. This type of change has not inhibited the ability of CWTD to maintain a stable population on Puget Island. Therefore, this type of development is not expected to impact CWTD on Puget Island in the foreseeable future. In contrast, areas like Willow Grove will likely see a continued change from an agricultural to a suburban landscape; this type of development may have a negative impact on CWTD depending on the density of development.

The Service's recovery efforts involving habitat acquisition and restoration have led to a corresponding increase in the amount and quality of habitat specifically protected for the benefit of CWTD. Habitat enhancement efforts have been focused primarily on the JBHR Mainland Unit, followed by Tenasillahe Island and Crims Island where attention has been focused on increasing the quality of browse, forage, and cover. There is also a new habitat enhancement program at Ridgefield NWR that is focused on increasing the amount of browse and forage available to CWTD. Finally, CWTD now have access to the upland areas at Ridgefield NWR, and it is expected that they will

respond positively to the higher quality habitat.

The rise in sea level predicted by climate change models could threaten any low-lying habitat of the Columbia River DPS not adequately protected by dikes, and also threaten the integrity of dikes providing flood control to certain subpopulations of CWTD. Therefore, the effects of climate change could potentially impact certain subpopulations of CWTD in the future, but climate change does not constitute a threat to the entire DPS now or in the foreseeable future. Overall, although the threat of habitat loss and modification still remains, it is lower than thought at the time the Recovery Plan was developed; this is due to habitat acquisition and enhancement efforts, as well as an overall better understanding of the influence of different types of development on CWTD populations.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Overutilization for commercial, scientific, or educational purposes is not a threat to CWTD. While historical overharvest of CWTD contributed to population decline, all legal harvest of CWTD in the Columbia River DPS ceased when CWTD was federally listed as endangered. Just after the establishment of the JBHR, poaching was not uncommon. Public understanding and views of CWTD have gradually changed however, and poaching is no longer considered a threat. Regulations and enforcement are in place to protect CWTD from overutilization, and a downlisting (and associated 4(d) rule) would not change this. There have only been a few cases of intentional shooting of CWTD through poaching in the 48 years since CWTD were first listed (Bergh 2014, pers. comm.). Though poaching cannot be completely ameliorated, this current level of poaching is not considered a threat. If subpopulations should decline, poaching could have a greater impact on CWTD numbers and would need to be monitored. Though overutilization was a factor that led to the listing of CWTD as federally endangered in 1967, it does not constitute a threat now or in the foreseeable future.

#### *C. Disease or Predation*

##### *Disease*

The Revised Recovery Plan lists necrobacillosis (hoof rot) as a primary causal factor in CWTD mortality on the JBHR (U.S. Fish and Wildlife Service 1983, p. 13). *Fusobacterium necrophorum* is identified as the

etiological agent in most cases of hoof rot, although concomitant bacteria such as *Arcanobacterium pyogenes* may also be at play (Langworth 1977, p. 383). Damp soil or inundated pastures increase the risk of hoof rot among CWTD with foot injuries (Langworth 1977, p. 383). Among 155 carcasses recovered from 1974 to 1977, hoof rot was evident in 31 percent (n=49) of the cases, although hoof rot only attributed directly to 3 percent (n=4) of CWTD mortalities (Gavin *et al.* 1984, pp. 30–31). Currently, CWTD on the JBHR Mainland Unit have occasionally displayed visible evidence of hoof rot, and recent cases have been observed on Puget Island, but its prevalence is not known to be a limiting factor in population growth (U.S. Fish and Wildlife Service 2010, p. 4:53). Of the 49 CWTD captured from the JBHR Mainland Unit and Puget Island in 2013, none displayed evidence of hoof rot at the time of capture (U.S. Fish and Wildlife Service, unpublished data).

Deer hair loss syndrome (DHLS) was documented in black-tailed deer in northwest Oregon from 2000 to 2004 (Biederbeck 2004, p. 4). DHLS results when a deer with an immune system weakened by internal parasites is plagued with ectoparasites such as deer lice (*Damalinia (Cervicola)* spp.). The weakened deer suffer increased inflammation and irritation, which result in deer biting, scratching, and licking affected areas and, ultimately, removing hair in those regions. This condition is found most commonly among deer occupying low-elevation agricultural areas (below 183 m (600 ft) elevation). While the study found a higher instance in black-tailed deer, cases in CWTD have also been observed. Most cases (72 percent) of DHLS detected at the Saddle Mountain Game Management Unit in northwest Oregon were associated with black-tailed deer. Twenty-six percent of black-tailed deer surveyed in the Saddle Mountain Game Management Unit showed symptoms of DHLS, while only 7 percent of CWTD were symptomatic (Biederbeck 2004, p. 4). Additionally, cases were identified in CWTD in 2002 and 2003, but none of the CWTD surveyed in 2004 showed evidence of the disease (Biederbeck 2004, p. 4). CWTD captured during translocations in recent years have occasionally exhibited evidence of hair loss. Mild hair loss has been observed in a few fawns and yearlings (U.S. Fish and Wildlife Service 2010, p. 4:53).

DHLS is not thought to be highly contagious, nor is it considered to be a primary threat to CWTD survival, although it has been associated with deer mortality (Biederbeck 2002, p. 11;

2004, p. 7). Reports of DHLS among black-tailed deer in Washington have indicated significant mortality associated with the condition. In 2006, a high number of Yakima area mule deer (*Odocoileus hemionus*) mortalities were reported with symptoms of DHLS (Washington Department of Fish and Wildlife 2010, p. 1), although their mortality may be more related to a significant outbreak of lice in the population at the time. With respect to CWTD, however, there has been no documented mortality associated with the disease on the JBHR Mainland Unit (U.S. Fish and Wildlife Service 2010, p. 4:53) and DHLS is not a current or foreseeable threat.

Parasite loads were tested in 16 CWTD on the JBHR Mainland Unit and Tenasillahe Island in February of 1998 (Creekmore and Glaser 1999, p. 3). All CWTD tested via fecal samples showed evidence of the stomach worm *Haemonchus contortus*. Lung worm (*Parelaphostrongylus* spp.) and trematode eggs, possibly from liver flukes (*Fascioloides* spp.), were also detected. These results are generally not a concern among healthy populations, and even though the Columbia River DPS of CWTD has less than optimal forage and habitat quality available in some subpopulations, their relatively high parasite load has never been linked to mortality in the DPS. Parasites are not a current or future threat to CWTD, as the parasite load appears to be offset by a level of fecundity that supports stable or increasing populations.

##### *Predation*

Coyote predation on CWTD has been a problem for the Columbia River DPS, but careful attention to predator control has demonstrated that predation can be managed. Since 1983, studies have been conducted to determine the primary factors affecting fawn survival throughout the range of the Columbia River DPS of CWTD (U.S. Fish and Wildlife Service, unpublished data), and coyote predation is thought to be the most significant impact on fawn recruitment. On the JBHR Mainland Unit, Clark *et al.* (2010, p. 1) fitted 131 fawns with radio collars and tracked them for the first 150 days of age from 1978 to 1982, and then again from 1996 to 2000 (16 deer were dropped from the analyses due to collar issues). The authors found only a 23 percent survival rate. Coyote predation was determined to be the primary cause of fawn mortality, accounting for 69 percent (n=61) of all documented mortalities. In comparison, disease and starvation accounted for 16 percent of known fawn mortalities. The cause(s) of the

remaining 15 percent of mortalities was unknown.

Between 1997 and 2008, 46 coyotes were removed from the JBHR Mainland Unit by the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (U.S. Fish and Wildlife Service 2010, p. 4:62). In some cases, removal has been correlated with an increase in fawn survival. In 1996, the estimated JBHR Mainland Unit Fawn:Doe (F:D) ratio was 15:100. The following year, after 9 coyotes were removed, the F:D ratio increased to 61:100 (U.S. Fish and Wildlife Service 2010, p. 4:54). On Tenasillahe Island, the average F:D ratio between 2001 and 2003 was 6:100. No coyotes were removed during that time. Over the next 5 years (2004 to 2008), 31 coyotes were removed, and the F:D ratio improved and averaged 37:100. Clark *et al.* (2010, p. 14) suggested shifting the timing of coyote removal from winter/early spring to the critical fawning period of June to September. This suggestion has been included in the comprehensive conservation plan for the JBHR and has been implemented since 2008. Since shifting the timing of predator control, a F:D ratio of 37:100 has been maintained on the JBHR Mainland Unit. Due to the evident success of predator control efforts at JBHR, Ridgefield NWR began implementing a coyote control program in May 2013, to support the newly translocated CWTD.

It is common for private landowners in the region to practice predator control on their property, and we have no information that leads us to anticipate a change in the level of predator control on these lands in the foreseeable future (Meyers 2013, pers. comm.). Additionally, coyote control has been in practice on refuge lands for some time and will continue to be implemented on both JBHR and Ridgefield NWR to support the translocated populations. While coyote control efforts in the Columbia River DPS have met with some success, there may be other factors, such as habitat enhancement, also influencing increased ratios in certain CWTD subpopulations. Doe survival in the DPS has been shown to rely more heavily on the availability of nutritious forage than predation pressures, even though fawn predation within subpopulations is most likely influenced by coyote population cycles (Phillips 2009, p. 20). Furthermore, deer and elk populations can be depressed by the interplay between various factors such as habitat quality and predation pressures (Oregon Department of Fish and Wildlife 2013, p. 8).

As CWTD move towards full recovery and increase in numbers as well as

occupation of higher quality habitat such as Ridgefield NWR, predation will be offset by increased fecundity. Also, the rate of predator control currently in place is not anticipated to change in the foreseeable future. An intermediate focus on coyote control for the translocated populations on refuge lands (and monitoring of predation by other species such as bobcat), used in conjunction with long-term improvement of habitat conditions, is anticipated to yield fecundity increases that will lead to self-sustaining population levels. While predator control is in practice in some subpopulations, predation at the DPS scale is not a threat.

#### Summary of Factor C

Diseases naturally occur in wild ungulate populations. Diseases such as hoof rot, DHLIS, and parasite loads can often work through a population without necessarily reducing the overall population abundance. Even though the relatively high parasite load in the Columbia River DPS of CWTD is compounded by the additional stressor of suboptimal forage and habitat quality for some subpopulations, the load itself has never been linked to mortality in the DPS. Disease in the Columbia River DPS of CWTD is not a threat now or in the foreseeable future.

Predation in the Columbia River DPS of CWTD is not a threat now or in the foreseeable future. Depredation of fawns by coyotes is common in the Columbia River DPS; however many factors work in conjunction with each other to determine overall level of fawn recruitment. Coyote control is in practice on some private lands in the region as well as both JBHR and Ridgefield NWR, and the level of control is not anticipated to change in the foreseeable future. As CWTD increase in numbers through continued recovery efforts, population increases will offset the impact of predation.

#### D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the CWTD discussed under other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account “those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .” In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may

minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

The following section includes a discussion of State, local, or Federal laws, regulations, or treaties that apply to CWTD. It includes legislation for Federal land management agencies and State and Federal regulatory authorities affecting land use or other relevant management. Before CWTD was federally listed as endangered in 1967, the species had no regulatory protections. Existing laws were considered inadequate to protect the subspecies. The CWTD was not officially recognized by Oregon or Washington as needing any special protection or given any special consideration under other environmental laws when project impacts were reviewed.

The CWTD is now designated as “State Endangered” by the WDFW. Although there is no State Endangered Species Act in Washington, the Washington Fish and Wildlife Commission has the authority to list species (Revised Code of Washington (RCW) 77.12.020), and they listed CWTD as endangered in 1980. State listed species are protected from direct take, but their habitat is not protected (RCW 77.15.120). Under the Washington State Forest Practices Act, the Washington State Forest Practices Board has the authority to designate critical wildlife habitat for State-listed species affected by forest practices (Washington Administrative Code (WAC) 222–16–050, WAC 222–16–080), though there is no critical habitat designated for CWTD.

The WDFW’s hunting regulations remind hunters that CWTD are listed as endangered by the State of Washington (Washington Department of Fish and Wildlife 2015, pp. 18, 20). This designation means it is illegal to hunt, possess, or control CWTD in Washington. There has been one documented case of an accidental shooting of CWTD by a black-tailed deer hunter due to misidentification, and a few cases of intentional shooting of CWTD through poaching in the 48 years since CWTD were first listed (Bergh 2014, pers. comm.). The State endangered designation adequately protects individual CWTD from direct

harm, but offers no protection to CWTD habitat.

The Washington State Legislature established the authority for Forest Practices Rules (FPR) in 1974. The Forest Practices Board established rules to implement the Forest Practices Act in 1976, and has amended the rules continuously over the last 30 years. The WDNR is responsible for implementing the FPR and is required to consult with the WDFW on matters relating to wildlife, including CWTD. The FPR do not specifically address CWTD, but they do address endangered and threatened species under their "Class IV-Special" rules (WAC 222-10-040). If a landowner's forestry-related action would "reasonably . . . be expected, directly or indirectly, to reduce appreciably the likelihood of the survival or recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species," the landowner would be required to comply with the State's Environmental Policy Act guidelines before they could perform the action in question. The guidelines can require the landowner to employ mitigation measures, or they may place conditions on the action such that any potentially significant adverse impacts would be reduced. Compliance with the FPR does not substitute for or ensure compliance with the Federal Endangered Species Act. A permit system for the scientific taking of State-listed endangered and threatened wildlife species is managed by the WDFW.

Though CWTD (Columbia River DPS) are not listed as endangered or threatened by the State of Oregon, they are classified as a "protected mammal" by the State of Oregon because of their federally endangered designation, and this will not change if CWTD are federally downlisted to threatened (Oregon Department of Fish and Wildlife 2012, p. 1). The CWTD is designated as "Sensitive-Vulnerable" by the Oregon Department of Fish and Wildlife (ODFW). The "Sensitive" species classification was created under Oregon's Sensitive Species Rule (Oregon Administrative Rules (OAR) 635-100-040) to address the need for a proactive species conservation approach. The Sensitive Species List is a nonregulatory tool that helps focus wildlife management and research activities, with the goal of preventing species from declining to the point of qualifying as "endangered" or "threatened" under the Oregon Endangered Species Act (Oregon Revised Statutes (ORS) 496.171, 496.172, 496.176, 496.182 and 496.192). Species designated as Sensitive-Vulnerable are those facing one or more

threats to their populations, habitats, or both. Vulnerable species are not currently imperiled with extirpation from a specific geographic area or the State, but could become so with continued or increased threats to populations, habitats, or both. This designation encourages but does not require the implementation of any conservation actions for the species. The ODFW does not allow hunting of CWTD, except for controlled hunt of the federally delisted Douglas County DPS in areas near Roseburg, Oregon (Oregon Department of Fish and Wildlife 2015, p. 39). There have been no documented cases of accidental or intentional killing of CWTD in Oregon (Boechler 2014, pers. comm.).

The State may authorize a permit for the scientific taking of a federally endangered or threatened species for "activities associated with scientific resource management such as research, census, law enforcement, habitat acquisition and maintenance, propagation and transplantation." An incidental taking permit or statement issued by a Federal agency for a species listed under the Federal Endangered Species Act "shall be recognized by the state as a waiver for any state protection measures or requirements otherwise applicable to the actions allowed under the federal permit" (ORS 96.172(4)).

The Oregon Forest Practices Act (ORS 527.610 to 527.992 and OAR Chapter 629, Divisions 600 to 665) lists protection measures specific to private and State-owned forested lands in Oregon. These measures include specific rules for overall maintenance of fish and wildlife, and specifically federally endangered and threatened species including the collection and analysis of the best available information and establishing inventories of these species (ORS 527.710 section 3(a)(A)). Compliance with the forest practice rules does not substitute for or ensure compliance with the Endangered Species Act.

The Oregon Department of Forestry recently updated their Northwest Oregon Forest Plan (Oregon Department of Forestry 2010). There is no mention of CWTD in their Forest Plan, but they do manage for elk and black-tailed deer. Landowners and operators are advised that Federal law prohibits a person from taking certain endangered or threatened species that are protected under the Endangered Species Act (Act) (OAR 629-605-0105).

Federal status under the Act continues to provide additional protections to CWTD not available under State laws. Other than the "take" that would be allowed for the specific

activities outlined in the accompanying proposed 4(d) rule, "take" of CWTD is prohibited on all lands without a permit or exemption from the Service.

Furthermore, the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*) provides additional protection to CWTD. Where CWTD occur on NWR lands (JBHR and Ridgefield NWR), this law protects CWTD and their habitats from large-scale loss or degradation due to the Service's mission "to administer a national network of lands . . . for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats."

The JBHR was established in Washington in 1971, specifically to protect and manage the endangered CWTD. The JBHR includes several subpopulations (Mainland Unit, Tenasillahe Island, and a portion of Westport/Wallace Island), supporting a total of approximately one third of the DPS population of CWTD. The JBHR's CCP includes goals for the following: (1) Protecting, maintaining, enhancing, and restoring habitats for CWTD; (2) contributing to the recovery of CWTD by maintaining minimum population sizes on JBHR properties; and (3) conducting survey and research activities, assessments, and studies to enhance species protection and recovery (U.S. Fish and Wildlife Service 2010, pp. 2:48-76). The JBHR implements habitat improvement and enhancement actions on a regular basis as well as predator management. As of early 2013, Ridgefield NWR is home to a new subpopulation of CWTD. Habitat conditions on Ridgefield NWR are favorable for CWTD, and predator control is being implemented. Regular monitoring will occur to assess the viability of the subpopulation over time. Both JBHR and Ridgefield NWR must conduct section 7 consultations under the Act for any refuge activity that may result in adverse effects to CWTD.

#### Summary of Factor D

Although additional regulatory mechanisms have been developed for the Columbia River DPS since its listing under the Act and these mechanisms are working as designed and help to minimize threats, they do not fully ameliorate the threats to the species and its habitat. At present without the protections of the Act, the existing regulatory mechanisms for the Columbia River DPS remain inadequate.

### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

#### Hybridization

Hybridization with black-tailed deer was not considered a significant threat to the Columbia River DPS of CWTD at the time of the development of the Revised Recovery Plan (U.S. Fish and Wildlife 1983, p. 40). Later studies raised some concern over the presence of black-tailed deer genes in the isolated Columbia River DPS population. Gavin and May (1988, p. 1) found evidence of hybridization in 6 of 33 samples of CWTD on the JBHR Mainland Unit and surrounding area. A subsequent study revealed evidence of hybridization on Tenasillahe Island, but not the JBHR Mainland Unit (Piaggio and Hopken 2009, p. 18). On Tenasillahe Island, 32 percent (8) of the 25 deer tested and identified as CWTD contained genes from black-tailed deer. Preliminary evidence shows no morphological differences in CWTD/black-tailed deer hybrids, suggesting molecular analysis may be the only analytic tool in tracking hybridization. These data suggest that these genes may have been due to a single hybridization event that is being carried through the Tenasillahe Island population.

Translocation efforts have at times placed CWTD in areas that support black-tailed deer populations. While few black-tailed deer inhabit the JBHR Mainland Unit or Tenasillahe Island, the Upper Estuary Islands population may experience more interspecific interactions. Aerial FLIR survey results in 2006 detected 44 deer on the 4-island complex of Fisher/Hump and Lord/Walker. Based upon the proportion of CWTD to black-tailed deer sightings using trail cameras on these islands, Service biologists estimated that, at most, 14 of those detected were CWTD (U.S. Fish and Wildlife Service 2007, p. 1). A study conducted in 2010 by the JBHR and the National Wildlife Research Center using fecal samples collected on Crims, Lord, and Walker Islands showed no hybridization in any of the samples collected, suggesting a low tendency to hybridize even in island situations (Piaggio and Hopken 2010, p. 14). The actual magnitude of hybridization has probably not changed since the listing of CWTD; however there is not enough data available to confirm this assumption. Hybridization might affect the genetic viability of the Columbia River DPS, and additional research regarding hybridization could give broader insight to the implications and occurrence of this phenomenon, and how it may influence subspecies designation. Although a more complete

data set would provide more conclusive information regarding hybridization in CWTD, based upon the minor level of detections of black-tailed deer genetic material and the complete lack of any evidence of hybridization on several islands, we find that hybridization is not a threat to the Columbia River DPS.

#### Vehicle Collisions

Because deer are highly mobile, collisions between CWTD and vehicles do occur, but the number of collisions in the Columbia River DPS has not prevented the DPS population from increasing over time and meeting some recovery criteria. The frequency of collisions is dependent on the proximity of a subpopulation to roads with high traffic levels, and collisions with CWTD have been most frequent among deer that have been translocated to areas that are relatively close to high trafficked roads. In 2010, 15 deer were translocated to Cottonwood Island, Washington, from Westport, Oregon. Seven of those translocated deer swam off the island and were killed by collisions with vehicles on U.S. Highway 30 in Oregon, and on Interstate 5 in Washington (Cowlitz Indian Tribe 2010, p. 3). By contrast, of the 58 deer that were translocated to Ridgefield NWR in 2013 and 2014, only 3 have been struck by vehicles, and all 3 were struck after wandering off refuge land. Because of its proximity to Highway 4 in Washington, JBHR sees occasional collisions between vehicles and CWTD on or near the refuge. Refuge personnel recorded four CWTD killed by vehicle collisions in 2010, along Highway 4 and on the JBHR Mainland Unit. These were deer that were either observed by Service personnel or reported directly to the JBHR.

The Washington Department of Transportation removes road kills without reporting species details to the JBHR, so the actual number of CWTD struck by cars in Washington is probably slightly higher than the number of cases of which JBHR staff is aware. Since the 2013 translocation, ODFW has an agreement with the Oregon Department of Transportation (ODOT) that ODOT personnel assigned to stations along Highway 30 will report any CWTD mortalities. So far, they have been contacting the Oregon State Police and occasionally ODFW staff when they find a mortality with a collar or ear tags. It is uncertain if the ODOT staff report unmarked CWTD mortalities (VandeBergh 2013, pers. comm.).

Although the number of deer collisions may increase over time as CWTD populations expand in both numbers and range, the rate of collisions

in proportion to the Columbia River DPS population size is not currently a problem and is not expected to rise in the future. Therefore, vehicle collisions are unlikely to ever be a threat to the Columbia River DPS.

#### Summary of Factor E

Low levels of hybridization have recently been detected between black-tailed deer and CWTD on JBHR (Piaggio and Hopken 2010, p. 15). Future genetics work could give a broader insight into the implications and occurrence of this phenomenon. Piaggio and Hopken revealed a low genetic diversity among CWTD, which compounds the threat of hybridization (2010, pp. 16–17). An increase in the incidence of hybridization beyond current levels could potentially affect the subspecies designation of CWTD. However, Piaggio and Hopken concluded that although hybridization can occur between CWTD and black-tailed deer, it is not a common or current event (2010, p. 16). The two species will preferentially breed within their own taxa, and their habitat preferences differ somewhat. Therefore, hybridization does not constitute a threat now or in the foreseeable future. The number of deer/vehicle collisions may increase over time as CWTD expand in numbers and range, but the overall rate of collisions is not expected to increase. Therefore, vehicle collisions do not constitute a threat now or in the foreseeable future.

#### Overall Summary of Factors Affecting CWTD

Based on the most recent comprehensive survey data from 2011 and 2014, the Columbia River DPS has approximately 830 CWTD, with 4 viable subpopulations, 2 of which are considered secure (Tenasillahe Island and Puget Island). The current range of CWTD in the lower Columbia River area has been expanded approximately 80.5 km (50 mi) upriver from its easternmost range of Wallace Island in 1983, to Ridgefield, Washington, presently. The Ridgefield NWR population is expected to grow and represent an additional viable subpopulation, as defined in the recovery plan. Furthermore, the JBHR Mainland unit has returned to a level above 50 animals and will likely regain its secure status in the near future. The Columbia River DPS has consistently exceeded the minimum population criteria of 400 deer over the past 2 decades, and though the JBHR Mainland Unit subpopulation has experienced a decline from the unsustainable levels of the late 1980s, it has stabilized to

population levels at or near the carrying capacity of the habitat.

Threats to the Columbia River DPS from habitat loss or degradation (Factor A) still remain and will likely continue into the foreseeable future in the form of habitat alteration, but are less severe than previously thought due to a greater understanding of the effects of land use and habitat management on CWTD. Overutilization (Factor B) is not a threat. Predation and disease (Factor C) in the Columbia River DPS of CWTD are not threats. Depredation of fawns by coyotes does occur in the Columbia River DPS; however many factors work in conjunction with each other to determine overall level of fawn recruitment. Without the protections of the Act, the existing regulatory mechanisms for the Columbia River DPS remain inadequate (Factor D). Vehicle collisions, disease, and hybridization (Factor E) are not threats.

#### Proposed Determination

As required by the Act, we considered the five factors in assessing whether the Columbia River DPS of CWTD is endangered or threatened throughout all or a significant portion of its range. We carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the DPS. We reviewed the information available in our files and other available published and unpublished information, and we consulted with recognized experts and State and Tribal agencies. During this process, we found the Columbia River DPS is still affected by habitat loss and degradation, and some subpopulations may potentially be affected in the future by habitat changes resulting from the effects of climate change, but we did not identify any factors that are likely to reach a magnitude that currently threatens the continued existence of the DPS.

Our analysis indicates that the Columbia River DPS of CWTD is not in danger of extinction throughout all of its range and does not, therefore, meet the definition of an endangered species. The Act defines “endangered species” as any species which is “in danger of extinction throughout all or a significant portion of its range,” and “threatened species” as any species which is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The term “species” includes “any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.” Furthermore, as described in

our 2014 policy (79 FR 37578, July 1, 2014), a portion of the range of a species is ‘significant’ (SPR) if the species is not currently endangered or threatened throughout all of its range, but the portion’s contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. Because we find the CWTD is threatened (still in danger of extinction in the foreseeable future) based on its status throughout all its range due to the continued threat of habitat loss, that ends the SPR inquiry. Therefore, we propose to reclassify the Columbia River DPS of CWTD from an endangered species to a threatened species under the Act. Additionally, although the DPS has yet to fully meet the Recovery Plan criteria for delisting, it now meets the definition of a threatened species.

#### Effects of the Proposed Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to reclassify the Columbia River DPS of CWTD from endangered to threatened. Reclassification of CWTD from endangered to threatened would provide recognition of the substantial efforts made by Federal, State, and local government agencies; Tribes; and private landowners to recover the species. Adoption of this proposed rule would formally recognize that this species is no longer at risk of extinction and therefore does not meet the definition of endangered, but is still impacted by habitat loss and degradation of habitat to the extent that the species meets the definition of a threatened species (a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range) under the Act. However, this proposed reclassification would not significantly change the protection afforded this species under the Act. Other than the “take” that would be allowed for the specific activities outlined in the accompanying proposed 4(d) rule, the regulatory protections of the Act would remain in place. Anyone taking, attempting to take, or otherwise possessing a CWTD, or parts thereof, in violation of section 9 of the Act would still be subject to a penalty under section 11 of the Act, except for the actions that would be covered under the 4(d) rule. Whenever a species is listed as threatened, the Act allows promulgation of a rule under section 4(d). These rules may prescribe conditions under which take of the threatened species would not be a

violation of section 9 of the Act. A 4(d) rule is proposed for CWTD.

#### 4(d) Rule

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in the Act. When a species is listed as endangered, certain actions are prohibited under section 9 of the Act, as specified in 50 CFR 17.21. These include, among others, prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; and shipment in interstate or foreign commerce in the course of a commercial activity.

The Act does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the Act, the Secretary is authorized to issue regulations deemed necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the Act. Exercising this discretion, the Service has by regulation applied those prohibitions to threatened species unless a special rule is promulgated under section 4(d) of the Act (“4(d) rule”) (50 CFR 17.31(c)). Under 50 CFR 17.32, permits may be issued to allow persons to engage in otherwise prohibited acts for certain purposes unless a special rule provides otherwise.

A 4(d) rule may include some or all of the prohibitions and authorizations set out at 50 CFR 17.31 and 17.32, but also may be more or less restrictive than those general provisions. For the Columbia River DPS of CWTD, the Service has determined that a 4(d) rule is appropriate. As a means to facilitate conservation of CWTD in the Columbia River DPS and expansion of their range by increasing flexibility in management activities for our State and Tribal partners and private landowners, we propose to issue a rule for this species under section 4(d) of the Act. This 4(d) rule would only apply if and when the Service finalizes the reclassification of the Columbia River DPS of CWTD as threatened.

Under the proposed 4(d) rule, the following forms of take would not be prohibited:

- Take by landowners or their agents conducting intentional harassment not likely to cause mortality if they have obtained a permit from the applicable State conservation agency;

- Take of problem CWTB (as defined under Provisions of the 4(d) Rule, below) by Federal or State wildlife management agency or private landowners acting in accordance with a permit obtained from a State conservation agency;

- Take by private landowners that is accidental and incidental to an otherwise permitted and lawful activity to control damage by black-tailed deer, and if reasonable due care was practiced to avoid such taking;

- Take by black-tailed deer hunters if the take was accidental and incidental to hunting done in full compliance with the State hunting rules, and if reasonable due care was practiced to avoid such taking;

- Take by designated Tribal employees and State and local law enforcement officers to deal with sick, injured, or orphaned CWTB;

- Take by State-licensed wildlife rehabilitation facilities when working with sick, injured, or orphaned CWTB; and

- Take under permits issued by the Service under 50 CFR 17.32. Other than these exceptions, the provisions of 50 CFR 17.31(a) and (b) would apply.

The proposed 4(d) rule targets these activities to facilitate conservation and management of CWTB where they currently occur through increased flexibility for State wildlife management agencies, and to encourage landowners to facilitate the expansion of CWTB's range by increasing the flexibility of management of the deer on their property (see Justification, below). Activities on Federal lands or with any Federal agency involvement will still need to be addressed through consultation under section 7 of the Act. Take of CWTB in defense of human life in accordance with 50 CFR 17.21(c)(2) or by the Service or designated employee of a State conservation agency responding to a demonstrable but nonimmediate threat to human safety in accordance with 50 CFR 17.21(c)(3)(iv) (primarily in the event that a deer interferes with traffic on a highway) is not prohibited. Any deterrence activity that does not create a likelihood of injury by significantly disrupting normal CWTB behavioral patterns such as breeding, feeding, or sheltering is not take and is therefore not prohibited under section 9. Noninjurious deterrence activities for CWTB damage control may include yelling at the deer, use of repellants, fencing and other

physical barriers, properly deployed noise-making devices (including explosive devices such as propane cannons, cracker shells, whistlers, etc.), scarecrows, plant protection devices (bud caps, netting, tree tubes, etc.), and artificial lighting.

If there is potential that an activity would interrupt normal CWTB behavior to the point where the animal would stop feeding or not find adequate cover, creating a likelihood of injury, then the activity would have the potential to cause take in the form of harassment. Under this proposed 4(d) rule, if the activity is not likely to be lethal to CWTB, it would be classified as intentional harassment not likely to cause mortality and would be allowed if the activity is carried out under and according to a legally obtained permit from the Oregon or Washington State conservation agency. Actions that may create a likelihood of injury, but are determined by State wildlife biologists not likely to cause mortality, may include the use of nonlethal projectiles (including paintballs, rubber bullets, pellets or "bb's" from spring- or air-propelled guns, etc.) or herding or harassing with dogs, and would only be allowed if the activity is carried out under and according to a legally obtained permit from the Oregon or Washington State conservation agency.

This proposed 4(d) rule would also allow a maximum of 5 percent of the DPS to be lethally taken annually for the following activities combined: (1) Damage management of problem CWTB, (2) misidentification during black-tailed deer damage management, and (3) misidentification during black-tailed deer hunting. The identification of a problem CWTB will occur when the State conservation agency or Service determines in writing that: (1) A CWTB is causing more than *de minimus* negative economic impact to a commercial crop; (2) previous efforts to alleviate the damage through nonlethal methods have been ineffective; and (3) there is a reasonable certainty that additional property losses will occur in the near future if a lethal control action is not implemented.

The current estimated population of the DPS is 850 deer; therefore 5 percent would currently equate to 43 deer. We would set the annual allowable take at 5 percent of the most current annual population estimate of the DPS to provide sufficient flexibility to our State wildlife agency partners in the management of CWTB and to strengthen our partnership in the recovery of the DPS. Although the fecundity and overall recruitment rate is strong and will allow the DPS to persist and continue to

recover even with take up to the maximum allowable 5 percent, we do not expect that the number of deer taken per year will ever exceed 2 percent of the DPS per year for the reasons detailed in the following paragraph.

In 2013 and 2014, the Service conducted an exceptional amount of direct management on CWTB populations through translocation events; during that time, out of the 47 CWTB that were translocated, only 3 were injured or killed during capture or release. Because no damage management activities have been required for successfully translocated CWTB, no CWTB have been injured or killed as a result of damage management activities. Furthermore, the Service expects that most CWTB will respond to noninjurious or nonlethal means of dispersal and that take of problem CWTB will not often be necessary. We are, therefore, confident that the amount of CWTB taken under this proposed 4(d) rule during CWTB damage management actions would be relatively low.

Additionally, the Service expects that the potential for accidental shooting by mistaking a CWTB for a black-tailed deer would be quite low because there has been only one documented case of an accidental shooting of CWTB by a black-tailed deer hunter due to misidentification (Bergh 2014, pers. comm.) and there are no documented accidental shootings of CWTB during black-tailed deer damage management. The 2015 big game hunting regulations in both Oregon and Washington provide information on distinguishing between black-tailed deer and CWTB and make it clear that shooting CWTB is illegal under State law (Oregon Department of Fish and Wildlife 2015, p. 39; Washington Department of Fish and Wildlife 2015, pp. 18, 20). Even with this proposed 4(d) rule in place, a hunter who shot a CWTB due to misidentification would still be required under the Act to report the incident to the Service, required under State law to report the incident to State authorities, and would still be subject to potential prosecution under State law.

Because the maximum amount of take allowed for these activities would be a percentage of the DPS population in any given year, the exact number of CWTB allowed to be taken would vary from year to year in response to each calendar year's most current estimated population. As mentioned above, we do not expect that the number of deer taken would ever exceed 2 percent of the DPS per year. If take does go beyond 2 percent of the DPS population in a given year, the Service would convene a meeting with the Oregon Department of



Fish and Wildlife and the Washington Department of Fish and Wildlife to discuss CWTD management and strategies to minimize further take from these activities for the rest of the year. If take should exceed 5 percent of the total DPS population in any given year, no further take would be allowed for these activities in the DPS as a whole, and, should any further take occur, it would be subject to potential prosecution under the Act.

#### Justification

As the Columbia River DPS of CWTD grows in number and range, the deer are facing increased interaction and potential conflict with the human environment. If finalized, the reclassification of the Columbia River DPS of CWTD would allow employees of State conservation agencies operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, and who are designated by their agencies for such purposes, and who are acting in the course of their official duties, to take CWTD to carry out conservation programs (see 50 CFR 17.31(b)). However, there are many activities carried out or managed by the States, Tribes, and private landowners that help reduce conflict with CWTD and thereby facilitate the movement of CWTD across the landscape, but would not be afforded take allowance under reclassification alone. These activities include CWTD damage management, black-tailed deer damage management, and black-tailed deer hunting. The proposed 4(d) rule would provide incentive to States, Tribes, and private landowners to support the movement of CWTD across the landscape by alleviating concerns about unauthorized take of CWTD.

One of the limiting factors in the recovery of the Columbia River DPS has been the concern of landowners regarding CWTD on their property due to the potential property damage from the species. Landowners express concern over their inability to prevent or address the damage because of the threat of penalties under the Act. Furthermore, State wildlife agencies expend resources addressing landowner complaints regarding potential CWTD damage to their property, or concerns from black-tailed deer hunters who are hunting legally but might accidentally shoot a CWTD even after reasonable due care was practiced to avoid such taking. By providing more flexibility to the States, Tribes, and landowners regarding management of CWTD, we would enhance support for both the movement of CWTD within areas where

they already occur, as well as the expansion of the subspecies' range into additional areas of Washington and Oregon through translocations.

The proposed 4(d) rule would address intentional CWTD damage management by private landowners and State and Tribal agencies; black-tailed deer damage management and hunting; and management of sick, injured, and orphaned CWTD by Tribal employees, State and local law enforcement officers, and State licensed wildlife rehabilitation facilities. Addressing these targeted activities that may normally result in take under section 9 of the Act would increase the incentive for landowners and land managers to allow CWTD on their property, and provide enhanced options for State wildlife agencies with respect to CWTD damage management and black-tailed deer management, thereby encouraging the States' participation in recovery actions for CWTD.

We believe the actions and activities that would be allowed under the 4(d) rule, while they may have some minimal level of harm or disturbance to individual CWTD in the Columbia River DPS, would not be expected to adversely affect efforts to conserve and recover the DPS and, in fact, should facilitate these efforts. The take of CWTD from these activities would be strictly limited to a maximum of 5 percent of the most current annual DPS population estimate in order to have a negligible impact on the overall DPS population. Though there would be a chance for lethal take to occur, recruitment rates are high enough in the DPS to allow for continued population growth despite the take that would be allowed in this proposed rule. This proposed special rule would not be made final until we have reviewed and fully considered comments from the public and peer reviewers.

#### Provisions of the 4(d) Rule

The increased interaction of CWTD with the human environment increases the potential for property damage caused by CWTD, as well as the potential for conflict with legal black-tailed deer management activities. Therefore, this proposed 4(d) rule would increase the flexibility of CWTD management for the States, Tribes, and private landowners by allowing take of CWTD resulting from CWTD damage management, and black-tailed deer damage management and hunting. The maximum allowable annual take per calendar year for these activities combined would be 5 percent of the most current annual CWTD DPS population estimate.

A State conservation agency would be able to issue permits to landowners or their agents to harass CWTD on lands they own, rent, or lease if the State conservation agency determines in writing that such action is not likely to cause mortality of CWTD. The techniques employed in this harassment must occur only as specifically directed or restricted by the State permit in order to avoid causing CWTD mortality. The State conservation agency would also be able to issue a permit to landowners or their agents to take problem CWTD on lands they own, rent, or lease. A CWTD would only be identified as a problem deer if the State conservation agency or Service determines in writing that: (1) The CWTD are causing more than *de minimus* negative economic impact to a commercial crop; (2) previous efforts to alleviate the damage through nonlethal methods have been ineffective; and (3) there is a reasonable certainty that additional property losses will occur in the near future if a lethal control action is not implemented. Take of problem CWTD would have to be implemented only as directed and allowed in the permit obtained from the State conservation agency. Additionally, any employee or agent of the Service or the State conservation agency, who is designated by their agency for such purposes and when acting in the course of their official duties, would be able to take problem CWTD.

Take of CWTD in the course of carrying out black-tailed deer damage control would be a violation of this rule unless: The taking was accidental; reported within 72 hours; reasonable care was practiced to avoid such taking; and the person causing the take was in possession of a valid black-tailed deer damage control permit from a State conservation agency. Take of CWTD in the course of hunting black-tailed deer would be a violation of this rule unless: The take was accidental; reported within 72 hours; the take was in the course of hunting black-tailed deer under a lawful State permit; and reasonable due care was exercised to avoid such taking.

The increased interaction of CWTD with the human environment increases the likelihood of encounters with injured or sick CWTD. Therefore, take of CWTD would also be allowed by Tribal employees, State and local government law enforcement officers, and State-licensed wildlife rehabilitation facilities to provide aid to injured or sick CWTD. Tribal employees and local government law enforcement officers would be allowed take of CWTD for the following purposes: Aiding or euthanizing sick, injured, or orphaned CWTD; disposing

of a dead specimen; and salvaging a dead specimen that may be used for scientific study. State-licensed wildlife rehabilitation facilities would also be allowed to take CWTD for the purpose of aiding or euthanizing sick, injured, or orphaned CWTD.

**Required Determinations**

*Clarity of This Proposed Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*National Environmental Policy Act*

We have determined that an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not

be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have coordinated the proposed rule with the Cowlitz Indian Tribe who manages land where one subpopulation of CWTD population is located, Cottonwood Island. Biologists from the Cowlitz Indian Tribe are members of the CWTD Working Group and have worked with the Service, WDFW, and ODFW to incorporate conservation measures to benefit CWTD into their management plan for the island.

**References Cited**

A complete list of all references cited in this proposed rule is available at <http://www.regulations.gov> at Docket No. FWS-R1-ES-2014-0045, or upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES**).

**Authors**

The primary authors of this document are staff members of the Oregon Fish and Wildlife Office in Portland, Oregon (see **FOR FURTHER INFORMATION CONTACT**).

**List of Subjects in 50 CFR Part 17**

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

**Proposed Regulation Promulgation**

Accordingly, we hereby 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; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.11(h) by revising the entry for “Deer, Columbian white-tailed” under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Deer, Columbian white-tailed.	<i>Odocoileus virginianus leucurus.</i>	U.S.A. (WA, OR) ...	Columbia River (Clark, Cowlitz, Pacific, Skamania and Wahkiakum Counties, WA, and Clatsop, Columbia and Multnomah Counties, OR).	T	1, 738	NA	17.40(r)
*	*	*	*	*	*		*

- 3. Amend § 17.40 by adding a paragraph (r) to read as follows:

**§ 17.40 Special rules—mammals.**

\* \* \* \* \*

(r) Columbian white-tailed deer (*Odocoileus virginianus leucurus*) (CWTD), the Columbia River distinct population segment.

(1) *General requirements.* Other than as expressly provided at paragraph (r)(3) of this section, the provisions of § 17.31(a) apply to the CWTD.

(2) *Definitions.* For the purposes of this entry:

(i) *CWTD* means the Columbia River distinct population segment (DPS) of Columbian white-tailed deer.

(ii) *Intentional harassment* means an intentional act which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Intentional harassment may include prior purposeful actions to attract, track, wait for, or search out CWTD, or purposeful actions to deter CWTD.

(iii) *Problem CWTD* means a CWTD that has been identified in writing by a State conservation agency or the Service as meeting the following criteria:

(A) The CWTD is causing more than *de minimus* negative economic impact to a commercial crop;

(B) Previous efforts to alleviate the damage through nonlethal methods have been ineffective; and

(C) There is a reasonable certainty that additional property losses will occur in the near future if a lethal control action is not implemented.

(iv) *Commercial crop* means commercially raised horticultural, agricultural, or forest products.

(v) *State conservation agency* means the State agency in Oregon or Washington operating a conservation program for CWTD pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Endangered Species Act.

(3) *Allowable forms of take of CWTD.* Take of CWTD resulting from the following legally conducted activities is allowed:

(i) Intentional harassment not likely to cause mortality. A State conservation agency may issue permits to landowners or their agents to harass CWTD on lands they own, rent, or lease if the State conservation agency determines in writing that such action is not likely to cause mortality of CWTD. The techniques employed in this harassment must occur only as specifically directed or restricted by the State permit in order to avoid causing CWTD mortality.

(ii) Take of problem CWTD. Take of problem CWTD is authorized under the following circumstances.

(A) Any employee or agent of the Service or the State conservation agency, who is designated by their agency for such purposes, may, when acting in the course of their official duties, take problem CWTD. This take must occur in compliance with all other applicable Federal, State, and local laws and regulations.

(B) The State conservation agency may issue a permit to landowners or their agents to take problem CWTD on lands they own, rent, or lease. Such take must be implemented only as directed and allowed in the permit obtained from the State conservation agency.

(iii) Accidental take of CWTD when carrying out State-permitted black-tailed deer damage control. Take of CWTD in the course of carrying out black-tailed deer damage control will be a violation of this rule unless the taking was accidental; reasonable care was practiced to avoid such taking; and the person causing the take was in possession of a valid black-tailed deer damage control permit from a State conservation agency. When issuing black-tailed deer damage control permits, the State conservation agency will provide education regarding identification of target species. The exercise of reasonable care includes, but is not limited to, the review of the educational material provided by the State conservation agency and identification of the target before shooting.

(iv) Accidental take of CWTD when carrying out State-permitted black-tailed deer hunting. Take of CWTD in the course of hunting black-tailed deer will be a violation of this rule unless the take was accidental; the take was in the course of hunting black-tailed deer under a lawful State permit; and reasonable due care was exercised to avoid such taking. The State conservation agency will provide educational material to hunters regarding identification of target species when issuing hunting permits. The exercise of reasonable care includes, but is not limited to, the review of the educational materials provided by the State conservation agency and identification of the target before shooting.

(4) *Take limits.* The amount of take of CWTD allowed for the activities in subparagraphs (r)(3)(ii), (r)(3)(iii), and (r)(3)(iv) of this section will not exceed 5 percent of the CWTD population during any calendar year as determined by the Service. By December 31 of each year, the Service will use the most current annual DPS population estimate to set the maximum allowable take for these activities for the following calendar year. If take exceeds 2 percent of the DPS population in a given calendar year, the Service will convene a meeting with the Oregon Department of Fish and Wildlife and the Washington Department of Fish and Wildlife to discuss CWTD management and strategies to minimize further take from these activities for the rest of the

year. If take exceeds 5 percent of the CWTD population in any given calendar year, no further take under subparagraphs (r)(3)(ii), (r)(3)(iii), and (r)(3)(iv) will be allowed during that year and any further take that does occur may be subject to prosecution under the Endangered Species Act.

(5) *Reporting and disposal requirements.* Any injury or mortality of CWTD associated with the actions authorized under paragraphs (r)(3) and (r)(7) of this section must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service. Reports should be made to the Service's Law Enforcement Office at (503) 231-6125, or the Service's Oregon Fish and Wildlife Office at (503) 231-6179. The Service may allow additional reasonable time for reporting if access to these offices is limited due to closure.

(6) *Additional taking authorizations for Tribal employees, State and local law enforcement officers, and State-licensed wildlife rehabilitation facilities.*

(i) Tribal employees and State and local government law enforcement officers. When acting in the course of their official duties, both Tribal employees designated by the Tribe for such purposes, and State and local government law enforcement officers working in the States of Oregon or Washington, may take CWTD for the following purposes:

(A) Aiding or euthanizing sick, injured, or orphaned CWTD;

(B) Disposing of a dead specimen; and

(C) Salvaging a dead specimen that may be used for scientific study.

(ii) Such take must be reported to the Service within 72 hours, and specimens may be disposed of only in accordance with directions from the Service.

(7) *Wildlife rehabilitation facilities licensed by the States of Oregon or Washington.* When acting in the course of their official duties, a State-licensed wildlife rehabilitation facility may take CWTD for the purpose of aiding or euthanizing sick, injured, or orphaned CWTD. Such take must be reported to the Service within 72 hours as required by paragraph (r)(5) of this section, and specimens may be retained and disposed of only in accordance with directions from the Service.

(8) *Take authorized by permits.* Any person with a valid permit issued by the Service under § 17.32 may take CWTD, pursuant to the special terms and conditions of the permit.

Dated: September 11, 2015.

**James W. Kurth,**

*Acting Director, U.S. Fish and Wildlife  
Service.*

[FR Doc. 2015-25260 Filed 10-7-15; 8:45 am]

**BILLING CODE 4333-15-P**

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0036]

#### Privacy Act Systems of Records; Wildlife Services Management Information System

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice; revision of a system of records.

**SUMMARY:** The Animal and Plant Health Inspection Service proposes to revise an existing system of records in its inventory of record systems subject to the provisions of the Privacy Act of 1974, as amended. The Animal and Plant Health Inspection Service is revising Wildlife Services Management Information System, USDA–APHIS–9, to revise the routine uses, expand the categories of records in the system, and the location of the system. This notice is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

**DATES:** *Effective Date:* This system will be adopted without further notice on November 17, 2015 unless modified to respond to comments received from the public and published in a subsequent notice.

*Comment date:* Comments must be received, in writing, on or before November 9, 2015.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0036>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0036> or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert P. Myers, Staff Officer, Wildlife Services, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737; (301) 851–2499.

**SUPPLEMENTARY INFORMATION:** The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish in the **Federal Register** notice of new or revised systems of records. A system of records is a group of any records under the control of any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is proposing to revise a system of records, entitled Wildlife Services (WS) Management Information System (MIS), which is used to maintain a record of activities conducted by the agency pursuant to its mission and responsibilities authorized by the Act of March 2, 1931, as amended (7 U.S.C. 426 and 426(b)), and the Act of December 22, 1987 (7 U.S.C. 426(c)).

Within this area of responsibility, WS provides wildlife damage management services to Federal, State, Tribal, and local governments; private sector entities within the United States; foreign partners; and cooperators. Individuals and cooperators may include farmers, ranchers, livestock dealers (including agents and brokers), airport employees, representatives of condominium associations, representatives of homeowners associations, golf course owners, pest control operators, contract personnel engaged in program activities, private homeowners, and other individuals. Wildlife damage management services include services to control wildlife diseases and invasive

species and to protect livestock, aquaculture, agricultural resources, natural resources, and property.

The WS MIS contains personally identifiable information about persons who acquire wildlife damage management services from APHIS. The information includes a name, telephone number, mailing address, physical location address, and, when necessary, Global Positioning System (GPS) coordinates. (GPS aids in tracking wildlife damage management devices and to locate entry points where WS has approval to enter lands.) For cooperators for whom WS provides services on specific wildlife damage projects, an identifying number may be issued, which may be a Federal tax identification number, an employer identification number, and for individual citizens who are the primary contact in a funded cooperative agreement relationship, a social security number. In these instances, WS collects social security numbers or other identifying numbers, such as tax identification numbers or employer identification numbers, in compliance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). The WS MIS may also include information relating to adverse human or animal incidents, indemnity, agreements, or insurance claims. In addition, the WS MIS includes information about WS employees, such as names, duty stations, user names, passwords, telephone numbers (home and work), email addresses (personal and work), and MIS-specific employee identification numbers.

Agency procedure requires that WS employees obtain permission to enter the property of cooperators. Information collected about cooperators will be used to document authority and license to enter premises to conduct wildlife damage management activities, pursuant to requests from cooperators for services to be conducted on their behalf. In addition, WS will use the information to help evaluate the effectiveness of program activities.

Also in support of the APHIS mission, WS conducts surveys by selecting cooperators to provide information about various facets of program activities related to the services provided. Information provided by the cooperator during the course of business enables WS to contact them and request

voluntary participation in a survey, as well as use the information volunteered by the cooperator to make determinations about how and when work will be performed, what methods will be used, what information will be provided to the cooperator about the methodology, process, frequency, results, and time lines to be used in program activities, and to assist in developing safety measures and protocols.

The system of records notice for this system was previously published in the **Federal Register** on April 30, 2008 (73 FR 23404–23406, APHIS–2006–0018). To the extent that disclosure will not violate 7 U.S.C. 8791, and any amendments thereto, the system is amended to add new Routine Uses 7 through 10 and to revise Routine Uses 1 and 2. Routine Uses 3, 4, 5, 6, and 11 (formerly Routine Use 7) remain the same. In addition, this notice updates the system location and manager, categories of records, storage, retention and disposal, and record source categories.

#### **Proposed New Routine Uses**

##### *Proposed New Routine Use 7*

APHIS is adding new routine use 7 to establish that APHIS will disclose the records to agencies that APHIS has interagency agreements or memoranda of understanding with, such as the Bureau of Land Management and the U.S. Fish and Wildlife Service, for cases in which a cooperator has a grazing allotment and the agencies require information about wildlife damage management actions performed on the agencies' managed land.

##### *Proposed New Routine Use 8*

APHIS is adding new routine use 8 to establish that APHIS will disclose the records to consumer reporting agencies in accordance with section 31 U.S.C. 3711(e) for cases in which WS provides services under a funded cooperative agreement. APHIS is also updating the "Disclosure to Consumer Reporting Agencies" section of the notice to reflect this new routine use.

##### *Proposed New Routine Use 9*

APHIS is adding new routine use 9 to establish that APHIS will disclose the records to Federal, State, Tribal, and local regulatory agencies and their employees and contractors who collaborate with WS.

##### *Proposed New Routine Use 10*

APHIS is adding new routine use 10 to establish that APHIS will disclose the records to State- or Federal Government-level representatives of the U.S.

Environmental Protection Agency to comply with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) mandate (FIFRA Sec. 8, 7 U.S.C. 136f, and FIFRA 7 U.S.C. 136i-1) as to application or deployment of regulated pesticides and regulated pesticide devices.

#### **Revised Routine Uses**

Routine Use 1 and Routine Use 2 are being revised by APHIS to add reference to Tribal governments because some WS projects may take place on Tribal lands.

A complete listing of routine uses of records maintained in the system is included in the document published with this notice.

#### **System Location and Manager**

APHIS is amending the system location to reflect that the electronic component of the system and its back up are housed on secure USDA-owned and operated systems in Riverdale, MD, and Ft. Collins, CO, and are not located at USDA's National Information Technology Center (NITC) in Kansas City, MO. However, an APHIS mandate scheduled for implementation in Fiscal Year 2015, may dictate that the system be relocated to NITC in Kansas City, MO, possibly with a mirror image stored at the NITC-managed, Enterprise Data Center, St. Louis, MO. APHIS is also updating the title of the system manager.

#### **Categories of Records**

In addition to the personally identifiable information previously listed in this notice, APHIS is also adding customer resource information, such as the numbers of animals WS may protect on a given property, because WS reports to customers the quantities and types of resources it protects over time and uses summarized date to report the resources it is protecting. This information will also include resources that were threatened, damaged, or destroyed by wildlife. In addition, we are adding information for WS collaborators and some WS contract pilots similar to the information maintained in the system for WS employees.

#### **Storage**

APHIS is amending this section to agree with the "System Location" section of the notice and to add that documents that are executed originals will be maintained in State or regional WS offices that are locked during non-business hours and require employee identification for admittance at all times.

#### **Retention and Disposal**

APHIS is amending this section to add that, in addition to Federal and State employee information remaining active in the system as long as the individual works for WS, information may remain active for as long as an employee's project-related work history is retained in the system. In addition, APHIS is adding that WS has developed record retention schedules for electronic information, but until they are approved by the National Archives and Records Administration (NARA), electronic records will be classified as permanent. Lastly, APHIS is adding that record retention schedules for WS paper-based records will be in accordance with NARA and existing APHIS policy.

#### **Record Source Categories**

APHIS is clarifying that WS employees enter data submitted by cooperators (customers) and that WS may add information to the system that consists of reference and lookup data about pesticide registration, wildlife laws, and permits obtained from Federal, State, Tribal, and local authorities.

#### **Miscellaneous**

The information collection requests associated with this system have been approved by the Office of Management and Budget under the Paperwork Reduction Act.

A report on the revised system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget Circular A–130, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairman, Committee on Oversight and Government Reform, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Done in Washington, DC, this 28th day of September 2015.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

#### **USDA–APHIS–9**

##### **SYSTEM NAME:**

Wildlife Services Management Information System

##### **SECURITY CLASSIFICATION:**

None.

##### **SYSTEM LOCATION:**

The files (paper-based component) for the Wildlife Services (WS) Management Information System (MIS) are

maintained in the offices of Wildlife Services, Riverdale, MD; Wildlife Services Information Technology Support Center, Ft. Collins, CO; Federal and State area offices; and Federal regional offices. The electronic component of the system is housed on secure USDA-owned and operated systems in Riverdale, MD, and Ft. Collins, CO. A backup site for the data is also located at Riverdale, MD and Ft. Collins, CO. However, an APHIS mandate scheduled for implementation in fiscal year 2016, may dictate that the system be relocated to USDA's National Information Technology Center (NITC) in Kansas City, MO, possibly with a mirror image stored at the NITC-managed, Enterprise Data Center, St. Louis, MO.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who participate in depredation activities, including ranchers, farmers, livestock dealers (including agents and brokers) handling livestock covered by the program, airport employees, representatives of condominium associations, representatives of homeowner associations, private homeowners, golf course owners, employees of the Federal Government, employees of State and Tribal governments, pest control operators, contract personnel engaged in program activities, and other entities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The records consist of agreements for services; description of property; names and addresses of those entering the agreement; contact information, including names and telephone numbers; property locations and descriptions, which may include Global Positioning System coordinates and customer resource information; resources that were threatened, damaged, or destroyed by wildlife; adverse human or animal incidents information; and insurance, appraisals, indemnity, and property damage information. In addition, for cooperators for whom WS provides services on specific wildlife damage projects, an identifying number, which may be a Federal tax identification number, an employer identification number, or for individual citizens who are the primary contact in a funded cooperative agreement relationship, a social security number. (Identifying numbers are recorded only on the paper-based component of the system.)

The system also includes information about WS employees, WS collaborators, and some WS contract pilots, such as names, duty stations, user names,

passwords, telephone numbers (home and work), email addresses (personal and work), and MIS-specific employee identification numbers.

**PURPOSE(S) OF THE SYSTEM:**

This system will be used to maintain a record of activities conducted by the agency pursuant to its mission and responsibilities for providing services necessary to manage wildlife damage to agriculture, human health and safety, natural resources, and human property.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Act of March 2, 1931, as amended (7 U.S.C. 426 and 426(b)), and the Act of December 22, 1987 (7 U.S.C. 426(c)).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records maintained in the system may be disclosed outside USDA, to the extent that disclosure will not violate 7 U.S.C. 8791, and any amendments thereto, as follows:

(1) To cooperative Federal, State, Tribal, and local government officials, employees, or contractors, and other parties as necessary to carry out the program; and other parties engaged to assist in administering the program. Such contractors and other parties will be bound by the nondisclosure provisions of the Privacy Act. This routine use assists the agency in carrying out the program, and thus is compatible with the purpose for which the records are created and maintained;

(2) To the appropriate agency, whether Federal, State, local, Tribal, or foreign, charged with responsibility of investigating or prosecuting a violation of law or of enforcing, implementing, or complying with a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and either arising by general statute or particular program statute, or by rule, regulation, or court order issued pursuant thereto;

(3) To the Department of Justice when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, in litigation, where the agency determines that litigation is likely to affect the agency or any of its components, is a

party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(4) For use in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(5) To appropriate agencies, entities, and persons when the agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; the agency has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, a risk of identity theft or fraud, or a risk of harm to the security of integrity of this system or other systems or programs (whether maintained by the agency or another agency or entity) that rely upon the compromised information; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the agency's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(6) To USDA contractors, partner agency employee or contractors, or private industry employed to identify patterns, trends, or anomalies indicative of fraud, waste, or abuse;

(7) To land management agencies, such as the Bureau of Land Management and the U.S. Fish and Wildlife Service relating to wildlife damage on grazing allotments;

(8) To consumer reporting agencies in accordance with section 31 U.S.C. 3711(e);

(9) To Federal, State, Tribal, and local regulatory agencies and their employees and contractors who collaborate with Wildlife Services in implementation of, or agencies that regulate, wildlife management projects or programs, or who have an interest in, or regulate, animal or public health, or national security;

(10) To State- or Federal Government-level representatives of the U.S.

Environmental Protection Agency, in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) mandate (FIFRA Sec. 8, 7 U.S.C. 136f, and FIFRA 7 U.S.C. 136i-1), of the location on a cooperator's property where certain regulated pesticide devices are deployed or regulated pesticides are applied; and

(11) To the National Archives and Records Administration (NARA) or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

In accordance with section 31 U.S.C. 3711(e).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

Policies for storing, retrieving, accessing, retaining, and disposing of records in the system are outlined in the Wildlife Services Information and Data Management Handbook and the APHIS Records Management Handbook and are summarized below.

**STORAGE:**

The WS MIS records will be maintained in USDA-owned server storage. Documents that are executed originals will be maintained in State or regional Wildlife Services offices that are locked during non-business hours and require employee identification for admittance at all times.

**RETRIEVABILITY:**

Under this system, data may be retrieved and organized by agreement number, name of cooperator, or agreement holder. Retrieval permissions for employees who have access to the system are determined by the data usage role of the employee and are compliant with the APHIS "least privilege" rule.

**SAFEGUARDS:**

Control measures designed to prevent misuse of accessible data include unique user identification, a password

protection protocol, and limitation of user roles through compartmentalization of allowed access. Agency implemented cybersecurity measures and firewalls are built into the application user interface, and monitoring of use of the MIS for profiles of misuse is possible. The hard copy components of the system, and computer files, tapes, and disks are kept in a safeguarded environment with access only by authorized personnel.

**RETENTION AND DISPOSAL:**

Information identifying cooperators is kept in the system as long as a cooperator retains an active agreement with WS. Federal and State employee information is kept active in the system as long as the individual works for WS or as long as their project-related work history is retained in the system. WS has developed record retention schedules for electronic information, but until they are approved by NARA, electronic records will be classified as permanent. Record retention schedules for WS paper-based records are in accordance with NARA and existing APHIS policy.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Applications Development, Information Technology Support Center, Wildlife Services, USDA/APHIS, NRRRC, 2150 Centre Avenue, Building A, Suite 143, Fort Collins, CO 80526.

**NOTIFICATION PROCEDURE:**

Any individual may request general information regarding this system of records or information as to whether the system contains records pertaining to him/her from the system manager at the address above. All inquiries pertaining to this system should be in writing, must name the system of records as set forth in the system notice, and must contain the individual's name, telephone number, address, and email address.

**RECORD ACCESS PROCEDURES:**

Any individual may obtain information from a record in the system that pertains to him or her. Requests for hard copies of records should be in writing, and the request must contain the requesting individual's name, address, name of the system of records, timeframe for the records in question, any other pertinent information to help identify the file, and a copy of his/her photo identification containing a current address for verification of identification. All inquiries should be addressed to the Freedom of Information and Privacy Act Staff, Legislative and Public Affairs, APHIS,

4700 River Road Unit 50, Riverdale, MD 20737-1232.

**CONTESTING RECORD PROCEDURES:**

Any individual may contest information contained within a record in the system that pertains to him/her by submitting a written request to the system manager at the address above. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

**RECORD SOURCE CATEGORIES:**

WS users generate data about the work performed by WS. Additional data is collected is voluntarily submitted by cooperators (customers) and entered into the system by WS employees. In addition, reference and lookup data about pesticide registration, wildlife laws, and permits are obtained from Federal, State, Tribal, and local authorities.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2015-25640 Filed 10-7-15; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**National Urban and Community Forestry Advisory Council**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Urban and Community Forestry Advisory Council (Council) will meet in Denver, Colorado. The Council is authorized under section 9 of the Cooperative Forestry Assistance Act, as amended by title XII, section 1219 of Public Law 101-624 (the Act) (16 U.S.C. 2105g) and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II). Additional information concerning the Council, can be found by visiting the Council's Web site at: <http://www.fs.fed.us/ucf/nucfac.shtml>.

**DATES:** The meeting will be held on Monday, November 16, 2015 from 9:00 a.m. to 5:00 p.m. PDT or until Council business is completed. All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**ADDRESSES:** The meeting will be held at the Webb Municipal Office Building, Conference Room 1.D.1, 201 West Colfax Avenue, Denver, Colorado. Written comments concerning this meeting should be submitted as



described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the USDA Forest Service, Sidney Yates Building, Room 3SC-01C, 201 14th Street SW., Washington DC 20024. Please call ahead at 202-205-7829 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Nancy Stremple, Executive Staff, National Urban and Community Forestry Advisory Council, Sidney Yates Building, Room 3SC-01C, 201 14th Street SW., Washington, DC 20024, by telephone at 202-205-7829, or by email at [nstremple@fs.fed.us](mailto:nstremple@fs.fed.us), or by cell phone at 202-309-9873, or via facsimile at 202-690-5792.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Introduce new members;
2. Develop the 2016 Work Plan;
3. Develop the 2017 grant categories;
4. Listen to local constituents urban forestry concerns;
5. Prepare to present the 10-year action plan (2016-2026);
6. Receive Forest Service budget and program updates; and
7. Finalize the 2015 Accomplishments/Recommendations report.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by November 2, 2015, to be scheduled on the agenda. Council discussion is limited to Forest Service staff and Council members, however anyone who would like to bring urban and community forestry matters to the attention of the Council may file written statements with the Council's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Nancy Stremple, Executive Staff, National Urban and Community Forestry Advisory Council, Sidney Yates Building, Room 3SC-01C, 201 14th Street SW., Washington, DC 20024, or by email at [nstremple@fs.fed.us](mailto:nstremple@fs.fed.us).

**Meeting Accommodations:** If you are a person requiring reasonable accommodation, please make requests in advance for sign language

interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: October 2, 2015.

**Patti Hiram,**

*Associate Deputy Chief, State & Private Forestry.*

[FR Doc. 2015-25611 Filed 10-7-15; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Request for Applications: The Community Forest and Open Space Conservation Program

**AGENCY:** Forest Service, USDA.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, State and Private Forestry, Cooperative Forestry staff, requests applications for the Community Forest and Open Space Conservation Program (CFP). This is a competitive grant program whereby local governments, qualified nonprofit organizations, and Indian Tribes are eligible to apply for grants to establish community forests through fee simple acquisition of private forest land from a willing seller. The purpose of the program is to establish community forests by protecting forest land from conversion to non-forest uses and provide community benefits such as sustainable forest management, environmental benefits including clean air, water, and wildlife habitat; benefits from forest-based educational programs; benefits from serving as models of effective forest stewardship; and recreational benefits secured with public access.

Eligible lands for grants funded under this program are private forests that are at least five acres in size, suitable to sustain natural vegetation, and at least 75 percent forested. The lands must also be threatened by conversion to non-forest uses, must not be held in trust by the United States on behalf of any Indian Tribe, must not be Tribal allotment lands, must be offered for sale by a willing seller, and if acquired by an eligible entity, must provide defined community benefits under CFP and allow for public access.

**DATES:** Interested local government and nonprofit applicants must submit applications to the State Forester. Tribal

applicants must submit applications to the appropriate Tribal government officials. All applications, either hardcopy or electronic, must be received by State Foresters or Tribal governments by January 15, 2016. State Foresters or Tribal government officials must forward applications to the Forest Service Region, Northeastern Area or International Institute of Tropical Forestry by February 19, 2016.

**ADDRESSES:** All local government and qualified nonprofit organization applications must be submitted to the State Forester of the State where the property is located. All Tribal applications must be submitted to the equivalent Tribal government official. Applicants are encouraged to contact and work with the Forest Service Region, Northeastern Area or International Institute of Tropical Forestry, and State Forester or equivalent Tribal government official when developing their proposal. Applicants must consult with the State Forester and equivalent Tribal government official prior to requesting technical assistance for a project. The State Forester's member roster may be found on <http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml>. All applicants must also send an email to [communityforest@fs.fed.us](mailto:communityforest@fs.fed.us) to confirm an application has been submitted for funding consideration.

State Foresters and Tribal government officials shall submit applications, either electronic or hardcopy, to the appropriate Forest Service Regional/Area/Institute contact noted below.

#### Northern and Intermountain Regions

Regions 1 and 4 (*ID, MT, ND, NV, UT*)

Janet Valle, U.S. Forest Service, 324 25th St., Ogden, UT 84401, 801-625-5258 (phone), 801-625-5716 (fax), [jvalle@fs.fed.us](mailto:jvalle@fs.fed.us).

#### Rocky Mountain Region

Region 2 (*CO, KS, NE, SD, WY*)

Claire Harper, U.S. Forest Service, 740 Simms Street, Golden, CO 80401, 303-275-5239 (phone), 303-275-5754 (fax), [claireharper@fs.fed.us](mailto:claireharper@fs.fed.us).

#### Southwestern Region

Region 3 (*AZ, NM*)

Alicia San Gil, U.S. Forest Service, 333 Broadway SE., Albuquerque, NM 87102, 505-842-3881 (phone), 505-842-3165 (fax), [agsangil@fs.fed.us](mailto:agsangil@fs.fed.us).

**Pacific Southwest Region**

Region 5 (CA, HI, Guam, American Samoa, Federated States of Micronesia and Other Pacific Islands)

Chris Fischer, U.S. Forest Service, 1323 Club Drive, Vallejo, CA 94592, 707-562-8921 (phone), 707-562-9054 (fax), [cfischer@fs.fed.us](mailto:cfischer@fs.fed.us).

**Pacific Northwest, and Alaska Regions**

Regions 6 and 10 (AK, OR, WA)

Karl Dalla Rosa, U.S. Forest Service, 120 Southwest 3rd Ave., Portland, OR 97204 or P.O. Box 3623, Portland, OR 97208-3623, 503-808-2913 (phone), 503-808-2469 (fax), [kdallarosa@fs.fed.us](mailto:kdallarosa@fs.fed.us).

**Southern Region**

Region 8 (AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA)

Mike Murphy, U.S. Forest Service, 1720 Peachtree Rd., NW., Suite 700B 850S North, Atlanta, GA 30309, 404-347-5214 (phone), 404-347-2776 (fax), [mwmurphy@fs.fed.us](mailto:mwmurphy@fs.fed.us).

**International Institute of Tropical Forestry**

(PR, VI)

Magaly Figueroa, U.S. Forest Service, Jardín Botánico Sur, 1201 Calle Ceiba, San Juan, PR 00926-1119, 787-766-5335 x 222 (phone), 787-766-6263 (fax), [mfigueroa@fs.fed.us](mailto:mfigueroa@fs.fed.us).

**Northeastern Area**

(CT, DC, DE, IA, IL, IN, MA, MD, ME, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, WI, WV)

Neal Bungard, U.S. Forest Service, 271 Mast Road, Durham, NH 03824-4600, 603-868-7719 (phone), 603-868-7604 (fax), [nbungard@fs.fed.us](mailto:nbungard@fs.fed.us).

**FOR FURTHER INFORMATION CONTACT:** For questions regarding the grant application or administrative regulations, contact Maya Solomon, Program Coordinator, 202-205-1376, [mayasolomon@fs.fed.us](mailto:mayasolomon@fs.fed.us).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:**

*CFDA number 10.689:* To address the goals of Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d) as amended, the Forest Service is requesting proposals for community forest projects that protect forest land that has been identified as a national, regional, or local priority for protection and to assist communities in

acquiring forestland that will provide public recreation, environmental and economic benefits, and forest-based educational programs.

Detailed information regarding what to include in the application, definitions of terms, eligibility, and necessary prerequisites for consideration can be found in the final program rule, published October 20, 2011 (76 FR 65121-65133), which is available at [www.fs.fed.us/spf/coop/programs/loa/cfp.shtml](http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml) and at [www.grants.gov](http://www.grants.gov) (Opportunity number CFP-FS-1002016).

**Grant Application Requirements****1. Eligibility Information**

a. *Eligible Applicants.* A local governmental entity, Indian Tribe (including Alaska Native Corporations), or a qualified nonprofit organization that is qualified to acquire and manage land (see § 230.2 of the final rule). Individuals are not eligible to receive funds through this program.

b. *Cost Sharing (Matching Requirement).* All applicants must demonstrate a 50 percent match of the total project cost. The match can include cash, in-kind services, or donations, which shall be from a non-Federal source. For additional information, please see § 230.6 of the final rule at [www.fs.fed.us/spf/coop/programs/loa/cfp.shtml](http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml).

c. *DUNS Number.* All applicants shall include a Data Universal Numbering System (DUNS) number in their application. For this requirement, the applicant is the entity that meets the eligibility criteria and has the legal authority to apply for and receive the grant. For assistance in obtaining a DUNS number at no cost, call the DUNS number request line 1-866-705-5711 or register on-line at <http://fedgov.dnb.com/webform>.

d. *System for Award Management.* All prospective awardees shall be registered in the System for Award Management prior to award, during performance, and through final payment of any grant resulting from this solicitation. Further information can be found at [www.sam.gov](http://www.sam.gov). For assistance, contact Federal Service Desk 1-866-606-8220.

**2. Award Information**

The Administration proposed to fund the CFP at \$1.683 million for fiscal year 2016. Individual grant applications may not exceed \$400,000, which does not include technical assistance requests. The Federal Government's obligation under this program is contingent upon the availability of appropriated funds.

No legal liability on the part of the Government shall be incurred until

funds are committed by the grant officer for this program to the applicant in writing. The initial grant period shall be for 2 years, and acquisition of lands should occur within that timeframe.

Lands acquired prior to the grant award are not eligible for CFP funding. The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process. Written annual financial performance reports and semi-annual project performance reports shall be required and submitted to the appropriate grant officer.

Technical assistance funds, totaling not more than 10 percent of all funds, may be allocated to State Foresters and equivalent officials of the Indian tribe. Technical assistance, if provided, will be awarded at the time of the grant. Applicants shall work with State Foresters and equivalent officials of the Indian tribe to determine technical assistance needs and include the technical assistance request in the project's budget.

As funding allows, applications submitted through this request may be funded in future years, subject to the availability of funds and the continued feasibility and viability of the project.

**3. Application Information**

*Application submission.* All local governments and qualified nonprofit organizations' applications must be submitted to the State Forester where the property is located by January 15, 2016. All Tribal applications must be submitted to the equivalent Tribal government official by January 15, 2016. Applications may be submitted either electronic or hardcopy to the appropriate official. The State Forester's contact information may be found at <http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml>.

All applicants must also send an email to [communityforest@fs.fed.us](mailto:communityforest@fs.fed.us) to confirm an application has been submitted to the State Forester or equivalent Tribal government official for funding consideration.

All State Foresters and Tribal government officials must forward applications to the Forest Service by February 19, 2016.

**4. Application Requirements**

The following section outlines grant application requirements:

a. The application can be no more than eight pages long, plus no more than two maps (eight and half inches by eleven inches in size), the grant forms specified in (b), and the draft community forest plan specified in (d).

b. The following grant forms and supporting materials must be included in the application:

- (1) An Application for Federal Assistance (Standard Form 424);
- (2) Budget information (Standard Form SF 424c—Construction Programs); and
- (3) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d—Construction Programs).

c. Documentation verifying that the applicant is an eligible entity and that the land proposed for acquisition is eligible (see § 230.2 of the final rule).

d. Applications must include the following, regarding the property proposed for acquisition:

- (1) A description of the property, including acreage and county location;
- (2) A description of current land uses, including improvements;
- (3) A description of forest type and vegetative cover;
- (4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;
- (5) A description of applicable zoning and other land use regulations affecting the property;
- (6) A description of the type and extent of community benefits, including to underserved communities (selection criteria outlined below);
- (7) A description of relationship of the property within and its contributions to a landscape conservation initiative; and
- (8) A description of any threats of conversion to non-forest uses, including any encumbrances on the property that prevent conversion to nonforest uses.

e. Information regarding the proposed establishment of a community forest, including:

- (1) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;
- (2) A description of community involvement to-date in the planning of the community forest acquisition and of community involvement anticipated in long-term management of the property;
- (3) An identification of persons and organizations that support the project and their specific role in establishing and managing the community forest; and
- (4) A draft community forest plan. The eligible entity is encouraged to work with the State Forester or equivalent Tribal government official for technical assistance when developing or updating the Community Forest Plan. In addition, the eligible entity is encouraged to work with technical

specialists, such as professional foresters, recreation specialists, wildlife biologists, or outdoor education specialists, when developing the Community Forest Plan.

f. Information regarding the proposed land acquisition, including:

- (1) A proposed project budget not exceeding \$400,000 and technical assistance needs as coordinated with the State Forester or equivalent Tribal government official (section § 230.6 of the final program rule);
- (2) The status of due diligence, including signed option or purchase and sale agreement, title search, minerals determination, and appraisal;
- (3) Description and status of cost share (secure, pending, commitment letter, etc. (section § 230.6 of the final rule) ;
- (4) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;
- (5) The proposed timeline for completing the acquisition and establishment of the community forest; and
- (6) Long term management costs and funding source(s).

g. Applications must comply with the U. S. Department of Agriculture's Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards also referred to as the Omni Circular (2 CFR 400).

h. Applications must also include the forms required to process a Federal grant. Section 6 *Grant Requirements* references the grant forms that must be included in the application and the specific administrative requirements that apply to the type of Federal grant used for this program.

A sample grant outline, scoring guidance, the final rule, and required forms can be found on the CFP Web site at: <http://www.fs.fed.us/spf/coop/programs/loa/cfp.shtml>.

#### 5. Forest Service's Project Selection Criteria

a. Using the criteria described below, to the extent practicable, the Forest Service will give priority to applications that maximize the delivery of community benefits, as defined in the final rule (see § 230.2 of the final rule); and

b. The Forest Service will evaluate all applications received by the State Foresters or equivalent Tribal government officials and award grants based on the following criteria:

- (1) Type and extent of community benefits provided, including to underserved communities. Community

benefits are defined in the final program rule as:

- (i) Economic benefits, such as timber and non-timber products;
  - (ii) Environmental benefits, including clean air and water, stormwater management, and wildlife habitat;
  - (iii) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.;
  - (iv) Benefits from serving as replicable models of effective forest stewardship for private landowners; and
  - (v) Recreational benefits, such as hiking, hunting and fishing secured through public access.
- (2) Extent and nature of community engagement in the establishment and long-term management of the community forest;
  - (3) Amount of cost share leveraged;
  - (4) Extent to which the community forest contributes to a landscape conservation initiative;
  - (5) Extent of due diligence completed on the project, including cost share committed and status of appraisal;
  - (6) Likelihood that, if unprotected, the property would be converted to non-forest uses; and
  - (7) Costs to the Federal Government.

#### 6. Grant Requirements

a. Once an application is selected, funding will be obligated to the grant recipient through a grant.

b. Local and Indian tribal governments should refer to 2 CFR part 225, Cost Principles for State,

Local, and Indian Tribal Governments (OMB Circular A–87) and 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) for directions.

c. Nonprofit organizations should refer to 2 CFR part 215 Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals and Other Nonprofit Organizations (OMB Circular A–110) and 7 CFR part 3019 Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and other Nonprofit Organizations for directions.

d. Forest Service must approve any amendments to a proposal or request to reallocate funding within a grant proposal. If negotiations on a selected

project fail, the applicant cannot substitute an alternative site.

e. The grant recipient must comply with the requirements in section § 230.8 in the final rule before funds will be released.

f. After the project has closed, as a requirement of the grant, grant recipients will be required to provide the Forest Service with a Geographic Information System (GIS) shapefile: A digital, vector-based storage format for storing geometric location and associated attribute information, of CFP project tracts and cost share tracts, as applicable.

g. Any funds not expended within the grant period must be de-obligated and returned to the Forest Service.

h. All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through the CFP.

Additional information may be found in section § 230.9 of the final rule.

Dated: October 2, 2015.

**Patricia F. Hiramí,**

*Associate Deputy Chief, State and Private Forestry.*

[FR Doc. 2015-25725 Filed 10-7-15; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### Advisory Committee Meeting

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

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection, Packers and Stockyards Administration (GIPSA) Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets annually to advise the GIPSA Administrator on the programs and services that GIPSA delivers under the U.S. Grain Standards Act. Recommendations by the Advisory Committee help GIPSA better meet the needs of its customers who operate in a dynamic and changing marketplace.

**DATES:** October 27, 2015, 8:00 a.m. to 4:30 p.m.; and October 28, 2015, 8:00 a.m. to Noon.

**ADDRESSES:** The Advisory Committee meeting will take place at GIPSA's National Grain Center, 10383 N. Ambassador Drive, Kansas City, Missouri 64153.

Requests to orally address the Advisory Committee during the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 3601, Washington, DC 20250-3601. Requests and comments may also be faxed to (202) 690-2173.

**FOR FURTHER INFORMATION CONTACT:**

Terri L. Henry by phone at (202) 205-8281 or by email at [Terri.L.Henry@usda.gov](mailto:Terri.L.Henry@usda.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of the Advisory Committee is to provide advice to the GIPSA Administrator with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71-87k). Information about the Advisory Committee is available on the GIPSA Web site at <http://www.gipsa.usda.gov/jgis/adcommit.html>.

The agenda will include service delivery overview, quality updates, field management overview, international program updates, and technology and science initiatives.

For a copy of the agenda please contact Terri L. Henry by phone at (202) 205-8281 or by email at [Terri.L.Henry@usda.gov](mailto:Terri.L.Henry@usda.gov).

Public participation will be limited to written statements unless permission is received from the Committee Chairperson to orally address the Advisory Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri L. Henry at the telephone number listed above.

**Larry Mitchell,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2015-25650 Filed 10-7-15; 8:45 am]

**BILLING CODE 3410-KD-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Meeting of the United States Manufacturing Council

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The United States Manufacturing Council (Council) will hold an open meeting on Friday, October 23, 2015. The Council was established in April 2004 to advise the Secretary of Commerce on matters

relating to the U.S. manufacturing industry. The purpose of the meeting is for Council members to review and deliberate on recommendations developed by the Workforce Development subcommittee looking at issues of shifting the image of manufacturing and high school educational approach enhancements for consideration by the Manufacturing Council. The agenda may change to accommodate Council business. The final agenda will be posted on the Department of Commerce Web site for the Council at <http://trade.gov/manufacturingcouncil>, at least one week in advance of the meeting.

**DATES:** Friday, October 23, 2015, 8:00 a.m.-2:00 p.m. The deadline for members of the public to register, including requests to make comments during the meetings and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on October 13, 2015.

**ADDRESSES:** The meeting will be held at 1651 Wilkening Road in Schaumburg, Illinois. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: U.S. Manufacturing Council, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, [archana.sahgal@trade.gov](mailto:archana.sahgal@trade.gov). Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

**FOR FURTHER INFORMATION CONTACT:**

Archana Sahgal, the United States Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202-482-4501, email: [archana.sahgal@trade.gov](mailto:archana.sahgal@trade.gov).

**SUPPLEMENTARY INFORMATION:**

*Background:* The Council advises the Secretary of Commerce on matters relating to the U.S. manufacturing industry.

*Public Participation:* The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the DATES caption. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation or other auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public. To accommodate as many speakers as possible, the time

for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. on Tuesday, October 13, 2015, for inclusion in the meeting records and for circulation to the members of the Manufacturing Council. Speakers additionally are requested to bring at least 25 copies of their oral comments for distribution to the members of the Manufacturing Council and to the public at the meeting. In addition, any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Archana Sahgal at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on October 13, 2015, to ensure transmission to the Council prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered during the meeting. Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: October 2, 2015.

**Archana Sahgal,**

*Executive Secretary, United States Manufacturing Council.*

[FR Doc. 2015-25671 Filed 10-5-15; 4:15 pm]

**BILLING CODE 3510-DR-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-552-814]

**Utility Scale Wind Towers From the Socialist Republic of Vietnam: Notice of Rescission of Antidumping Duty Administrative Review; 2014-2015**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("the Department") is rescinding its administrative review of utility scale wind towers ("wind towers") from the Socialist Republic of Vietnam ("Vietnam") for the period February 1,

2014 through January 31, 2015 ("POR"), based on the withdrawal of request for review.

**DATES:** *Effective date:* October 8, 2015.

**FOR FURTHER INFORMATION CONTACT:** Robert Galantucci, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2923.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 2, 2015, the Department published the notice of opportunity to request an administrative review of the antidumping duty order on wind towers from Vietnam for the POR.<sup>1</sup> On February 25, 2015, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.213(b), the Department received a timely request from the Wind Tower Trade Coalition ("Petitioner") to conduct an administrative review.<sup>2</sup>

Pursuant to this request and in accordance with 19 CFR 351.221(c)(1)(i), on April 3, 2015, the Department published a notice of initiation of an administrative review of the antidumping duty order on wind towers from Vietnam.<sup>3</sup> On July 1, 2015, Petitioner withdrew its request for an administrative review.<sup>4</sup>

**Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the publication date of the notice of initiation of review. As noted above, Petitioner withdrew its request for review within 90 days of the publication date of the *Initiation Notice*. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 5509 (February 2, 2015).

<sup>2</sup> See Letter from Petitioner, "Utility Scale Wind Towers from the Socialist Republic of Vietnam: Request for Administrative Review," dated February 25, 2015.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 18202 (April 3, 2015) ("*Initiation Notice*").

<sup>4</sup> See Letter from Petitioner, "Utility Scale Wind Towers from the Socialist Republic of Vietnam: Withdrawal of Request for Administrative Review," dated July 1, 2015.

**Assessment**

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of wind towers from Vietnam. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

**Notifications**

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

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

This notice is published in accordance with section 751 of the Act, and 19 CFR 351.213(d)(4).

Dated: October 1, 2015.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2015-25683 Filed 10-7-15; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-351-844, C-533-866, C-570-030, C-580-882, C-821-823]

**Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Postponement of Preliminary Determinations in the Countervailing Duty Investigations**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Sergio Balbontin at (202) 482-6478 (Brazil); Robert Bolling at (202) 482-3434 and Erin Kearney at (202) 482-0167 (India); Yasmin Nair at (202) 482-3813 (the People's Republic of China and the Republic of Korea); and Kristen Johnson at (202) 482-4793 (the Russian Federation), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****Background**

On August 17, 2015, the Department of Commerce (the Department) initiated countervailing duty investigations on certain cold-rolled steel flat products from Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation.<sup>1</sup> Currently, the preliminary determinations are due no later than October 21, 2015.

**Postponement of the Preliminary Determinations**

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for an extension in accordance with 19 CFR 351.205(e), section 703(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

<sup>1</sup> See *Certain Cold-Rolled Steel Flat Products From Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty Investigations*, 80 FR 51206 (August 24, 2015).

On September 23, 2015, Petitioners<sup>2</sup> submitted timely requests pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations.<sup>3</sup> For the reasons stated above and because there are no compelling reasons to deny the requests, the Department, in accordance with section 703(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations to no later than 120 days after the day on which the investigation was initiated. In accordance with section 735(a)(1) of the Act, the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: October 1, 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2015-25706 Filed 10-7-15; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-831]

**Fresh Garlic From the People's Republic of China: Final Rescission of the Semiannual Antidumping Duty New Shipper Review of Jinxiang Kaihua Imp & Exp Co., Ltd.**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("the Department") is conducting a new shipper review ("NSR") of Jinxiang Kaihua Imp & Exp Co., Ltd. (Kaihua) regarding the antidumping duty order on fresh garlic from the People's Republic of China ("the PRC"). On June 5, 2015, the Department published the preliminary results in which it found that Kaihua's new shipper sale is not *bona fide*. As a result, we preliminarily rescinded the NSR of Kaihua<sup>1</sup> and we

<sup>2</sup> AK Steel Corporation, ArcelorMittal USA EEC, Nucor Corporation, Steel Dynamics, Inc., and the United States Steel Corporation (collectively, Petitioners).

<sup>3</sup> See Letters from Petitioners, entitled "Cold-Rolled Steel Flat Products from Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Petitioners' Request to Extend the Countervailing Duty Preliminary Determination," dated September 23, 2015.

<sup>1</sup> See *Fresh Garlic From the People's Republic of China: Preliminary Intent To Rescind the New Shipper Review of Jinxiang Kaihua Imp & Exp Co., Ltd.*, 70 FR 32092 (June 5, 2015) (*Preliminary*

invited interested parties to comment. Based on our analysis of the comments received, we continue to find Kaihua's new shipper sale is not *bona fide*. Consequently, the Department is rescinding this NSR.

**DATES:** *Effective Date:* October 8, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Milton Koch, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2584.

**Background**

On June 5, 2015, the Department published the preliminary results of this new shipper review.<sup>2</sup> The review covers the new shipper Kaihua. The period of review (POR) is November 1, 2013, through April 30, 2014. A summary of the events that occurred since the Department published the *Preliminary Results*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, dated concurrently with, and hereby adopted by, this notice.<sup>3</sup>

The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://iaaccess.trade.gov>, and is available to all parties in the Department's Central Records Unit, located in Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be found at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Scope of the Order**

The merchandise covered by this order is all grades of garlic, whether whole or separated into constituent cloves. The subject merchandise is

*Results*) and accompanying Issues and Decision Memorandum (PDM).

<sup>2</sup> *Id.*

<sup>3</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding "Issues and Decision Memorandum for the Final Results of Antidumping Duty Semiannual New Shipper Review on Fresh Garlic from the People's Republic of China: Jinxiang Kaihua Imp & Exp Co., Ltd." issued concurrently with this notice (Issues and Decision Memorandum).

currently classifiable under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 0703.20.0000, 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700. A full description of the scope of the order is contained in the Issues and Decision Memorandum.<sup>4</sup> Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description is dispositive.

#### Final Rescission of New Shipper Review

As we explain in the Issues and Decision Memorandum and in the proprietary Kaihua Bona Fides Memorandum<sup>5</sup> issued with the *Preliminary Results*, due to the totality of circumstances, including the price, discrepancies relating to expenses arising from the transaction, lack of definitive proof of payment, and pattern of inconsistencies in Kaihua’s submissions, we continue to find that Kaihua’s sale is not *bona fide*. As a result, we are rescinding the new shipper review of Kaihua.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that are raised in the briefs and addressed in the Issues and Decision Memorandum is in the appendix of this notice.

#### Cash Deposit Requirements

Effective upon publication of the final rescission of the NSR of Kaihua, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Kaihua. Cash deposits will be required for exports of subject merchandise by Kaihua entered, or withdrawn from warehouse, for consumption on or after the publication date, at the PRC-wide rate.

#### Assessment Instructions

As the result of this rescission of the NSR of Kaihua, the entries of Kaihua covered by this NSR will be assessed at the PRC-wide rate.

<sup>4</sup> See the Issues and Decision Memorandum.

<sup>5</sup> See Memorandum to Edward Yang, Office Director, AD/CVD Operations Office VII, “Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People’s Republic of China (PRC): Jinxiang Kaihua Imp & Exp Co., Ltd.” dated June 3, 2015.

#### Notification to Importers

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

#### Return or Destruction of Proprietary Information

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

This notice is issued and published this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214.

Dated: October 1, 2015.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Issues and Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Issues
  - Comment 1: Whether The Price Of Kaihua’s Garlic Was *Bona Fide*
  - Comment 2: Whether The Comparison Of Single-Clove Garlic With Multi-Clove Garlic Comports With Recent Decisions
  - Comment 3: Whether CBP Data Contains Errors
  - Comment 4: Whether Kaihua Reported Accurate And Actual Expense And Accounting Data
  - Comment 5: Whether Kaihua Provided Proof Of Payment
  - Comment 6: Whether There Is A Pattern Of Inconsistencies With Kaihua’s Submissions
5. Recommendation

[FR Doc. 2015–25705 Filed 10–7–15; 8:45 am]

**BILLING CODE 3510–DS–P**

#### DEPARTMENT OF COMMERCE

#### International Trade Administration

[A–570–981]

#### Utility Scale Wind Towers From the People’s Republic of China: Notice of Rescission of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (“the Department”) is rescinding its administrative review of utility scale wind towers (“wind towers”) from the People’s Republic of China (“PRC”) for the period February 1, 2014 through January 31, 2015 (“POR”), based on the withdrawal of request for review.

**DATES:** *Effective Date:* October 8, 2015.

**FOR FURTHER INFORMATION CONTACT:** Robert Galantucci, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2923.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 2, 2015, the Department published the notice of opportunity to request an administrative review of the antidumping duty order on wind towers from the PRC for the POR.<sup>1</sup> On February 25, 2015, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the “Act”), and 19 CFR 351.213(b), the Department received a timely request from the Wind Tower Trade Coalition (“Petitioner”) to conduct an administrative review.<sup>2</sup>

Pursuant to this request and in accordance with 19 CFR 351.221(c)(1)(i), on April 3, 2015, the Department published a notice of initiation of an administrative review of the antidumping duty order on wind towers from the PRC.<sup>3</sup> On July 1, 2015, Petitioner withdrew its request for an administrative review.<sup>4</sup>

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 80 FR 5509 (February 2, 2015).

<sup>2</sup> See Letter from Petitioner, “Utility Scale Wind Towers from the People’s Republic of China: Request for Administrative Review,” dated February 25, 2015.

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 18202 (April 3, 2014) (“*Initiation Notice*”).

<sup>4</sup> See Letter from Petitioner, “Utility Scale Wind Towers from the People’s Republic of China: Withdrawal of Request for Administrative Review,” dated July 1, 2015.

## Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, Petitioner withdrew its request for review within 90 days of the publication date of the *Initiation Notice*. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

## Assessment

The Department will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of wind towers from the PRC. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

## Notifications

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

This notice also serves as a reminder to parties subject to administrative protective orders (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with section 751 of the Act, and 19 CFR 351.213(d)(4).

Dated: October 1, 2015.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2015–25684 Filed 10–7–15; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–851]

### Certain Preserved Mushrooms From the People’s Republic of China: Initiation of Antidumping Duty New Shipper Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* October 8, 2015.

**SUMMARY:** The Department of Commerce (the Department) is initiating a new shipper review of the antidumping duty order on certain preserved mushrooms (mushrooms) from the People’s Republic of China (PRC) involving Linyi Yuqiao International Trade Co., Ltd. (Yuqiao). The period of review (POR) of this new shipper review is February 1, 2015, through July 31, 2015.

#### FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4475 or (202) 482–0649, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On February 19, 1999, the Department published the antidumping duty order on mushrooms from the PRC.<sup>1</sup> Pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), we received a timely request for a new shipper review of the order from Yuqiao.<sup>2</sup> In its request for review, Yuqiao identified itself as the exporter of the subject merchandise, while listing the producer as Linyi City Kangfa Foodstuff Drinkable Co., Ltd. (Kangfa).

Pursuant to the requirements set forth in section 751(a)(2)(B)(i) of the Act and 19 CFR 351.214(b)(2), Yuqiao certified that: (1) It did not export subject merchandise to the United States during

the period of investigation (POI) (*see* section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(ii)(A)); (2) since the initiation of the investigation it has never been affiliated with any exporter or producer that exported subject merchandise to the United States during the POI, including those companies not individually examined during the investigation (*see* section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A)); and (3) its export activities are not controlled by the central government of the PRC (*see* 19 CFR 351.214(b)(2)(iii)(B)). Kangfa also certified that: (1) It did not export the subject merchandise to the United States during the POI (*see* 19 CFR 351.214(b)(2)(ii)(B)); and (2) since the initiation of the investigation, Kangfa has never been affiliated with any exporter or producer that exported subject merchandise during the POI, including those companies not individually examined during the investigation.<sup>3</sup>

Moreover, in accordance with 19 CFR 351.214(b)(2)(iv), Yuqiao submitted documentation establishing the following: (1) The date on which it first entered merchandise into the United States; (2) the volume of its first shipment and a statement that it had no subsequent shipments; and (3) the date of its first sale to an unaffiliated customer in the United States.<sup>4</sup>

Finally, the Department conducted a U.S. Customs and Border Protection (CBP) database query and confirmed the price, quantity, and date of entry of the sale at issue.<sup>5</sup> Notably, the CBP data indicate that Yuqiao’s sale and entry of subject merchandise occurred during the POR and the entry was suspended for antidumping duties.

#### Period of Review

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the POR for new shipper reviews initiated in the month immediately following the semiannual anniversary month will be the six month period immediately preceding the semiannual anniversary month. Therefore, because the semiannual anniversary month of this order is August, the POR for this new shipper review is February 1, 2015, through July 31, 2015.

<sup>3</sup> *Id.* at Attachment 1.

<sup>4</sup> *Id.* at Attachment 2.

<sup>5</sup> *Id.*; *see also* Memorandum to the File from the Case Analyst, “Certain Preserved Mushrooms from the People’s Republic of China: Customs Data for NSR”, dated September 14, 2015, and herein incorporated by reference.

<sup>1</sup> *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People’s Republic of China*, 64 FR 8308 (February 19, 1999).

<sup>2</sup> *See* Letter from Yuqiao to Secretary of Commerce, dated August 28, 2015 (Yuqiao Request).



### Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), the Department finds that Yuqiao's request meets the statutory and regulatory requirements for initiation of a new shipper review.<sup>6</sup> Accordingly, the Department is initiating a new shipper review of the antidumping duty order on mushrooms from the PRC for subject merchandise produced by Kangfa and exported by Yuqiao. Absent a determination that the case is extraordinarily complicated, the Department intends to issue the preliminary results of this review within 180 days after the date on which this review is initiated and the final results within 90 days after the date on which the Department issues the preliminary results.<sup>7</sup>

In cases involving non-market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities.<sup>8</sup> Accordingly, the Department will issue a questionnaire to Yuqiao that will include a separate rates section. This review may proceed if the response provides sufficient indication that Yuqiao is not subject to either *de jure* or *de facto* government control with respect to its exports of mushrooms.

The Department will instruct CBP to allow (at the option of the importer) the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of subject merchandise exported by Yuqiao and produced by Kangfa in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Kangfa certified that the sales which form the basis for its request were produced by Kangfa, the Department will instruct CBP to permit the use of a bond only for entries of subject merchandise produced by Kangfa and exported by Yuqiao.

To assist in its analysis of the *bona fides* of Yuqiao's sales, upon initiation of this new shipper review, the

Department will require the company to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to business proprietary information in this new shipper review should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214, and 19 CFR 351.221(c)(1)(i).

Dated: October 1, 2015.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2015-25704 Filed 10-7-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Science Advisory Board (SAB)

**AGENCY:** Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of open meeting.

**SUMMARY:** The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

**Time and Date:** The meeting will be held Thursday, October 29, 9:45 a.m. EDT to 5:45 p.m. EDT and on Friday, October 30, from 8:15 a.m. EDT to 1:00 p.m. EDT. These times and the agenda topics described below are subject to change. Please refer to the Web page <http://www.sab.noaa.gov/Meetings/meetings.html> for the most up-to-date meeting times and agenda.

**Place:** The meeting will be held at the Hamilton Hotel Ballroom, 1001 14th Street Northwest, Washington, DC. Please check the SAB Web site <http://www.sab.noaa.gov/Meetings/meetings.html> for directions to the meeting location.

[www.sab.noaa.gov/Meetings/meetings.html](http://www.sab.noaa.gov/Meetings/meetings.html) for directions to the meeting location.

**Status:** The meeting will be open to public participation with a 15-minute public comment period on October 29 from 5:30-5:45 p.m. EDT (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of two (2) minutes. Individuals or groups planning to make a verbal presentation should contact the SAB Acting Executive Director by October 22, 2015 to schedule their presentation. Written comments should be received in the SAB Executive Director's Office by October 22, 2015, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after October 22, 2015, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first-served basis.

**Special Accommodations:** These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12:00 p.m. on October 22, 2015, to Dr. Elizabeth Turner, Acting SAB Executive Director, Room 146 Gregg Hall, 35 Colovos Road, Durham, NH 03824; Email: [Elizabeth.Turner@noaa.gov](mailto:Elizabeth.Turner@noaa.gov).

**Matters To Be Considered:** The meeting will include the following topics: (1) Review Report for the Joint Institute on Marine and Atmospheric Research (JIMAR); (2) Review Report for the Cooperative Institute on Mesoscale Meteorological Studies (CIMMS); (3) Gulf Coast Ecosystem Restoration Program Advisory Working Group Report on the RESTORE Act Science Program's Performance Metrics Plan and Coordination Plan; (4) SAB Strategy Discussion; (5) Updates from the NOAA Administrator and Chief Scientist; (6) Discussion on Optimizing SAB Working Group Operations and (7) Working Group Issues for Discussion.

**FOR FURTHER INFORMATION CONTACT:** Dr. Elizabeth Turner, Acting Executive Director, Science Advisory Board, NOAA, Room 146 Gregg Hall, 35 Colovos Road, Durham, NH 03824. Email: [Elizabeth.Turner@noaa.gov](mailto:Elizabeth.Turner@noaa.gov); or visit the NOAA SAB Web site at <http://www.sab.noaa.gov>.

<sup>6</sup> See Memorandum from Michael J. Heaney to the File through Scot T. Fullerton entitled, "Initiation of Antidumping Duty New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China (A-570-851)," dated September xx, 2015.

<sup>7</sup> See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(h)(i).

<sup>8</sup> See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews*, 75 FR 72794, 72796 (November 26, 2010), unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 76 FR 9747 (February 22, 2011).

Dated: October 1, 2015.

**Jason Donaldson,**

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2015-25679 Filed 10-7-15; 8:45 am]

**BILLING CODE 3510-KD-P**

**CONSUMER PRODUCT SAFETY COMMISSION**

[Docket No. CPSC-2013-0025]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Standard for Infant Swings**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission ("CPSC" or "Commission") requests comments on a proposed extension of approval of a collection of information under the safety standard for swings, approved previously under OMB Control No. 3041-0155. The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget ("OMB").

**DATES:** Submit written or electronic comments on the collection of information by December 7, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. CPSC-2013-0025, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through [www.regulations.gov](http://www.regulations.gov). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

*Written Submissions:* Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other

personal information provided, to: <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

*Docket:* For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number CPSC-2013-0025, into the "Search" box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504-7815, or by email to: [rsquibb@cpsc.gov](mailto:rsquibb@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** CPSC seeks to renew the following currently approved collection of information:

*Title:* Safety Standard for Infant Swings.

*OMB Number:* 3041-0155.

*Type of Review:* Renewal of collection.

*Frequency of Response:* On occasion.  
*Affected Public:* Manufacturers and importers of infant swings.

*Estimated Number of Respondents:* 9 firms that supply infant swings to the United States market have been identified; there are approximately 5 models per firm annually.

*Estimated Time per Response:* 1 hour/model associated with marking and labeling.

*Total Estimated Annual Burden:* 45 hours (9 firms × 5 models × 1 hour).

*General Description of Collection:* The Commission revised the CPSC standard for the safety standard for infant swings (16 CFR part 1223) on June 24, 2013 (78 FR 37706). The standard is intended to address hazards to children associated with infant swings. Among other requirements, the standard requires manufacturers, including importers, to meet the collection of information requirements for marking and labeling for infant swings.

**Request for Comments**

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including

whether the information would have practical utility;  
—Whether the estimated burden of the proposed collection of information is accurate;  
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and  
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: October 5, 2015.

**Todd A. Stevenson,**

Secretary, Consumer Product Safety Commission.

[FR Doc. 2015-25626 Filed 10-7-15; 8:45 am]

**BILLING CODE 6355-01-P**

**DEPARTMENT OF ENERGY**

**Biological and Environmental Research Advisory Committee**

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, October 28, 2015—9:00 a.m. to 6:00 p.m.

Thursday, October 29, 2015—8:30 a.m. to 12:00 p.m.

**ADDRESSES:** Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sharlene Weatherwax, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC-23/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585-1290; Telephone: (301) 903-3251; Fax (301) 903-5051 or email:

[sharlene.weatherwax@science.doe.gov](mailto:sharlene.weatherwax@science.doe.gov).

The most current information concerning this meeting can be found on the Web site: <http://science.energy.gov/ber/berac/meetings/>.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical

issues that arises in the development and implementation of the Biological and Environmental Research Program.

**Tentative Agenda Topics**

- Report from the Under Secretary for Science and Energy
- Report from the Office of Science
- Report from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Climate and Environmental Sciences Divisions
- Report on the Biological Systems Science Division Strategic Plan
- Briefings on the Industrialization of Biology and the Advanced Research Projects Agency—Energy (ARPA-E)
- Environmental Molecular Sciences Laboratory update
- Integrated Field Laboratory workshop report and discussion
- Science Talk
- New Business
- Public Comment

*Public Participation:* The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharlene Weatherwax at: [sharlene.weatherwax@science.doe.gov](mailto:sharlene.weatherwax@science.doe.gov) (email) or (301) 903-5051 (fax). You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: <http://science.energy.gov/ber/berac/meetings/berac-minutes/>.

Issued in Washington, DC, on October 2, 2015.

**LaTanya R. Butler,**  
*Deputy Committee Management Officer.*

[FR Doc. 2015-25645 Filed 10-7-15; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**State Energy Advisory Board (STEAB)**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of Open Teleconference.

**SUMMARY:** This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, November 19, 2015 from 3:30 p.m. to 4:00 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer at the address or phone number listed below.

**FOR FURTHER INFORMATION CONTACT:** Michael Li, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number 202-287-5718, and email: [michael.li@ee.doe.gov](mailto:michael.li@ee.doe.gov).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

*Tentative Agenda:* Receive STEAB Task Force updates on action items and revised objectives for FY 2016, discuss follow-up opportunities and engagement with EERE and other DOE staff as needed to keep Task Force work moving forward, continue engagement with DOE, EERE and EPSA staff regarding energy efficiency and renewable energy projects and initiatives, and receive updates on member activities within their states.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: <http://www.energy.gov/eere/steab/state-energy-advisory-board>.

Issued at Washington, DC, on October 2, 2015.

**LaTanya R. Butler,**  
*Deputy Committee Management Officer.*

[FR Doc. 2015-25649 Filed 10-7-15; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Notice of Application**

	Docket Nos.
Atlantic Coast Pipeline, LLC .....	CP15-554-000
	PF15-6-000
Dominion Transmission, Inc .....	CP15-555-000
	PF15-5-000
Atlantic Coast Pipeline, LLC and Piedmont Natural Gas Company, Inc .....	CP15-556-000

Take notice that on September 18, 2015, Atlantic Coast Pipeline, LLC (ACP), 120 Tredgar Street, Richmond, Virginia 23219 filed an application under section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations requesting authorization to install, construct, own, operate and maintain certain natural gas pipeline

facilities for its Atlantic Coast Pipeline project consisting of: (i) Approximately 564.1 miles of various diameter pipeline; (ii) three greenfield compressor stations totaling 117,545 horsepower (HP) of compression; and (iii) various appurtenant and auxiliary facilities designed to transport up to approximately 1.5 million dekatherms

per day (MMDth/d) of natural gas. Facilities to be constructed are located in Harrison, Lewis, Upshur, Randolph, and Pocahontas Counties, West Virginia; Highland, Augusta, Nelson, Buckingham, Cumberland, Prince Edward, Nottoway, Dinwiddie, Brunswick, Greenville and Southampton Counties and the Cities of

Suffolk and Chesapeake, Virginia; and Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland and Robeson Counties, North Carolina. Additionally, ACP is seeking Blanket Certificates of public convenience and necessity pursuant to Part 284, Subpart G authorizing the transportation of natural gas for others, and Part 157, Subpart F authorizing certain facility construction, operation and abandonment activities, all as more fully described in the application.

In a related filing, on September 18, 2015, Dominion Transmission, Inc. (DTI), 707 East Main Street, Richmond, Virginia 23219, filed under sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations requesting authorization to abandon, install, construct, own, operate and maintain certain natural gas pipeline facilities for its Supply Header Project (Supply Header) located in Westmoreland and Greene Counties, Pennsylvania; and Harrison, Doddridge, Tyler, Wetzel, and Marshall Counties, West Virginia. The Supply Header would provide transportation service of approximately 1.5 MMDth/d from supply areas on the DTI system for delivery to the ACP. The Supply Header facilities would consist of: (i) Two pipeline loops of 30-inch diameter pipeline totaling 37.5 miles; ii) added compression at three existing compressor stations totaling 70,530 HP; and iii) various appurtenant and auxiliary facilities. DTI also proposes to abandon two compressor units in Wetzel County, West Virginia, all as more fully described in the application.

Finally, on September 18, 2015, ACP and Piedmont Natural Gas Company, Inc. (Piedmont), 4720 Piedmont Row Drive, Charlotte, North Carolina 28210, filed a joint application under section 7(c) of the NGA and Part 157 of the Commission's regulations seeking authorization of a lease pursuant to which ACP will lease capacity (Lease) on Piedmont's system for use by ACP in providing service under its FERC Gas Tariff, primarily for the Public Service Company of North Carolina, Inc. Piedmont, a local distribution company (LDC), also requests a limited jurisdiction certificate in order to enter into the Lease with ACP for the interstate transportation of gas through Piedmont's facilities. Piedmont also requests a determination that the Lease will not affect its status and a LDC not otherwise subject to Commission regulation, all as more fully described in the application.

The filings may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket

number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or TTY, (202) 502-8659.

Any questions regarding ACP's or DTI's projects should be directed to Angela Woolard, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219; telephone: 866-319-3382.

Any questions regarding the ACP—Piedmont Lease should be directed to Matthew Bley, Director, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219; telephone: 866-319-3382.

On November 13, 2014, the Commission staff granted ACP's and DTI's requests to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket Nos. PF15-6-000 and PF15-5-000, respectively to staff activities involving the combined Atlantic Coast Pipeline and Supply Header projects. Now, as of the filing of the applications on September 18, 2015, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP15-554-000 for the Atlantic Coast Pipeline and CP15-555-000 for DTI's Supply Header project, as noted in the caption of this Notice.

Within 90 days after the Commission issues a Notice of Application for the ACP, Supply Header and ACP—Piedmont Lease projects, the Commission staff will issue a Notice of Schedule for Environmental Review that will indicate the anticipated date for the Commission's staff issuance of the final EIS analyzing both the three proposals. The issuance of a Notice of Schedule for Environmental Review will also serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's final EIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

*Comment Date:* 5:00 p.m. Eastern Time on October 23, 2015.

Dated: October 2, 2015.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2015-25636 Filed 10-7-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 4580-006]

#### **PacifiCorp; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Amendment of Exemption.

b. *Project Nos.:* 4580-006.

c. *Date Filed:* September 21, 2015.

d. *Applicant:* PacifiCorp.

e. *Name of Projects:* Last Chance Canal Hydroelectric Project.

f. *Location:* The project is located at the Last Chance Canal, a diversion from the Bear River in Caribou County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Roger L. Raeburn, Chief Dam Safety Engineer, PacifiCorp, 825 NE. Multnomah Street, Suite 1500, Portland, OR 97232; (503) 813-6667 or roger.raeburn@pacificorp.com.

i. *FERC Contact:* B. Peter Yarrington, (202) 502-6129 or peter.yarrington@ferc.gov.

j. Deadline for filing comments, motions to intervene, and protests is 15 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, or comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P-

4580-006) on any comments, motions to intervene, or protests filed.

k. *Description of Request:* The applicant proposes to replace the project's wood-crib diversion dam, and parts of the canal intake structure. An engineering inspection in April 2015 found significant deterioration of the diversion dam, which is over 100 years old, in addition to seepage where the intake structure meets the dam. The existing diversion dam would be replaced with a new structure of reinforced concrete and roller-compacted concrete. The work would not result in any changes to dam height, dam width, associated water levels, or project operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1 (866) 208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the

project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 2, 2015.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2015-25639 Filed 10-7-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 77-276]

#### **Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 77-276.

c. *Date Filed:* September 30, 2015.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Potter Valley Project.

f. *Location:* Eel River and East Fork Russian River in Lake and Mendocino Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Matthew Joseph, License Coordinator, Pacific Gas and Electric Company, Mail Code: N13E, P.O. Box 770000, San Francisco, CA 94177, (415) 973-8616.

i. *FERC Contact:* Mr. John Aedo, (415) 369-3335, or [john.aedo@ferc.gov](mailto:john.aedo@ferc.gov).

j. Deadline for filing comments, motions to intervene, protests, and recommendations is October 19, 2015. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P-77-276) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The licensee requests a temporary variance of the minimum flow requirement in the East Branch Russian River. The licensee states that it is planning to conduct repairs to reconstruct the lower woodstave conduit and replace some adjoining piping above the Potter Valley powerhouse. The licensee states that it needs to dewater the lower portion of the water conveyance system to conduct this work. In order to complete the work, the licensee is requesting a temporary variance of its Normal water year minimum flow requirement of 35 cubic feet per second (cfs) between November 1, 2015 and March 15, 2016. During this time, the licensee proposes to release flows through a conduit into a seasonal creek that is a tributary to the East Branch Russian River immediately downstream of the project powerhouse. The licensee states that during the repair period, it would release a minimum flow of 20 cfs from the conduit into the East Branch Russian River, which would include the release of up to 5 cfs for the Potter Valley Irrigation District. The licensee states that if site conditions reach a Critically Dry water year status, it would instead, maintain the license-required minimum flow of 5 cfs. Finally, the licensee

proposes to regularly monitor the interim flows in the seasonal tributary. Upon completion of construction, the licensee states that it would notify the resource agencies and return to the license-required flows.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or

protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 2, 2015.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2015-25617 Filed 10-7-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG15-132-000.

*Applicants:* CED Alamo 5, LLC.

*Description:* Self-certification as an exempt wholesale generator of CED Alamo 5, LLC.

*Filed Date:* 9/29/15.

*Accession Number:* 20150929-5130.

*Comments Due:* 5 p.m. ET 10/20/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-1817-010; ER10-1820-014; ER10-1819-011; ER10-1818-009.

*Applicants:* Southwestern Public Service Company.

*Description:* Supplement to June 30, 2015 Triennial Market Power Analysis of Southwestern Public Service Company, et al.

*Filed Date:* 9/25/15.

*Accession Number:* 20150925-5301.

*Comments Due:* 5 p.m. ET 10/16/15.

*Docket Numbers:* ER15-1473-002.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* Report Filing: 2015-09-29\_SA 2771 Refund Report of ATC-Cloverland CFA to be effective N/A.

*Filed Date:* 9/29/15.  
*Accession Number:* 20150929–5111.  
*Comments Due:* 5 p.m. ET 10/20/15.  
*Docket Numbers:* ER15–1861–000.  
*Applicants:* Tucson Electric Power Company.

*Description:* Report Filing: Refund Report to be effective N/A.

*Filed Date:* 9/29/15.  
*Accession Number:* 20150929–5002.  
*Comments Due:* 5 p.m. ET 10/20/15.  
*Docket Numbers:* ER15–1862–000.  
*Applicants:* Tucson Electric Power Company.

*Description:* Report Filing: Refund Report to be effective N/A.

*Filed Date:* 9/29/15.  
*Accession Number:* 20150929–5003.  
*Comments Due:* 5 p.m. ET 10/20/15.  
*Docket Numbers:* ER15–2720–001; ER15–2689–001; ER15–2688–001.  
*Applicants:* WestRock CP, LLC, MeadWestvaco Coated Board, LLC, MeadWestvaco Virginia Corporation.

*Description:* Notice of Non-Material Change in Status of the WestRock MBR Sellers.

*Filed Date:* 9/28/15.  
*Accession Number:* 20150928–5344.  
*Comments Due:* 5 p.m. ET 10/19/15.  
*Docket Numbers:* ER15–2736–000.  
*Applicants:* PJM Interconnection, L.L.C., Commonwealth Edison Company.

*Description:* § 205(d) Rate Filing: ComEd submits Amended Facilities, Interconnection, and Easement Agreement 4266 to be effective 9/28/2015.

*Filed Date:* 9/28/15.  
*Accession Number:* 20150928–5305.  
*Comments Due:* 5 p.m. ET 10/19/15.  
*Docket Numbers:* ER15–2737–000.  
*Applicants:* Beethoven Wind, LLC.  
*Description:* Tariff Cancellation:

Notice of cancellation to be effective 9/29/2015.

*Filed Date:* 9/28/15.  
*Accession Number:* 20150928–5308.  
*Comments Due:* 5 p.m. ET 10/19/15.  
*Docket Numbers:* ER15–2738–000.  
*Applicants:* Sierra Pacific Power Company.

*Description:* Initial rate filing: Rate Schedule No. 68—SPPC Concurrence with PG&E Service Agreement 84 to be effective 10/31/2015.

*Filed Date:* 9/28/15.  
*Accession Number:* 20150928–5310.  
*Comments Due:* 5 p.m. ET 10/19/15.  
*Docket Numbers:* ER15–2739–000.  
*Applicants:* PJM Interconnection,

L.L.C., Trans-Allegheny Interstate Line Company, West Penn Power Company, The Potomac Edison Company, Pennsylvania Electric Company, Metropolitan Edison Company, Monongahela Power Company.

*Description:* § 205(d) Rate Filing: Trans-Allegheny, et al. submits service agreement nos. 2149, 3743, and 3818 to be effective 10/1/2015.

*Filed Date:* 9/29/15.  
*Accession Number:* 20150929–5090.  
*Comments Due:* 5 p.m. ET 10/20/15.  
*Docket Numbers:* ER15–2740–000.  
*Applicants:* Central Hudson Gas & Electric Corporation.

*Description:* § 205(d) Rate Filing: Revision to FERC Rate Schedule 206 to be effective 7/1/2015.

*Filed Date:* 9/29/15.  
*Accession Number:* 20150929–5101.  
*Comments Due:* 5 p.m. ET 10/20/15.  
 Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES15–66–000.  
*Applicants:* El Paso Electric Company.  
*Description:* Supplement to September 9, 2015 Application of El Paso Electric Company for FPA Section 204 authorization.

*Filed Date:* 9/16/15.  
*Accession Number:* 20150916–5070.  
*Comments Due:* 5 p.m. ET 10/13/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 29, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–25651 Filed 10–7–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2503–154]

#### Duke Energy Carolinas, LLC; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Keowee-Toxaway Hydroelectric Project, located on the Toxaway, Keowee, and Little Rivers in Oconee County and Pickens County, South Carolina and Transylvania County, North Carolina, and has prepared a draft Environmental Assessment (EA) for the project. The project does not occupy federal land.

The draft EA contains staff's analysis of the potential environmental impacts of the project and concludes that relicensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is on file with the Commission and is available for public inspection. The draft EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at <http://www.ferc.gov/docs-filing/efiling/efiling.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments.

For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2503–154.

For further information, contact Rachel McNamara at (202) 502–8340 or [rachel.mcnamara@ferc.gov](mailto:rachel.mcnamara@ferc.gov).

Dated: October 1, 2015.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2015-25638 Filed 10-7-15; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. ER15-2728-000]

**Maricopa West Solar PV, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Maricopa West Solar PV, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2015-25655 Filed 10-7-15; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. CD15-34-000]

**City of Manitou Springs, Colorado;**

**Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene**

On September 24, 2015, the City of Manitou Springs, Colorado, filed a

notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Manitou Springs WTP Hydro Project would have an installed capacity of 40 kilowatts (kW), and would be located along an existing 16-inch-diameter raw water pipeline supplying water to the city's water treatment plant. The project would be located in the City of Manitou Springs in El Paso County, Colorado.

*Applicant Contact:* Jason Wells, City Administrator, 606 Manitou Ave., Manitou Springs, CO 80829, Phone No. (719) 685-2626.

*FERC Contact:* Christopher Chaney, Phone No. (202) 502-6778, email: [christopher.chaney@ferc.gov](mailto:christopher.chaney@ferc.gov).

*Qualifying Conduit Hydropower Facility Description:* The proposed project would consist of: (1) A proposed powerhouse, approximately 12.5 feet by 23 feet, adjacent to the existing water treatment plant building; (2) a short, 6-inch-diameter penstock teeing off the existing 16-inch-diameter raw water supply pipeline; (3) one vertical in-line Francis turbine/generator unit with an installed capacity of 40 kilowatts (kW); (4) a short, 6-inch-diameter discharge returning water to the existing 16-inch-diameter raw water pipeline; and (5) appurtenant facilities.

The proposed project would have a total installed capacity of 40 kW.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA .....	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA .....	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA .....	The facility has an installed capacity that does not exceed 5 megawatts .....	Y
FPA 30(a)(3)(C)(iii), as amended by HREA .....	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y



*Preliminary Determination:* Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

*Comments and Motions to Intervene:* Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

*Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.<sup>1</sup> All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b) and 385.2010.

*Locations of Notice of Intent:* Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at <http://www.ferc.gov/docs-filing/elibrary.asp> using the "eLibrary" link. Enter the docket number (*i.e.*, CD15-34) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659.

Dated: October 1, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015-25633 Filed 10-7-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP15-559-000]

#### Transwestern Pipeline Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on September 25, 2015, Transwestern Pipeline Company, LLC (Transwestern), 1300 Main Street, Houston, Texas 77002, filed a prior notice application pursuant to sections 157.205, 157.208, and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Transwestern's blanket certificate issued in Docket No. CP82-534-000. Transwestern seeks authorization to: (1) Modify the existing compressor units at its P-1 Compressor Station located in Roosevelt County, New Mexico, and at its P-2 Compressor Station located in Deaf Smith County, Texas; and (2) increase the certificated capacity of its Panhandle Lateral to flow an additional 22,000 million cubic feet per day, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Mr. Kelly Allen, Manager, Regulatory Affairs Department, Transwestern Pipeline Company, LLC, 1300 Main Street, Houston, Texas 77002 or phone (713) 989-2606, or fax (713) 989-1205 or by email [Kelly.Allen@energytransfer.com](mailto:Kelly.Allen@energytransfer.com).

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will

<sup>1</sup> 18 CFR 385.2001-2005 (2015).

not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: October 2, 2015.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2015-25637 Filed 10-7-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EL12-101-000; EL14-29-000; EL13-16-000]

#### **New York Association of Public Power v. Niagara Mohawk Power Corporation and New York Independent System Operator, Inc., New York Association of Public Power v. Niagara Mohawk Power Corporation and New York Independent System Operator, Inc., Municipal Electric Utilities Association of New York v. Niagara Mohawk Power Corporation and New York Independent System Operator, Inc.; Notice of Filing**

Take notice that on September 30, 2015, Niagara Mohawk Power Corporation submitted tariff filing: Refund Report to be effective N/A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5:00 p.m. Eastern Time on October 21, 2015.

Dated: October 1, 2015.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2015-25631 Filed 10-7-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER15-2722-000]

#### **Wheelabrator Saugus Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Wheelabrator Saugus Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 29, 2015.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2015-25653 Filed 10-7-15; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### **Combined Notice of Filings #2**

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC15-157-000.  
*Applicants:* Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Co., FirstEnergy Transmission, LLC, Mid-Atlantic Interstate Transmission, LL.

*Description:* Response of Pennsylvania Electric Company, et al., to August 28, 2015 Commission letter requesting additional information.

*Filed Date:* 9/28/15.

*Accession Number:* 20150928-5341.

*Comments Due:* 5 p.m. ET 10/19/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13-948-007.

*Applicants:* Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc.

*Description:* Entergy Services, Inc., on behalf of the Entergy Operating Companies, submits transmission formula rate implementation timeline and deadlines for 2015-16 rate year.

*Filed Date:* 9/28/15.

*Accession Number:* 20150928-5345.

*Comments Due:* 5 p.m. ET 10/19/15.

*Docket Numbers:* ER15-2741-000.

*Applicants:* Arizona Public Service Company.

*Description:* § 205(d) Rate Filing: Service Agreement No. 346—City of Williams to be effective 12/1/2015.

*Filed Date:* 9/29/15.

*Accession Number:* 20150929-5190.

*Comments Due:* 5 p.m. ET 10/20/15.

*Docket Numbers:* ER15-2742-000.

*Applicants:* Panda Patriot LLC.

*Description:* Baseline eTariff Filing: FERC Electric Tariff, Volume No. 1 (MBR Application) to be effective 11/13/2015.

*Filed Date:* 9/29/15.

*Accession Number:* 20150929-5221.

*Comments Due:* 5 p.m. ET 10/20/15.

Take notice that the Commission received the following land acquisition reports:

*Docket Numbers:* LA15-3-000.

*Applicants:* Consolidated Edison Company of New York, Inc., Consolidated Edison Energy, Inc., Consolidated Edison Solutions, Inc., Orange and Rockland Utilities, Inc., CED White River Solar, LLC, CED White River Solar 2, LLC, Alpaugh North, LLC, Alpaugh 50, LLC, Broken Bow Wind II, LLC, Copper Mountain Solar 2, LLC, Copper Mountain Solar 3, LLC, Mesquite Solar 1, LLC, Campbell County Wind Farm, LLC.

*Description:* Quarterly Land Acquisition Report of Consolidated Edison Company of New York, Inc., et. al.

*Filed Date:* 9/29/15.

*Accession Number:* 20150929-5153.

*Comments Due:* 5 p.m. ET 10/20/15.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR15-16-000.

*Applicants:* North American Electric Reliability Corporation.

*Description:* Response of North American Electric Reliability Corporation's to September 15, 2015 Commission letter requesting additional information.

*Filed Date:* 9/29/15.

*Accession Number:* 20150929-5218.

*Comments Due:* 5 p.m. ET 10/13/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 29, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-25654 Filed 10-7-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER15-2676-000]

#### **Cedar Bluff Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Cedar Bluff Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 19, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-25652 Filed 10-7-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### **Combined Notice of Filings #1**

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13-1053-001.

*Applicants:* Switch Energy LLC.

*Description:* Notice in Change in Status of Switch Energy LLC.

*Filed Date:* 10/1/15.

*Accession Number:* 20151001-5432.

*Comments Due:* 5 p.m. ET 10/22/15.

*Docket Numbers:* ER15-2534-000.

*Applicants:* Saddleback Ridge Wind, LLC.

*Description:* Supplement to August 26, 2015 Saddleback Ridge Wind, LLC tariff filing.

*Filed Date:* 10/1/15.

*Accession Number:* 20151001-5411.

*Comments Due:* 5 p.m. ET 10/22/15.

*Docket Numbers:* ER15-2705-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Report Filing: Seams Transmission Projects-Re-Submission of Transmittal Letter in ER15-2705 to be effective N/A.

*Filed Date:* 10/2/15.

*Accession Number:* 20151002-5080.

*Comments Due:* 5 p.m. ET 10/23/15.

*Docket Numbers:* ER16-3-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc.'s Informational Filing to Notify the Commission of Implementation of Year-Four Reallocation of Revenue Requirements Pursuant to Attachments J and O for the Balanced Portfolio.

*Filed Date:* 10/1/15.

*Accession Number:* 20151001-5136.

*Comments Due:* 5 p.m. ET 10/22/15.

*Docket Numbers:* ER16-11-000.

*Applicants:* Sierra Pacific Power Company.

*Description:* § 205(d) Rate Filing: Rate Schedule No. 27—Annual BPA—GTA Update 2015 to be effective 10/31/2015.

*Filed Date:* 10/1/15.

*Accession Number:* 20151001-5407.

*Comments Due:* 5 p.m. ET 10/22/15.

*Docket Numbers:* ER16-12-000.

*Applicants:* LRI Renewable Energy LLC.

*Description:* § 205(d) Rate Filing: Emerald City Amendment to LRI to be effective 10/2/2015.

*Filed Date:* 10/2/15.

*Accession Number:* 20151002-5083.

*Comments Due:* 5 p.m. ET 10/23/15.

*Docket Numbers:* ER16-13-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: Revisions to Attach AE Regarding Annual Auction Revenue Right Allocation to be effective 1/28/2016.

*Filed Date:* 10/2/15.

*Accession Number:* 20151002-5106.

*Comments Due:* 5 p.m. ET 10/23/15.

*Docket Numbers:* ER16-14-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2015-10-02 MISO-SPP JOA Section 8.1.2 Amendment M2M to be effective 3/1/2015.

*Filed Date:* 10/2/15.

*Accession Number:* 20151002-5124.

*Comments Due:* 5 p.m. ET 10/23/15.

*Docket Numbers:* ER16-15-000.

*Applicants:* R.E. Ginna Nuclear Power Plant, LLC.

*Description:* § 205(d) Rate Filing: 2015 normal Oct to be effective 10/2/2015.

*Filed Date:* 10/2/15.

*Accession Number:* 20151002-5125.

*Comments Due:* 5 p.m. ET 10/23/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: October 2, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-25616 Filed 10-7-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP15-537-000]

#### DBM Pipeline, LLC; Notice of Staff Protest to Proposed Blanket Certificate Activity

Commission staff (Protestor) hereby protests the prior notice request filed under the provisions of part 157, subpart F, of the Commission's regulations, by DBM Pipeline, LLC (DBM Pipeline) on July 27, 2015 in the above referenced docket. Pursuant to its part 157, subpart F, blanket certificate authority, DBM Pipeline proposes to construction and operate approximately 9 miles of 20-inch-diameter pipeline in Reeves and Culberson Counties, Texas, and Eddy County, New Mexico. Protestor seeks to have this prior notice request processed as a case-specific application filed under section 7(c) of the Natural Gas Act and part 157, subpart A, of the Commission's regulations.<sup>1</sup>

Protestor notes that on September 28, 2015, DBM Pipeline filed a data response which described a mitigation plan instead of an avoidance plan for

<sup>1</sup> Section 157.205(f) provides that a protested prior notice filing shall be treated as though it had filed a case-specific application under National Gas Act section 7, unless, pursuant to section 157.205(g) the protestor withdraws its protest within 30 days after protests were due.

historic properties. Mitigation plans do not comply with the National Historic Preservation Act under the Commission's regulations for blanket projects. DBM Pipeline must file with the Commission construction plan to avoid historic properties (exceed 25 feet from any of the historic properties). In addition, DBM Pipeline must file with the FERC complete responses to the FERC Environmental Data Request dated September 23, 2015.

Without this information, environmental concerns cannot be adequately addressed within the 30 day period after the protest deadline.

Dated: October 2, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015-25634 Filed 10-7-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP15-553-000]

#### Equitrans, L.P.; Notice of Application

Take notice that on September 18, 2015, Equitrans, L.P. ("Equitrans"), pursuant to section 7(c) of the Federal Energy Regulatory Commission's (FERC) regulations under the Natural Gas Act (NGA), filed in Docket No. CP15-553-000, application for all authorizations necessary for it to restate the certificated capacities for the Allegheny Valley Connector (AVC) storage facilities located in Cambria, Clarion, Allegheny and Westmoreland Counties, Pennsylvania to reflect actual operations. The new collective storage deliverability will be adjusted to 246 MMcf/d from 260 MMcf/d and the new working gas capacity will be adjusted to 11.2 Bcf from 15.1 Bcf. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this application may be directed to Matthew Eggerding, Counsel—Midstream, EQT Corporation, 625 Liberty Avenue, Suite 1700, Pittsburgh, PA 15222 by calling (412) 553-5786; by faxing (412) 553-7781; or by emailing [MEggerding@eqt.com](mailto:MEggerding@eqt.com).

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9,

within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this

project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the "e-Filing" link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

*Comment Date:* 5:00 p.m. Eastern Time on October 23, 2015.

Dated: October 2, 2015.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2015-25635 Filed 10-7-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EL15-70-000; EL15-71-000; EL15-72-000; EL15-82-000]

#### **Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc., The People of the State of Illinois By Illinois Attorney General Lisa Madigan v. Midcontinent Independent System Operator, Inc., Southwestern Electric Cooperative, Inc. v. Midcontinent Independent System Operator, Inc., Dynegy, Inc., and Sellers of Capacity into Zone 4 of the 2015-2016 MISO Planning Resource Auction, Illinois Industrial Energy Consumers v. Midcontinent Independent System Operator, Inc.; Notice of Technical Conference**

Take notice that a staff-led conference will be held on October 20, 2015, at the offices of the Federal Energy Regulatory

Commission, 888 First Street NE., Washington, DC 20426, between 9:00 a.m. and 4:15 p.m. (EST). The purpose of the conference is to obtain further information concerning the above referenced complaints.<sup>1</sup>

The technical conference will be transcribed. Transcripts will be available for a fee from Ace-Federal Reports, Inc. (202-347-3700).

There will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference, but not participate. Anyone with internet access who wants to listen to the conference can do so by navigating to the Calendar of Events at [www.ferc.gov](http://www.ferc.gov) and locating the technical conference in the Calendar. The technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit [www.CapitolConnection.org](http://www.CapitolConnection.org) or call 703-993-3100. The webcast will be available on the Calendar of Events on the Commission's Web site [www.ferc.gov](http://www.ferc.gov) for three months after the conference.

Advance registration is not required but is highly encouraged. Attendees may register at the following Web page: <https://www.ferc.gov/whats-new/registration/10-20-15-form.asp>. Attendees should allow time to pass through building security procedures before the 9:00 a.m. (EST) start time of the technical conference. In addition, information on this event will be posted on the Calendar of Events on the Commission's Web site, [www.ferc.gov](http://www.ferc.gov), prior to the event.

Discussions at the conference may address matters at issue in the following Commission proceeding(s) that are either pending or within their rehearing period: Midcontinent Independent System Operator, Inc., Docket No. ER11-4081-000, *et al.*

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free (866) 208-3372 (voice) or (202) 502-8659 (TTY), or send a FAX to (202) 208-2106 with the required accommodations.

<sup>1</sup> As noted in its order issued October 1, 2015 in Docket No. IN15-10-000, the Commission's Office of Enforcement is conducting a non-public investigation under Part 1b of the Commission's regulations into whether market manipulation or other potential violations of Commission orders, rules and regulations occurred before or during the Auction conducted by MISO in April 2015. This technical conference will not address the current investigation.

The technical conference will consist of four sessions and focus on the issues raised in the complaints, as detailed below. Commissioners may attend and ask questions. The times given below are approximate and may change, as needed.

*Conference Introduction:* Commission Staff (9:00 a.m.–9:15 a.m.)

*Session 1: Market Power Mitigation* (9:15 a.m.–12:15 p.m.)

*Panel 1: Implementation of the Current Mitigation Procedures and Reference Level Calculations* (90 mins)

Staff will lead a discussion to obtain information on the current market power mitigation procedures, including Initial Reference Levels, the transmission availability from MISO to PJM Interconnection, L.L.C. (PJM), PJM's market for replacement capacity, opportunity costs, and the Conduct Threshold for capacity market offer mitigation. Panelists should also be prepared to answer questions including, but not limited to, the following: For the 2014/15 and 2015/16 delivery years, how much PJM replacement capacity was procured after PJM's third incremental auction, and of that, how much was from MISO resources, and for what prices and durations were these MISO resources contracted? How much total transmission capability was available between MISO and PJM during the 2014/15 and 2015/16 MISO and PJM delivery years, and how much of that transmission capacity was subscribed as of the PJM third Incremental Auction for each delivery year? How much total transmission capability is expected between MISO and PJM for the 2016/17 and 2017/18 delivery years, and how much of that transmission capability is already subscribed?

*Panel 2: Alternatives to the Current Mitigation Procedures and Reference Level Calculation* (90 mins)

Panelists should be prepared to discuss possible alternatives to the current market power mitigation procedures and calculations. Panelists should also be prepared to answer questions including, but not limited to, the following: How should opportunity cost underlying reference levels consider physical or economic limitations of capacity sales? Should individual reference levels be developed for market participants that are pivotal suppliers in the capacity market? If so, how should they be determined? What are alternatives to PJM replacement capacity sales for determining the opportunity costs used to establish mitigation reference levels?

*Lunch Break:* (12:15 p.m.–1:15 p.m.)

*Session 2: Local Requirements* (1:15 p.m.–2:15 p.m.)

Panelists should be prepared to describe the calculations of Auction parameters such as Local Reliability Requirements, Capacity Import Limits, Capacity Export Limits, and Local Clearing Requirements, and to answer questions including, but not limited to, the following: What was the rationale behind the methodological change to examine constraints below 200 kV in the calculation of Capacity Import Limits and Capacity Export Limits? How does MISO's calculation of zonal Capacity Import Limits and Capacity Export Limits reflect counter-flows from or into neighboring regions?

*Session 3: Zonal Boundaries* (2:15 p.m.–3:00 p.m.)

Panelists should be prepared to discuss the current zonal boundaries in MISO and the criteria used to establish zonal configuration. Panelists should also be prepared to answer questions including, but not limited to, the following: Have the six criteria in the Tariff established a zonal configuration that reflects the physical constraints on the MISO transmission system? If there is little or no congestion between adjacent zones, what are the reasons for and against combining the zones? What changes to the criteria and/or zonal configuration are currently being considered by MISO?

*Break:* (3:00 p.m.–3:15 p.m.)

*Session 4: Wrap Up* (3:15 p.m.–4:00 p.m.)

Panelists should be prepared to answer questions including, but not limited to, the following: What changes to the Tariff, including those not discussed in the first three sessions, might be necessary to ensure just and reasonable outcomes going forward, and, of these changes, which can be implemented for the 2016/17 Auction?

*Conference Conclusion: Next Steps* (4:00 p.m.–4:15 p.m.)

Following the technical conference, the Commission will consider post-technical conference comments regarding the matters discussed at the conference submitted on or before November 4, 2015.

For more information about this technical conference, please contact Elizabeth Shen, 202–502–6545, [elizabeth.shen@ferc.gov](mailto:elizabeth.shen@ferc.gov), regarding legal issues; or Angelo Mastrogiacommo, 202–502–8689, [angelo.mastrogiacommo@ferc.gov](mailto:angelo.mastrogiacommo@ferc.gov), and Emma Nicholson, 202–502–8846, [emma.nicholson@ferc.gov](mailto:emma.nicholson@ferc.gov), regarding technical issues; or Sarah McKinley, 202–502–8368,

[sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov), regarding logistical issues.

Dated: October 1, 2015.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2015–25632 Filed 10–7–15; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0669; FRL–9934–99]

### Pesticide Program Dialogue Committee; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's Office of Pesticide Programs is announcing a public meeting of the Pesticide Program Dialogue Committee (PPDC) on October 21–22, 2015. In addition, EPA is announcing meetings on October 20, 2015, of the following PPDC Workgroups: Integrated Pest Management, Comparative Safety Statements, 21st Century Toxicology/New Integrated Testing Strategies, and Pesticide Incidents. These meetings provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides.

**DATES:** The PPDC meeting will be held on Wednesday, October 21, 2015, from 9 a.m. to 5:00 p.m. and Thursday, October 22, 2015, from 9 a.m. to 12:00 p.m.

*Work Group Meetings:* On Tuesday, October 20, 2015, PPDC Work Group meetings are scheduled as follows: Integrated Pest Management Work Group, 1:00 p.m. to 3:00 p.m., Comparative Safety Statements Work Group, 2:00 p.m. to 4:00 p.m., 21st Century Toxicology/New Integrated Testing Strategies Work Group, 1:00 p.m. to 3:00 p.m., and Pesticide Incidents Work Group, 1:30 p.m. to 4:00 p.m.

*Agenda:* A draft agenda will be posted on or before October 7, 2015.

*Accommodations requests:* To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** The PPDC Meeting and PPDC Work Group meetings will be held at 1 Potomac Yard South, 2777 S. Crystal Drive, Arlington, VA. The PPDC meeting will be held in the lobby-level Conference Center. The PPDC Work Group meetings will be held as follows: Integrated Pest Management Work Group in the fourth floor conference room number N4850-70, Comparative Safety Statements Work Group in the lobby-level Conference Center; 21st Century Toxicology/New Integrated Testing Strategies Work Group in the ninth floor conference room number 9100; and Pesticide Incidents Work Group in the fourth floor conference room number N4830.

EPA's Potomac Yard South Building is approximately 1 mile from the Crystal City Metro Station.

**FOR FURTHER INFORMATION CONTACT:** Dea Zimmerman, Office of Pesticide Programs (LC-8J), Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, IL 60604; telephone number: (312) 353-6344; email address: [zimmerman.dea@epa.gov](mailto:zimmerman.dea@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you work in agricultural settings or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; the Pesticide Registration Improvement Act, and the Endangered Species Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; state, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2015-0669 is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the

Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**II. Background**

The PPDC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. EPA established the PPDC in September 1995 to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. The following sectors are represented on the current PPDC: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and state/local/tribal governments; the general public; academia; and public health organizations.

**III. How can I request to participate in this meeting?**

PPDC meetings are free, open to the public, and no advance registration is required. Public comments may be made during the public comment session of each meeting or in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: October 2, 2015.

**Marty Monell,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 2015-25687 Filed 10-7-15; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OA-2015-0210; FRL 9935-35-OARM]

**National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Advisory Committee meeting teleconference call.

**SUMMARY:** Under the Federal Advisory Committee Act, Public Law 92-463, EPA gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in her capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Public Law 103-182, and as directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The NAC is composed of 14 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 15 members representing state, local, and Tribal governments. The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC.

The purpose of this meeting is to provide advice on a variety of trade and environment issues in North America. The meeting will also include a public comment session. The agenda, meeting materials, and general information about NAC and GAC will be available at <http://www2.epa.gov/faca/nac-gac>.

**DATES:** The NAC/GAC will hold a public teleconference on October 23, 2015, from 1:00 p.m. to 5:30 p.m. Eastern Standard Time.

**ADDRESSES:** The meeting will be held at the U.S. EPA William Jefferson Clinton East Building, 1201 Constitution Avenue NW., Room 1132, Washington, DC 20004

**FOR FURTHER INFORMATION CONTACT:** Oscar Carrillo, Designated Federal Officer, [carrillo.oscar@epa.gov](mailto:carrillo.oscar@epa.gov), 202-564-0347, U.S. EPA, Office of Diversity, Advisory Committee Management and Outreach (1601-M), 1200 Pennsylvania Avenue NW., Washington, DC 20004.

**SUPPLEMENTARY INFORMATION:** Requests to make oral comments or to provide written comments to NAC/GAC should be sent to Oscar Carrillo at [carrillo.oscar@epa.gov](mailto:carrillo.oscar@epa.gov) by Wednesday, October 14, 2015. The meeting is open to the public, with limited seating on a first-come, first-served basis. Members of the public wishing to participate in

the teleconference should contact Oscar Carrillo at [carrillo.oscar@epa.gov](mailto:carrillo.oscar@epa.gov) or (202) 564-0347 by October 14, 2015.

**Meeting Access:** For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202-564-0347 or [carrillo.oscar@epa.gov](mailto:carrillo.oscar@epa.gov). To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 17, 2015.

**Oscar Carrillo,**

*Designated Federal Officer.*

[FR Doc. 2015-25675 Filed 10-7-15; 8:45 am]

**BILLING CODE 6560-50-P**

## Environmental Protection Agency

[EPA-HQ-OPPT-2013-0677; FRL-9934-79]

### Receipt of Test Data Under the Toxic Substances Control Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing its receipt of test data submitted pursuant to a test rule issued by EPA under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which test data have been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the test data received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: Kathy Calvo, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-8089; email address: [calvo,kathy@epa.gov](mailto:calvo,kathy@epa.gov).

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. Chemical Substances and/or Mixtures

Information about the following chemical substances and/or mixtures is provided in Unit IV.:

*1H,3H-Benzo[1,2-c:4,5-c']difuran-1,3,5,7-tetrone (aka PMDA) (CAS RN 89-32-7).*

### II. Federal Register Publication Requirement

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under TSCA section 4 (15 U.S.C. 2603).

### III. Docket Information

A docket, identified by the docket identification (ID) number EPA-HQ-OPPT-2013-0677, has been established for this Federal Register document that announces the receipt of data. Upon EPA's completion of its quality assurance review, the test data received will be added to the docket for the TSCA section 4 test rule that required the test data. Use the docket ID number provided in Unit IV. to access the test data in the docket for the related TSCA section 4 test rule.

The docket for this **Federal Register** document and the docket for each related TSCA section 4 test rule is available electronically at <http://www.regulations.gov> or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

### IV. Test Data Received

This unit contains the information required by TSCA section 4(d) for the test data received by EPA.

*1H,3H-Benzo[1,2-c:4,5-c']difuran-1,3,5,7-tetrone (aka PMDA) (CAS RN 89-32-7).*

1. **Chemical Use(s):** Epoxy curing and cross-linking agent; plasticizer and synthetic intermediate.

2. **Applicable Test Rule:** Chemical testing requirements for second group of high production volume chemicals (HPV2), 40 CFR 799.5087.

3. **Test Data Received:** The following listing describes the nature of the test data received. The test data will be added to the docket for the applicable TSCA section 4 test rule and can be found by referencing the docket ID number provided. EPA reviews of test data will be added to the same docket upon completion.

*Reproduction Developmental Toxicity Screening Test (F1).* The docket ID number assigned to this data is EPA-HQ-OPPT-2007-0531.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: October 1, 2015.

**Maria J. Doa,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2015-25686 Filed 10-7-15; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0286]

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before December 7, 2015. If you anticipate that you will be submitting comments, but find it



difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [CathyWilliams@fcc.gov](mailto:CathyWilliams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-0286.

*Title:* Section 80.302, Notice of Discontinuance, Reduction, or Impairment of Service Involving a Distress Watch.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit, not-for-profit institutions, and State, local, or tribal government.

*Number of Respondents and*

*Responses:* 160 respondents and 160 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection 47 U.S.C. 154, 303, 307(e), 309 and 332, unless noted.

*Total Annual Burden:* 160 hours.

*Annual Cost Burden:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:*

There is no need for confidentiality with this collection of information.

*Needs and Uses:* The reporting requirement contained in section 80.302 is necessary to ensure that the U.S. Coast Guard is timely notified when a coast station, which is responsible for maintaining a listening watch on a designated marine distress and safety frequency discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2015-25577 Filed 10-7-15; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Monday, October 5, 2015 at 2:30 p.m.

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

**STATUS:** This meeting was closed to the public.

**ITEMS DISCUSSED:** Compliance matters pursuant to 52 U.S.C. 30109.

Internal personnel decisions, or internal rules and practices.

\* \* \* \* \*

**PERSON TO CONTACT FOR INFORMATION:**

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

**Shawn Woodhead Werth,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2015-25736 Filed 10-6-15; 11:15 am]

**BILLING CODE 6715-01-P**

## FEDERAL HOUSING FINANCE AGENCY

[No. 2015-N-09]

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of Revisions to Existing Systems of Records Notices.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (Privacy Act), notice is hereby given that the Federal Housing Finance Agency (FHFA) is revising its existing Systems of Records Notices (SORN) to change and/or add to the System Location Address; the System Manager Address; and the Address for where to direct inquiries and requests.

The proposed revisions are to the following systems: Federal Home Loan Bank System Directory (FHFA-1); Financial Management System (FHFA-2); Correspondence Tracking System (FHFA-3); Compensation Information Provided by the Regulated Entities (FHFA-4); Mail, Contact, Telephone, and Other Lists (FHFA-7); Federal Home Loan Bank Directors (FHFA-8); Administrative Grievance Records (FHFA-9); Employee Benefits Records (FHFA-10); Transit Subsidy Program Records (FHFA-11); Parking Program Records (FHFA-12); Freedom of Information Act and Privacy Act Records (FHFA-13); Emergency Notification System (FHFA-14); Payroll, Retirement, Time and Attendance, and

Leave Records (FHFA-15); and Personnel Investigative Files (FHFA-16).

Since the revisions to these existing systems of records are purely administrative in nature, they will become effective upon publication in the **Federal Register**.

**DATES:** These revisions are effective October 8, 2015. See **SUPPLEMENTARY INFORMATION** for additional information.

**FOR FURTHER INFORMATION CONTACT:**

Stacy Easter, Privacy Act Officer, [privacy@fhfa.gov](mailto:privacy@fhfa.gov) or (202) 649-3803; or David A. Lee, Senior Agency Official for Privacy, [privacy@fhfa.gov](mailto:privacy@fhfa.gov) or (202) 649-3803 (not toll-free numbers), Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Deaf is 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

This notice satisfies the Privacy Act requirement that an agency publishes a system of records notice in the **Federal Register** when there is an addition or change to the agency's systems of records. Although Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act, the Director of FHFA has determined that records and information in this system of records are not exempt from the requirements of the Privacy Act.

Pursuant to paragraph 4.c.(1) of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (61 FR 6428, 6435 February 20, 1996), FHFA has not submitted a report describing the system of records covered by this notice to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, because the changes to the systems are minor and administrative and changes of this nature are not required to be reported.

### II. Notice of Amendment of Systems of Records

The following systems of records, Federal Home Loan Bank System Directory (FHFA-1), Financial Management System (FHFA-2), and Correspondence Tracking System (FHFA-3), all established at 74 FR 31949 (Jul. 6, 2009); Compensation Information Provided by the Regulated

Entities (FHFA-4), established at 75 FR 35028 (Jun. 21, 2010); Mail, Contact, Telephone, and Other Lists (FHFA-7), Federal Home Loan Bank Directors (FHFA-8), Administrative Grievance Records (FHFA-9), Employee Benefits Records (FHFA-10), Transit Subsidy Program Records (FHFA-11), Parking Program Records (FHFA-12), and Freedom of Information Act and Privacy Act Records (FHFA-13), all established at 76 FR 33286 (Jun. 8, 2011); and Emergency Notification System (FHFA-14), Payroll, Retirement, Time and Attendance, and Leave Records (FHFA-15), and Personnel Investigative Files (FHFA-16), all established at 77 FR 499 (Jan. 5, 2012), are hereby revised as follows:

**SYSTEM LOCATIONS:**

Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees.

For the Payroll, Retirement, Time and Attendance, and Leave Records (FHFA-15) system only, add the following under System Locations: Department of the Interior, Interior Business Center, 7301 W. Mansfield Avenue, Lakewood, CO 80235.

**SYSTEM MANAGER(S) AND ADDRESS:**

Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024, and any alternate work site utilized by FHFA employees or by individuals assisting such employees.

For the Payroll, Retirement, Time and Attendance, and Leave Records (FHFA-15) system only, add the following under System Address: Department of the Interior, Interior Business Center, 7301 W. Mansfield Avenue, Lakewood, CO 80235.

**NOTIFICATION AND RECORD ACCESS PROCEDURES:**

Direct inquiries and requests to the Privacy Act Officer by mail at Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024, or electronically at <http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/Privacy.aspx> in accordance with the procedures set forth in 12 CFR part 1204.

**CONTESTING RECORD PROCEDURES:**

Direct requests to the Privacy Act Appeals Officer by mail at Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024, or electronically at <http://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/Privacy.aspx> in accordance with the

procedures set forth in 12 CFR part 1204.

Dated: September 29, 2015.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2015-25678 Filed 10-7-15; 8:45 am]

**BILLING CODE 8070-01-P**

**FEDERAL RESERVE SYSTEM**

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

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

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

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 2, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *First Merchants Corporation*, Muncie, Indiana; to merge with Ameriana Bancorp, and thereby indirectly acquire Ameriana Bank, both in New Castle, Indiana.

Board of Governors of the Federal Reserve System, October 5, 2015.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2015-25629 Filed 10-7-15; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM**

**Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB**

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension, without revision, of the following report:

*Report title:* Registration of a Securities Holding Company.

*Agency form number:* FR 2082.

*OMB control number:* 7100-0347.

*Frequency:* On occasion.

*Reporters:* Securities holding companies.

*Estimated annual reporting hours:* 40 hours.

*Estimated average hours per response:* 8 hours.

*Number of respondents:* 5.

*General description of report:* The FR 2082 is authorized pursuant to Section 618 of the Dodd-Frank Act (12 U.S.C. 1850a). The institutions' obligation to report is mandatory for companies that elect to register under Section 618. The confidentiality of the forms required to

be filed pursuant to section 241.3(b)(3)(i) is covered in specific memoranda relating to those forms. With respect to the "Registration of a Securities Holding Company" form required pursuant to section 241.3(a)(1), the information submitted on and with the form is normally public. However, a company may seek confidential treatment for any such information that it believes is exempt from disclosure under FOIA (5 U.S.C. 552(b)(1)–(9)). A determination of confidentiality would be made on a case-by-case basis.

**Abstract:** On June 4, 2012, the Federal Reserve published a final rulemaking for Securities Holding Companies (Regulation OO) in the **Federal Register** (77 FR 32881). Regulation OO implements section 618 of the Dodd-Frank Act, which permits nonbank companies that own at least one registered securities broker or dealer, and that are required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision, to register with the Board and subject themselves to supervision by the Board.

**Current Actions:** On July 23, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 43777) requesting public comment on the proposed extension, without revision, of the FR 2082. The comment period for the notice expired on September 21, 2015. The Federal Reserve did not receive any comments on the proposal, and the FR 2082 will be extended without revision as proposed.

Final approval under OMB delegated authority of the extension, with revision, of the following report:

**Report title:** Request for Proposal and Request for Price Quotations.

**Agency form number:** RFP and RFPQ.

**OMB control number:** 7100–0180.

**Frequency:** On occasion.

**Reporters:** Vendors of goods and services.

**Estimated annual reporting hours:**

RFP: 17,500 hours; RFPQ: 4,400 hours; Subcontractor report: 50 hours.

**Estimated average hours per response:** RFP: 50 hours; RFPQ: 2 hours; Subcontractor report: 20 minutes.

**Number of respondents:** RFP: 350; RFPQ: 2,200; Subcontractor report: 150.

**General description of report:** The RFP and RFPQ are required to obtain a benefit and are authorized by Sections 10(3), 10(4), and 11(1) of the Federal Reserve Act (12 U.S.C. 243, 244, and 248(l)). With regard to the Subcontracting Report, Section 342(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the Federal Reserve to develop and implement standards and

procedures to assess the diversity policies and practices in all business and activities of the agency at all levels, including procurement, insurance, and all types of contracts. (12 U.S.C. 5452(c)(1)). "Such procedure shall include a written statement, in a form and with such content as the Director [of OMWI] shall prescribe . . . that a contractor shall ensure . . . the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors." (12 U.S.C. 5452(c)(2)).

Proposals from vendors that are not accepted and incorporated into contracts with the Federal Reserve would be protected from Freedom of Information (FOIA) disclosure by 41 U.S.C. 4702, which expressly prohibits FOIA disclosure of these proposals. Moreover, during the solicitation process vendors are permitted to mark information contained in their proposals that is proprietary or confidential with the label RESTRICTED DATA. For information so marked, the Federal Reserve also may determine on a case-by-case basis whether FOIA exemption 4, which applies to "trade secrets and commercial or financial information," would protect information from disclosure pursuant to a FOIA request (5 U.S.C. 552(b)(4)).

**Abstract:** The Federal Reserve uses the RFP and the RFPQ as appropriate to obtain competitive proposals and contracts from approved vendors of goods and services. This information collection is required to collect data on prices, specifications of goods and services, and qualifications of prospective vendors.

**Current Actions:** On July 23, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 43777) requesting public comment on the proposed extension, with revision, of the RFP and RFPQ. In connection with the RFP and RFPQ process, the Federal Reserve proposed to require prime contractors to submit a Subcontracting Report that would collect information about their subcontractors' commitments toward diversity and inclusion of minority-owned and women-owned vendors in the subcontractor's activities. The comment period for the notice expired on September 21, 2015. The Federal Reserve received one comment, which stated that contracting programs should be open to all and that no one should be discriminated against nor granted preferential treatment because of skin color, national origin, or sex. The RFP and RFPQ will be extended with revision as proposed.

Board of Governors of the Federal Reserve System, October 5, 2015.

**Robert deV. Frierson,**  
*Secretary of the Board.*

[FR Doc. 2015–25664 Filed 10–7–15; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

[File No. 151 0018]

### Wright Medical Group, Inc. and Tornier N.V.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 30, 2015.

**ADDRESSES:** Interested parties may file a comment at <https://ftcpublic.commentworks.com/ftc/wrighttornierconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Wright Medical Group, Inc. and Tornier N.V.—Consent Agreement; File No. 151 0018" on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/wrighttornierconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Wright Medical Group, Inc. and Tornier N.V.—Consent Agreement; File No. 151 0018" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Aylin M. Skroejer (202–326–2459), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been

filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 30, 2015), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 30, 2015. Write "Wright Medical Group, Inc. and Tornier N.V.—Consent Agreement; File No. 151 0018" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept

confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/wrighttornierconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you file your comment on paper, write "Wright Medical Group, Inc. and Tornier N.V.—Consent Agreement; File No. 151 0018" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 30, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

### **Analysis of Agreement Containing Consent Order To Aid Public Comment Introduction**

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Wright Medical Group, Inc. ("Wright") and Tornier N.V. ("Tornier") designed to remedy the anticompetitive effects resulting from the proposed merger of Wright and Tornier. Under the terms of the proposed Decision and Order ("Order")

contained in the Consent Agreement, the parties are required to divest to Integra Lifesciences Corporation ("Integra") all of Tornier's rights and assets related to the following reconstructive joint markets: (1) Total ankle replacements; (2) total silastic big toe joint replacements; and (3) total silastic toe joint replacements for the second through fifth "lesser" toes.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Consent Agreement and the comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

Pursuant to an Agreement and Plan of Merger dated October 27, 2014, Wright and Tornier propose to merge in an all-stock transaction valued at approximately \$3.3 billion (the "Proposed Merger"). The Commission's Complaint alleges that the Proposed Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the U.S. markets for total ankle replacements and total silastic toe joint replacements. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be lost in these markets as a result of the Proposed Merger.

### **The Parties**

Headquartered in Memphis, Tennessee, Wright is a global orthopedic company that divides its business into three categories: foot and ankle hardware; upper extremity reconstructive devices; and biologics products.

Tornier is a global medical device company based in Amsterdam, the Netherlands, with U.S. operations headquartered in Bloomington, Minnesota. Tornier's U.S. products include those for the upper extremity joints; lower extremity joints; sports medicine; and biologics.

### **The Relevant Products and Structure of the Markets**

#### **I. Total Ankle Replacements**

Total ankle replacements are used to treat end-stage ankle arthritis, which develops when cartilage on the bones of the ankle joint wears away and causes bone-on-bone grinding down of the joint

<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request,

and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

surface. Patients with end-stage ankle arthritis experience pain and swelling at the ankle along with difficulty walking. Total ankle replacements reduce the pain while maintaining the motion at the ankle joint. They replace damaged bone and cartilage with a metal tibial tray, a metal talar dome, and a polyethylene bearing. In a fixed bearing total ankle replacement, the polyethylene bearing is locked to the tibial component, while in a mobile bearing system it moves independently. Physicians and their patients would not switch to an alternative product or therapy in response to a small but significant increase in the price of total ankle replacements.

Wright, Tornier, and Stryker Corporation (“Stryker”) are the only significant suppliers in the U.S. market for total ankle replacements, accounting for 44%, 19%, and 31% of 2014 sales, respectively. Wright and Tornier are each other’s closest competitor. These companies both offer fixed bearing technologies and the only options for revision surgeries, *i.e.*, surgeries to redo a prior total ankle replacement procedure. The other leading supplier, Stryker, supplies the only mobile bearing system in the United States, making it a more distant competitor to Wright and Tornier. The only other U.S. supplier of total ankle replacements, Zimmer Holdings, Inc. (“Zimmer”) offers a technology that typically is used only in specialized cases. Zimmer maintains a fringe position in the market.

## II. Total Silastic Toe Joint Replacements

Total big toe joint replacements treat severe cases of *hallux rigidus*, an arthritic condition in the first metatarsophalangeal (“MTP”) joint of the big toe. Pain and inflammation at the first MTP joint restricts movement of the big toe and leads to difficulty walking. Total big toe joint replacements relieve pain and preserve motion in the big toe.

There are two types of total big toe joint replacements: Metal and silastic. Total silastic big toe joint replacements are a distinct antitrust market. Surgeons that favor total silastic big toe joint replacements over metal implants do so for the silastic implants’ flexibility and longevity. The silastic implants are also significantly less expensive than total metal big toe joint replacements. Physicians and patients do not view total silastic and total metal big toe joint replacements as reasonably interchangeable. A small but significant increase in the price of total silastic big toe joint replacements would not cause

physicians or patients to switch to other products or therapies.

The U.S. market for total silastic big toe joint replacements is highly concentrated. Wright and Tornier are the only significant suppliers of the product, accounting for approximately 60% and 38% of the market, respectively. The next closest competitor to Wright and Tornier—Sgarlato Med LLC—accounts for a nominal share of the market.

Although more rare than in the big toes, severe arthritis also occurs in the MTP joints of the lesser toes. Physicians and patients who use total silastic lesser toe joint replacements would not switch to any other product or procedure in response to a small but significant increase in the price of the total silastic toe joint implants. Wright, Tornier, and OsteoMed supply total silastic lesser toe joint replacements in the United States, and Wright and Tornier are each other’s closest competitor. The Proposed Merger would result in a combined market share of approximately 76%.

The relevant geographic market for total ankle replacements and total silastic toe joint replacements is the United States. These products are medical devices regulated by the U.S. Food and Drug Administration (“FDA”). Medical devices sold outside of the United States, but not approved for sale in the United States, do not provide viable competitive alternatives for U.S. consumers.

### Entry Conditions

Entry in the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Merger. To enter or effectively expand in any of the relevant markets successfully, a supplier would need to design and manufacture an effective product, obtain FDA approval, and develop clinical history supporting the long-term efficacy of its product. The new entrant or expanding firm would also need to develop and foster product loyalty and establish a nationwide sales network capable of marketing the product and providing on-site service at hospitals nationwide. Establishing a track record for quality, service, and consistency is difficult, expensive, and typically spans several years.

### Competitive Effects of the Merger

The Proposed Merger would likely result in significant competitive harm to consumers in the markets for total ankle replacements and total silastic toe joint replacements. As particularly close substitutes in each relevant market,

Wright and Tornier respond directly to competition from each other with improved products, better service, and lower prices. By eliminating this direct and substantial head-to-head competition, the Proposed Merger likely would allow the combined firm to exercise market power unilaterally, resulting in less innovation and higher prices for consumers.

### The Consent Agreement

The Consent Agreement eliminates the competitive concerns raised by the Proposed Merger by requiring the parties to divest to Integra all of the rights and assets needed for it to become an independent, viable, and effective competitor in the U.S. markets for total ankle replacements and total silastic toe joint replacements. The divestitures will maintain the competition that currently exists in each of the relevant markets.

Integra is well positioned to restore the competition that otherwise would be lost through the Proposed Merger. Headquartered in Plainsboro, New Jersey, Integra is a global medical device company that has experience manufacturing, marketing, and distributing orthopedic devices in the United States, and a track record for quality, service, and consistency. Integra’s lower extremity product portfolio is also highly complementary to Tornier’s total ankle replacements and total silastic toe joint replacements.

The Order requires Tornier to divest all U.S. assets and rights related to the relevant products, including intellectual property, manufacturing technology, and existing inventory. In order to ensure continuity of supply, the Order requires that the parties supply Integra with total ankle replacements for up to three years and total silastic toe joint replacements for up to one year while Integra transitions to independent manufacturing and works to obtain FDA approval.

To ensure that the divestitures are successful, the Order requires the parties to enter into a transitional services agreement with Integra to assist the company in establishing its manufacturing capabilities and securing all necessary FDA approvals. Further, the Order requires that the parties transfer all confidential business information to Integra, as well as provide access to employees who possess or are able to identify such information. Integra also will have the right to interview and offer employment to employees associated with the relevant products.

The parties must accomplish these divestitures and relinquish their rights to Integra no later than ten days after the

Proposed Merger is consummated. If the Commission determines that Integra is not an acceptable acquirer, or that the manner of the divestitures is not acceptable, the proposed Order requires the parties to unwind the sale of rights to Integra and then divest the products to a Commission-approved acquirer within six months of the date the Order becomes final. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products as required.

The Order also requires the parties to appoint Quantic Regulatory Services, LLC as interim monitor to ensure the parties comply with the obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the assets and rights to Integra.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 2015-25604 Filed 10-7-15; 8:45 am]

BILLING CODE 6750-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-16-15BHD; Docket No. CDC-2016-0088]

#### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, 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. This notice invites comment on Congenital Heart Surveillance to Recognize Outcomes, Needs and well-being (CHSTRONG). CDC seeks to collect data for the purpose of providing insight into the public health questions that remain for

the population and to develop services and allocate resources to improve long-term health and wellbeing.

**DATES:** Written comments must be received on or before December 7, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2016-0088 by any of the following methods:

- *Federal eRulemaking Portal:*

*Regulation.gov.* Follow the instructions for submitting comments.

- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS-D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

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; (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

#### Proposed Project

Congenital Heart Surveillance To Recognize Outcomes, Needs, and Well-being (CHSTRONG)—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

Congenital heart defects (CHDs) are the most common type of structural birth defects, affecting approximately 1 in 110 live-born children. In prior decades, many CHDs were considered fatal during infancy or childhood, but with tremendous advances in pediatric cardiology and cardiac surgery, at least 85% of patients now survive to adulthood and there are approximately 1.5 million adults with CHD living in the United States. With vast declines in mortality from pediatric heart disease over the past 30 years, it is vital to evaluate long term outcomes and quality of life issues for adults with CHD. However, U.S. data on long term outcomes, quality of life issues, and comorbidities of adults born with CHD are lacking. U.S. data is needed to provide insight into the public health questions that remain for this population and to develop services and allocate resources to improve long-term health and wellbeing.

For this one-year project, we will use data from U.S. state birth defect surveillance systems to identify a population-based sample of individuals 18 to 45 years of age born with CHD. We will then use state databases and online search engines to find current addresses for those individuals and mail surveys to them inquiring about their barriers to

health care, quality of life, social and educational outcomes, and transition of care from childhood to adulthood. The information collected from this population-based survey will be used to inform current knowledge, allocate resources, develop services, and,

ultimately, improve long-term health of adults born with CHD.

We estimate identifying 7,500 individuals with CHD in the birth defects surveillance systems, obtaining current addresses and sending surveys to 5,625 individuals with CHD (75%), and receiving completed surveys from 4,500 individuals (80%). The survey

takes approximately 25 minutes to complete, which includes 5 minutes to read the informed consent and 20 minutes to answer survey questions. Therefore, we estimate the total burden hours are 1,875.

There are no costs to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Individuals with CHD .....	Informed consent .....	4,500	1	5/60	375
Individuals with CHD .....	Survey .....	4,500	1	20/60	1,500
Total .....	.....	.....	.....	.....	1,875

**Leroy A. Richardson,**  
*Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.*

[FR Doc. 2015-25647 Filed 10-7-15; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60 Day-16-15BHH; Docket No. CDC-2016-0087]

**Proposed Data Collection Submitted for Public Comment and Recommendations**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, 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. This notice invites comment on the Personal Protective Equipment Information (PPE-Info) Database which is a compendium of personal protective equipment (PPE) Federal regulations and consensus standards.

**DATES:** Written comments must be received on December 7, 2015.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2016-0087 by any of the following methods:

*Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.

*Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

**Please note:** All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: omb@cdc.gov.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed

extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

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; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

**Proposed Project**

PPE-Info Database—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–173 as amended by Public Law 95–164 (Federal Mine Safety and Health Act of 1977), NIOSH is proposing a three-year study to conduct research to advance the health and safety of workers.

National Personal Protective Technology Laboratory (NPPTL) developed the NIOSH PPE-Info Database in response to recommendations from the Institute of Medicine (IOM) in its report, *Certifying Personal Protective Technologies (PPT): Improving Worker Safety*. The report recommended that NPPTL “expand its efforts to become a national clearinghouse for information on all types of PPT.”

In its current application, the database provides standards developers, manufacturers, purchasers, and end users of PPE with a comprehensive tool which allows general or advanced criteria searches of relevant standards, target occupational groups, basic conformity assessment specifications, accredited lab information, and standard connections.

The CDC is currently updating its PPE selection guidance related to the Ebola response. This guidance, *Guidance on Personal Protective Equipment To Be Used by Healthcare Workers During Management of Patients with Ebola Virus Disease in U.S. Hospitals, Including Procedures for Putting On (Donning) and Removing (Doffing)* (hereafter referred to as the “CDC Ebola Response PPE Guidance”) will provide recommendations, in the form of

protection standards, for PPE selection and use for the Ebola response.

The NIOSH PPE-Info Database is being expanded as a tool to connect the protection standards that already exist in the database, with relevant PPE information as identified through the updated CDC Ebola Response PPE Guidance. This new aspect of the NIOSH PPE-Info Database allows end users (e.g., healthcare workers) to find products (e.g., gowns and coveralls) that are compliant (as verified by manufacturer) with the protection standards outlined by the CDC Ebola Response PPE Guidance. The initial information in the NIOSH PPE-Info Database will only offer guidance on gowns and coveralls, but is intended to expand to all PPE types associated with the official CDC Ebola Response PPE Guidance in the future. Since there is no single source of this information, NIOSH is requesting that Manufacturers provide it directly for input into the Ebola PPE selection guidance portion of the database.

NIOSH is requesting that a Memorandum of Understanding (MOU) be developed with Ebola response PPE manufacturers to facilitate cooperation and collaboration on the provision of product information. The primary focus of the collaboration will be the exchange of manufacturer product information to be aggregated and displayed in the NIOSH PPE-Info Database.

The nature and use of this information exchange includes the (1) provision of product information regarding compliance (as verified by manufacturers) with designated protection standards related to CDC guidance for personal protective equipment (PPE) used by healthcare workers during management of patients with confirmed or suspected Ebola Virus Disease (“Ebola”) and (2) the verification, by manufacturers, of product information displayed in the NIOSH PPE-Info Database.

Once the MOU is signed, the manufacturer will be sent a product information sheet. Using the product information sheet, NIOSH collects manufacturer-specific product information such as; product category (e.g., gown or coverall), standards that the product claim complies with, product model number, product name, link to product specification sheet from manufacturer, and designation of whether third-party testing was performed. Once this information is completed, the product information sheet is electronically signed and returned by email to NIOSH. The NIOSH project officer will then upload the information into a PPE-Info sub database, which acts as an interim point for review. The manufacturer is then sent a link to the sub database to review their products. The manufacturer has one week to make objections. If no objections are made, the information in the sub-database gets published to the live NIOSH PPE-Info database.

Quarterly, manufacturer products will be pulled from the database and sent through a pre generated product information sheet to the manufacturer POC. Manufacturers are required through the MOU to complete and return the PPE Information Sheet within two weeks of receipt along with the electronic verification form.

NIOSH will be soliciting information from manufacturers and manufacturer POCs. For products that comply with gown and coverall standards, we estimate that seven manufacturers will need to supply product information. The amount of time for manufacturers to complete the initial product information sheets and make quarterly updates will be no more than 3 hours for the initial product information and one hour for the quarterly updates. The total estimated burden hours are 42. There are no costs to respondents other than their time.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Manufacturer .....	Initial Product Info Sheet .....	7	1	3	21
Manufacturer POC .....	Quarterly product Info Sheet .....	7	3	1	
Total .....	.....	.....	.....	.....	42



Leroy A. Richardson,  
Chief, Information Collection Review Office,  
Office of Scientific Integrity, Office of the  
Associate Director for Science, Office of the  
Director, Centers for Disease Control and  
Prevention.

[FR Doc. 2015-25646 Filed 10-7-15; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day-16-0234; Docket No. CDC-2015-  
0086]

#### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and  
Prevention (CDC), Department of Health  
and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease  
Control and Prevention (CDC), as part of  
its continuing efforts to reduce public  
burden and maximize the utility of  
government information, 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. This notice invites  
comment on the proposed revision of  
the National Ambulatory Medical Care  
Survey (NAMCS). The purpose of  
NAMCS is to meet the needs and  
demands for statistical information  
about the provision of ambulatory  
medical care services in the United  
States.

**DATES:** Written comments must be  
received on or before December 7, 2015.

**ADDRESSES:** You may submit comments,  
identified by Docket No. CDC-2016-  
0026 by any of the following methods:

- *Federal eRulemaking Portal:*  
Regulation.gov. Follow the instructions  
for submitting comments.
- *Mail:* Leroy A. Richardson,  
Information Collection Review Office,  
Centers for Disease Control and  
Prevention, 1600 Clifton Road NE., MS-  
D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received  
must include the agency name and  
Docket Number. All relevant comments  
received will be posted without change  
to *Regulations.gov*, including any  
personal information provided. For  
access to the docket to read background  
documents or comments received, go to  
*Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** To  
request more information on the  
proposed project or to obtain a copy of  
the information collection plan and  
instruments, contact the Information  
Collection Review Office, Centers for  
Disease Control and Prevention, 1600  
Clifton Road, NE., MS-D74, Atlanta,  
Georgia 30329; phone: 404-639-7570;  
Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the  
Paperwork Reduction Act of 1995 (PRA)  
(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. In addition, the PRA also  
requires Federal agencies to provide a  
60-day notice in the **Federal Register**  
concerning each proposed collection of  
information, including each new  
proposed collection, each proposed  
extension of existing collection of  
information, and each reinstatement of  
previously approved information  
collection before submitting the  
collection to OMB for approval. To  
comply with this requirement, we are  
publishing this notice of a proposed  
data collection as described below.

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; (d) ways to minimize the  
burden of the collection of information  
on respondents, including through the  
use of automated collection techniques  
or other forms of information  
technology; and (e) estimates of capital  
or start-up costs and costs of operation,  
maintenance, and purchase of services  
to provide information. Burden means  
the total time, effort, or financial  
resources expended by persons to  
generate, maintain, retain, disclose or  
provide information to or for a Federal  
agency. This includes the time needed  
to review instructions; to develop,  
acquire, install and utilize technology  
and systems for the purpose of  
collecting, validating and verifying  
information, processing and  
maintaining information, and disclosing  
and providing information; to train  
personnel and to be able to respond to  
a collection of information, to search  
data sources, to complete and review  
the collection of information; and to  
transmit or otherwise disclose the  
information.

#### Proposed Project

The National Ambulatory Medical  
Care Survey (NAMCS), (OMB No. 0920-  
0234, expires 12/31/2017)—Revision —  
National Center for Health Statistics  
(NCHS), Centers for Disease Control and  
Prevention (CDC).

#### Background and Brief Description

Section 306 of the Public Health  
Service (PHS) Act (42 U.S.C. 242k), as  
amended, authorizes that the Secretary  
of Health and Human Services, acting  
through NCHS, shall collect statistics on  
the utilization of health care provided  
by non-federal office-based physicians  
in the United States. On December 19,  
2014, the OMB approved data collection  
for three years from 2015 to 2017. This  
revision is to request approval to  
continue NAMCS data collection  
activities for three years from 2016-  
2018 and to add questions to the  
physician interview that pertain to  
policies, services, and experiences  
related to the prevention and treatment  
of sexually transmitted infections (STIs)  
and HIV prevention among adolescents  
and others. Small modifications will  
also be made to questions on the use of  
electronic health records. This notice  
also covers a decrease in the sample size  
resulting from smaller budget  
allocations. Due to this decrease,  
selected state estimates will not be  
available for 2016-2018 data.

The National Ambulatory Medical  
Care Survey (NAMCS) has been  
conducted intermittently from 1973  
through 1985, and annually since 1989.  
The purpose of NAMCS, a voluntary  
survey, is to meet the needs and  
demands for statistical information  
about the provision of ambulatory  
medical care services in the United  
States. Ambulatory services are  
rendered in a wide variety of settings,  
including physicians' offices and  
hospital outpatient and emergency  
departments.

The NAMCS target universe consists  
of all office visits made by ambulatory  
patients to non-Federal office-based  
physicians (excluding those in the  
specialties of anesthesiology, radiology,  
and pathology) who are engaged in  
direct patient care. In 2006, physicians  
and mid-level providers (*i.e.*, nurse  
practitioners, physician assistants, and  
nurse midwives) practicing in  
community health centers (CHCs) were  
added to the NAMCS sample, and these  
data will continue to be collected.

To complement NAMCS data, NCHS  
initiated the National Hospital  
Ambulatory Medical Care Survey  
(NHAMCS, OMB No. 0920-0278,  
expires 02/28/18) in 1992 to provide

data concerning patient visits to hospital outpatient and emergency departments. NAMCS and NHAMCS are

the principal sources of data on ambulatory care provided in the United States.

There is no cost to the respondents other than their time.

## ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Office-based physicians	Physician Induction Interview (NAMCS-1) .....	2,590	1	45/60	1,943
	Patient Record form (NAMCS-30) (Physician abstracts).	259	30	14/60	1,813
	Prepare and transmit EHR (MU On-Boarding) .....	130	1	1	130
	Pulling, refiling medical record forms (FR abstracts).	2,201	30	1/60	1,101
Community Health Centers.	Induction Interview—service delivery site (NAMCS-201).	104	1	30/60	52
	Induction Interview—Providers (NAMCS-1) .....	234	1	30/60	117
	Patient Record form (NAMCS-30) (Provider abstracts).	23	30	14/60	161
	Pulling, refiling medical record forms (FR abstracts).	211	30	1/60	106
Reabstraction study .....	Pulling, refiling medical record forms abstracts) .....	72	10	1/60	12
Total .....	.....	.....	.....	.....	5,435

**Leroy A. Richardson,**

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015-25648 Filed 10-7-15; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA-2013-D-1622]

**Submitting Food Canning Establishment Registration Form and Food Process Filing Forms to the Food and Drug Administration in Electronic or Paper Format: Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a guidance entitled “Submitting Form FDA 2541 (Food Canning Establishment Registration) and Forms FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g (Food Process Filing Forms) to FDA in Electronic or Paper Format: Guidance for Industry.” This guidance describes the administrative procedures to be used by commercial processors that manufacture, process, or pack acidified foods (“AF”) and/or thermally processed low-acid foods packaged in hermetically sealed containers (historically referred to as “low-acid canned foods” or “LACF”). These

changes include new registration and food process filing forms and a new “smart form” system for electronic submission of the process filing forms. Registration and process filing are required by the AF and LACF provisions of our regulations. This guidance also provides general information about how to use FDA’s systems for electronic submission of the applicable forms. In addition, this guidance describes administrative procedures for voluntary registration and voluntary submissions when a commercial processor has determined that its product is not an acidified food or a low-acid canned food, and is therefore not subject to our regulations for AF and LACF. Further, this guidance describes a voluntary process whereby, upon request, we review data and other information that relate to a new processing method or new equipment.

**DATES:** Submit either electronic or written comments on FDA guidances at any time.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions:* Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or

anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions:* Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA-2013-D-1622 for Submitting Food Canning Establishment Registration Form and Food Process Filing Forms to the Food and Drug Administration in Electronic or Paper Format: Guidance for Industry; Availability. Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets

Management between 9 a.m. and 4 p.m., Monday through Friday.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION”. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance entitled “Submitting Form FDA 2541 (Food Canning Establishment Registration) and Forms FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g (Food Process Filing Forms) to FDA in Electronic or Paper Format: Guidance for Industry” to Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–HFS–302), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Susan Brecher, Center for Food Safety and Applied Nutrition (HFS–302), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1781.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

We are announcing the availability of a guidance for industry entitled “Submitting Form FDA 2541 (Food Canning Establishment Registration) and Forms FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g (Food Process Filing Forms) to FDA in Electronic or Paper Format: Guidance for Industry.” This guidance is being issued consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents our current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

This guidance supersedes the previous guidance entitled “Guidance for Industry: Submitting Form FDA 2541 (Food Canning Establishment Registration) and Forms FDA 2541a and FDA 2541c (Food Process Filing Forms) to FDA in Electronic or Paper Format.” Among other things, it provides guidance on administrative procedures related to new process filing forms (Forms FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g) that will replace the current process filing forms (Forms FDA 2541a and 2541c). The process filing regulations in 21 CFR 108.25(c)(2) and 108.35(c)(2) currently specify Form FDA 2541a (food canning establishment process filing for all methods except aseptic) or Form FDA 2541c (food canning establishment process filing for aseptic systems). We intend to update these regulations to specify the new form numbers, and to provide information about how to access the online system for electronic submission of these forms, as soon as possible.

This guidance describes: (1) Administrative procedures relating to the registration requirements of 21 CFR 108.25(c)(1) (for AF) using Form FDA 2541 in both electronic and paper format; (2) administrative procedures relating to the registration requirements of § 108.35(c)(1) (for LACF) using Form FDA 2541 in both electronic and paper format; (3) administrative procedures relating to the process filing requirements of § 108.25(c)(2) (for AF) using Form FDA 2541e in both electronic and paper format; (4) administrative procedures relating to

the process filing requirements of § 108.35(c)(2) (for LACF) using Forms FDA 2541d, FDA 2541f, and FDA 2541g in both electronic and paper format; (5) administrative procedures for voluntary registration and voluntary process filing submissions when a commercial processor has determined that its product is not an acidified food (or a low-acid canned food), and is therefore not subject to 21 CFR part 113, 21 CFR part 114, or part 108; and (6) a voluntary process whereby, upon request, we review data and other information that relate to a new processing method or new equipment.

In the **Federal Register** of January 14, 2014 (79 FR 2448), we made available a draft guidance entitled “Guidance for Industry: Submitting Form FDA 2541 (Food Canning Establishment Registration) and Forms FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g (Food Process Filing Forms) to FDA in Electronic or Paper Format” and gave interested parties an opportunity to submit comments by March 17, 2014, for us to consider before beginning work on the final version of the guidance. We received a few comments on the draft guidance, largely directed to the specific content of the forms discussed in the guidance rather than to the procedures described in the guidance, and have not made any modifications to the final guidance as a result of these comments. We have, however, modified the content of the forms where appropriate. We have deleted information, which we had included in the draft guidance, explaining how the draft guidance would eventually supersede previous administrative guidance associated with previous editions of the forms, which are now obsolete. We also have modified the Appendix of the final guidance to include additional resources—*e.g.*, instructions for submitting process filing forms electronically. The guidance announced in this notice finalizes the draft guidance dated January 2014.

**II. Paperwork Reduction Act of 1995**

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in parts 108, 113, and 114 have been approved under OMB control number 0910–0037. The collections of information related to 21 CFR 1.230 through 1.233 and section 415 of the Federal Food, Drug, and Cosmetic Act

(21 U.S.C. 350d) have been approved under OMB control number 0910-0502.

### III. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/FoodGuidances>, <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/default.htm> or <http://www.regulations.gov>. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: October 5, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-25642 Filed 10-7-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2012-N-0294]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Food Contact Substance Notification Program

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with the Food Contact Substance Notification Program.

**DATES:** Submit either electronic or written comments on the collection of information by December 7, 2015.

**ADDRESSES:** You may submit comments as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2012-N-0294 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Food Contact Substance Notification Program." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the

claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (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. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information

is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Food Contact Substance Notification Program—21 CFR 170.101, 170.106, and 171.1**

*OMB Control Number 0910-0495—Extension*

Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the FD&C Act defines a "food contact substance" as "any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food." Section 409(h)(3) of the FD&C Act requires that the notification process be used for authorizing the marketing of food contact substances except when: (1) We determine that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the FD&C Act is necessary to provide

adequate assurance of safety, or (2) we and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the FD&C Act requires that a notification include: (1) Information on the identity and the intended use of the food contact substance, and (2) the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 of FDA's regulations (21 CFR 170.101 and 170.106) specify the information that a notification must contain and require that: (1) A food contact substance notification (FCN) includes Form FDA 3480, and (2) a notification for a food contact substance formulation includes Form FDA 3479. These forms serve to summarize pertinent information in the notification. The forms facilitate both preparation and review of notifications because the forms will serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Currently, interested persons transmit an FCN submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3480 whether it is submitted in electronic or paper format. We estimate that the amount of time for respondents to complete Form FDA 3480 will continue to be the same.

In addition to its required use with FCNs, Form FDA 3480 is recommended to be used to organize information

within a Pre-notification Consultation or Master File submitted in support of an FCN according to the items listed on the form. Master Files can be used as repositories for information that can be referenced in multiple submissions to FDA, thus minimizing paperwork burden for food contact substance authorizations. We estimate that the amount of time for respondents to complete the Form FDA 3480 for these types of submissions is 0.5 hours.

Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to: (1) Establish that the proposed use of an indirect food additive is safe, and (2) secure the publication of an indirect food additive regulation in parts 175 through 178 (21 CFR parts 175 through 178). Parts 175 through 178 describe the conditions under which the additive may be safely used.

In addition, FDA's guidance document entitled "Use of Recycled Plastics in Food Packaging: Chemistry Considerations," provides assistance to manufacturers of food packaging in evaluating processes for producing packaging from post-consumer recycled plastic. The recommendations in the guidance address the process by which manufacturers certify to us that their plastic products are safe for food contact.

*Description of Respondents:* The respondents to this information collection are manufacturers of food contact substances.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

21 CFR section or other category	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
170.106 <sup>2</sup> (Category A) .....	FDA 3479 ..	10	2	20	2	40
170.101 <sup>3 7</sup> (Category B) .....	FDA 3480 ..	6	1	6	25	150
170.101 <sup>4 7</sup> (Category C) .....	FDA 3480 ..	6	2	12	120	1,440
170.101 <sup>5 7</sup> (Category D) .....	FDA 3480 ..	42	2	84	150	12,600
170.101 <sup>6 7</sup> (Category E) .....	FDA 3480 ..	38	1	38	150	5,700
Pre-notification Consultation or Master File (concerning a food contact substance) <sup>8</sup> .	FDA 3480 ..	190	1	190	0.5	95
Amendment to an existing notification (170.101), amendment to a Pre-notification Consultation, or amendment to a Master File (concerning a food contact substance) <sup>9</sup> .	FDA 3480A	100	1	100	0.5	50
171.1 Indirect Food Additive Petitions .....	N/A .....	1	1	1	10,995	10,995
Use of Recycled Plastics in Food Packaging: Chemistry Considerations.	N/A .....	10	1	10	25	250
<b>Total</b> .....						<b>31,320</b>

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup> Notifications for food contact substance formulations and food contact articles. These notifications require the submission of Form FDA 3479 ("Notification for a Food Contact Substance Formulation") only.

<sup>3</sup> Duplicate notifications for uses of food contact substances.

<sup>4</sup> Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.

<sup>5</sup> Notifications for uses that are the subject of moderately complex food additive petitions.

<sup>6</sup> Notifications for uses that are the subject of very complex food additive petitions.

<sup>7</sup> These notifications require the submission of Form FDA 3480.

<sup>8</sup> These notifications recommend the submission of Form FDA 3480.

<sup>9</sup> These notifications recommend the submission of Form FDA 3480A.

The estimates in table 1 are based on our current experience with the food contact substance notification program and informal communication with industry.

Beginning in row 1, we estimate 10 respondents will submit 2 notifications annually for food contact substance formulations (Form FDA 3479), for a total of 20 responses. We calculate a reporting burden of 2 hours per response, for a total of 40 hours. In row 2 we estimate six respondents. We believe the hourly burden for preparing these notifications will primarily consist of the manufacturer or supplier completing Form FDA 3480, verifying that a previous notification is effective, and preparing necessary documentation. We estimate one submission for each respondent, for a total of six responses. We calculate a reporting burden of 25 hours per response, for a total of 150 hours.

In rows 3, 4, and 5, we identify three tiers of FCNs that reflect different levels of burden applicable to the respective information collection items (denoted as Categories C, D, and E). We estimate 6 respondents will submit 2 Category C submissions annually, for a total of 12 responses. We calculate a reporting burden of 120 hours per response, for a total burden of 1,440 hours. We estimate 42 respondents will submit 2 Category D submissions annually, for a total of 84 responses. We calculate a reporting burden of 150 hours per response, for a total burden of 12,600 hours. We estimate 38 respondents will submit 1 Category E submission annually, for a total of 38 responses. We calculate a reporting burden of 150 hours per response, for a total burden of 5,700 hours.

In row 6, we estimate 190 respondents will submit information to a pre-notification consultation or a master file in support of FCN submission using Form FDA 3480. We calculate a reporting burden of 0.5 hours per response, for a total burden of 95 hours. In row 7 we estimate 100 respondents will submit an amendment (Form FDA 3480A) to a substantive or non-substantive request of additional information to an incomplete FCN submission, an amendment to a pre-notification consultation, or an amendment to a master file in support of an FCN. We calculate a reporting burden of 0.5 hours per response, for a total burden of 50 hours.

In row 8, we estimate one respondent will submit one indirect food additive

petition under § 171.1, for a total of one response. We calculate a reporting burden of 10,995 hours per response, for a total burden of 10,995 hours.

Finally, in row 9, we estimate 10 respondents will utilize the recommendations in the guidance document entitled, "Use of Recycled Plastics in Food Packaging: Chemistry Considerations," to develop the additional information for one such submission annually, for a total of 10 responses. We calculate a reporting burden of 25 hours per response, for a total burden of 250 hours.

Dated: October 2, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-25625 Filed 10-7-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2012-N-0247]

#### Agency Information Collection Activities; Proposed Collection; Submission for Office of Management and Budget Review; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

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

**DATES:** Fax written comments on the collection of information by November 9, 2015.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are

solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2012-N-0247 for "Agency Information Collection Activities; Proposed Collection; Submission for Office of Management and Budget Review; Guidance for Industry on Formal Meetings With Sponsors and Applicants for PDUFA Products."

Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The

Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at:

<http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0429.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

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

**Guidance for Industry on Formal Meetings With Sponsors and Applicants for PDUFA Products—OMB Control Number 0910-0429—Extension**

This information collection approval request is for FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review

of PDUFA products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The guidance provides information on how the Agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act (FDAMA) (Pub. L. 105-115), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at §§ 312.47(b)(1)(ii), (1)(iv), and (2) describe information that should be submitted in support of a request for an end-of-phase 2 meeting and a pre-NDA meeting. The information collection provisions of § 312.47 have been approved by OMB control number 0910-0014. However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting additional estimates for OMB approval.

**I. Request for a Meeting**

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the Agency as part of an investigational new drug application (IND), new drug application (NDA), or biological license application (BLA) must be submitted with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: Form FDA 1571—OMB control number 0910-0014 and Form FDA 356h—OMB control number 0910-0338.

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the

Agency with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The Agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency's tracking databases enables the Agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the Agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes:

- Information identifying and describing the product;
- the type of meeting being requested;
- a brief statement of the purpose of the meeting;
- a list of objectives and expected outcomes from the meeting;
- a preliminary proposed agenda;
- a draft list of questions to be raised at the meeting;
- a list of individuals who will represent the sponsor or applicant at the meeting;
- a list of Agency staff requested to be in attendance;
- the approximate date that the information package will be sent to the Agency; and
- suggested dates and times for the meeting.

This information will be used by the Agency to determine the utility of the meeting, to identify Agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

**II. Information Package**

A sponsor or applicant submitting an information package to the Agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or Agency. The Agency recommends that information packages generally include:

- Identifying information about the underlying product;
- a brief statement of the purpose of the meeting;
- a list of objectives and expected outcomes of the meeting;
- a proposed agenda for the meeting;
- a list of specific questions to be addressed at the meeting;
- a summary of clinical data that will be discussed (as appropriate);

- a summary of preclinical data that will be discussed (as appropriate); and
- chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide Agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The Agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an end-of-phase 2 meeting (§§ 312.47(b)(1)(ii) and (iv)) and a pre-NDA meeting (§ 312.47(b)(2)).

*Description of Respondents:* A sponsor or applicant for a drug or biological product who requests a formal meeting with the Agency regarding the development and review of a PDUFA product.

*Burden Estimate:* Provided in this document is an estimate of the annual reporting burden for the submission of

meeting requests and information packages under the guidance.

**III. Request for a Formal Meeting**

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 1,099 sponsors and applicants (respondents) request approximately 2,366 formal meetings with CDER annually and approximately 175 respondents request approximately 264 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA’s experience, the Agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting.

**IV. Information Package**

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 959 respondents submitted approximately 1,901 information packages to CDER annually and approximately 142 respondents submitted approximately 193 information packages to CBER annually prior to a formal meeting regarding the development and review of a PDUFA product. The hours per response, which

is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be approximately 18 hours. Based on FDA’s experience, the Agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the Agency.

In the **Federal Register** of May 20, 2015 (80 FR 29010), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

As stated earlier, the guidance provides information on how the Agency will interpret and apply section 119(a) of FDAMA, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning end-of-phase 2 meetings and pre-NDA meetings have been approved by OMB control number 0910–0014. However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting for OMB approval these additional estimates.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Meeting requests and information packages	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Meeting Requests:					
CDER .....	1,099	2.15	2,366	10	23,660
CBER .....	175	1.51	264	10	2,640
Total .....					26,300
Information Packages:					
CDER .....	959	1.99	1,901	18	34,218
CBER .....	142	1.36	193	18	3,474
Total .....					37,692
Grand Total .....					63,992

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 2, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–25624 Filed 10–7–15; 8:45 am]

BILLING CODE 4164–01–P



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2008-D-0449]

#### Integrated Summary of Effectiveness; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled "Integrated Summary of Effectiveness." This guidance describes how an integrated summary of effectiveness (ISE) should be prepared by industry for new drug applications (NDAs) and biologics license applications (BLAs). This guidance is intended to improve the quality of drug applications by describing what efficacy information should be submitted so that FDA can make a regulatory decision on an application. This guidance finalizes the draft guidance issued August 28, 2008.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2008-D-0449 for Integrated Summary of Effectiveness; Guidance for Industry; Availability. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments

received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002; or the Office of Communication, Training, and Manufacturers Assistance, Center for Biologics Evaluation and Research, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. The guidance may also be obtained from the Center for Biologics Evaluation and Research by mail by calling 1-800-835-4709 or 240-402-7800. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

#### FOR FURTHER INFORMATION CONTACT:

Helen Sile, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6462, Silver Spring, MD 20993-0002, 301-796-4123; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is announcing the availability of a guidance for industry entitled "Integrated Summary of Effectiveness." This guidance describes how an ISE should be prepared by industry for NDAs and BLAs. The ISE has been required as part of an NDA submission since 1985 (21 CFR 314.50(d)(5)(v)), but the regulation does not describe the specific components of the ISE. The guidance for industry "Guideline for the Format and Content of the Clinical and Statistical Sections of an Application" (Clin-Stat guidance) provides a description of what FDA recommends for inclusion in an ISE. However, since the Clin-Stat guidance was published, several International Conference on Harmonisation guidances, including the ICH guidances for industry "E3 Structure and Content of Clinical Study Reports," "E10 Choice of Control Group and Related Issues in Clinical Trials," and "M4E The CTD—Efficacy," have

provided additional recommendations for describing individual trials and providing results of efficacy analyses.

This guidance supersedes section II.G., Integrated Summary of Effectiveness Data, of the Clin-Stat guidance to reflect FDA's current thinking regarding the format and content of the ISE to provide a truly integrated analysis, rather than a summary of efficacy results from individual clinical trials, and to satisfy FDA regulatory requirements. This guidance also incorporates the conceptual framework of section 2.7.3, Summary of Clinical Efficacy, from ICH M4E. Although there are no corresponding regulations requiring an ISE for BLA submissions, applicants are encouraged to provide these analyses.

The focus of the ISE is not on the detailed results of individual studies, which are described in individual study reports, but a comprehensive, detailed, integrated analysis that goes beyond individual study results to examine all sources of information concerning effectiveness to provide further insight into the efficacy of the study drug. Integrated analyses included in an ISE generally fall into two broad categories: (1) Comparing the individual studies to better understand the overall results; and (2) using the greater power of pooled analyses to gain insight into the nature of the drug's effectiveness in demographic (e.g., age, sex, race, and ethnicity) and other subpopulations, dose-response, and onset and duration of effect, among others.

A draft of this guidance was published for comment in the **Federal Register** on August 28, 2008 (73 FR 50825). Comments received on the draft guidance have been considered and the guidance has been revised as follows: (1) Clarification on the difference between the document included in Module 2, section 2.7.3, Summary of Clinical Efficacy, from ICH M4E, and the ISE has been provided; (2) the definition of integrated analyses has been revised and the components that constitute an integrated analyses have been clarified; (3) pooled analyses has been defined; and (4) the recommendations for when it is appropriate to pool data has been included.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on preparing an ISE. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements

of the applicable statutes and regulations.

## II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information for submission of data in a BLA under 21 CFR 601.2 have been approved under OMB control number 0910–0338.

## III. Electronic Access

Persons with access to the Internet may obtain the guidance at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <http://www.regulations.gov>.

Dated: October 2, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–25630 Filed 10–7–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2014–D–2138]

#### Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is announcing the availability of a final guidance for industry entitled “Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act.” Under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), an outsourcing facility must submit adverse event reports to FDA. This guidance explains FDA's current thinking on adverse event reporting for these outsourcing facilities.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** You may submit comments as follows:

#### Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA–2014–D–2138 for Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Guidance for Industry; Availability. Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be

made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Sara Rothman, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-3110.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Background**

FDA is announcing the availability of a final guidance for industry entitled

"Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act." On November 27, 2013, President Obama signed the Drug Quality and Security Act (DQSA) into law (Pub. L. 113-54). The DQSA added a new section, 503B, to the FD&C Act (21 U.S.C. 353b). Under section 503B(b), a compounder can register as an outsourcing facility with FDA. Section 503B(d)(4) of the FD&C Act defines an outsourcing facility, in part, as a facility that complies with all of the requirements of section 503B, including registering with FDA as an outsourcing facility and paying associated fees. If the conditions outlined in section 503B(a) of the FD&C Act are satisfied, a drug compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility is exempt from certain sections of the FD&C Act, including section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use) and section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)). Drugs compounded in outsourcing facilities are not exempt from the requirements of section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice for drugs).

Under section 503B(b)(5), an outsourcing facility must submit adverse event reports to FDA in accordance with the content and format requirements established through guidance or regulation under 21 CFR 310.305 (or any successor regulations). This guidance explains how FDA intends to implement § 310.305 with respect to outsourcing facilities.

In the **Federal Register** of February 19, 2015 (80 FR 8872), FDA issued a notice announcing the availability of the draft version of this guidance. The comment period on the draft guidance ended on May 20, 2015. FDA received seven comments on the draft guidance.

In response to received comments or on its own initiative, FDA made several changes to clarify particular points and to provide updated information.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create any rights for any person and is not binding on FDA or the public. An alternative approach can be used if such approach satisfies the requirements of the applicable statutes and regulations.

### **II. Paperwork Reduction Act**

This guidance contains collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information have been approved under OMB control number 0910-0800.

### **III. Electronic Access**

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: October 2, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-25622 Filed 10-7-15; 8:45 am]

**BILLING CODE 4164-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[Docket No. FDA-2012-N-0248]

#### **Agency Information Collection Activities; Proposed Collection; Submission for Office of Management and Budget Review; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

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

**DATES:** Fax written comments on the collection of information by November 9, 2015.

**ADDRESSES:** You may submit comments as follows:

#### **Electronic Submissions**

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your

comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

### Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2012-N-0248 for "Agency Information Collection Activities; Proposed Collection; Submission for Office of Management and Budget Review; Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0430.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

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

### Guidance for Industry on Formal Dispute Resolution; Appeals Above the Division Level OMB Control Number 0910-0430—Extension

This information collection approval request is for FDA guidance on the process for formally resolving scientific and procedural disputes in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) that cannot be resolved at the division level. The guidance describes procedures for formally appealing such disputes to the office or center level and for submitting

information to assist center officials in resolving the issue(s) presented. The guidance provides information on how the Agency will interpret and apply provisions of the existing regulations regarding internal Agency review of decisions (§ 10.75 (21 CFR 10.75)) and dispute resolution during the investigational new drug (IND) process (§ 312.48 (21 CFR 312.48)) and the new drug application/abbreviated new drug application (NDA/ANDA) process (§ 314.103 (21 CFR 314.103)). In addition, the guidance provides information on how the Agency will interpret and apply the specific Prescription Drug User Fee Act (PDUFA) goals for major dispute resolution associated with the development and review of PDUFA products.

Existing regulations, which appear primarily in parts 10, 312, and 314 (21 CFR parts 10, 312, and 314), establish procedures for the resolution of scientific and procedural disputes between interested persons and the Agency, CDER, and CBER. All Agency decisions on such matters are based on information in the administrative file (§ 10.75(d)). In general, the information in an administrative file is collected under existing regulations in part 312 (OMB control number 0910-0014), part 314 (OMB control number 0910-0001), and part 601 (21 CFR part 601) (OMB control number 0910-0338), which specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of drugs and biological products. This information is usually submitted as part of an IND, NDA, or biologics license application (BLA), or as a supplement to an approved application. While FDA already possesses in the administrative file the information that would form the basis of a decision on a matter in dispute resolution, the submission of particular information regarding the request itself and the data and information relied on by the requestor in the appeal would facilitate timely resolution of the dispute. The guidance describes the following collection of information not expressly specified under existing regulations: The submission of the request for dispute resolution as an amendment to the application for the underlying product, including the submission of supporting information with the request for dispute resolution.

Agency regulations (§§ 312.23(a)(11) and (d), 314.50, 314.94, and 601.2) state that information provided to the Agency as part of an IND, NDA, ANDA, or BLA is to be submitted in triplicate and with

an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs, ANDAs, and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571—OMB control number 0910–0014, and FDA Form 356h—OMB control number 0910–0338.

In the guidance document, CDER and CBER ask that a request for formal dispute resolution be submitted as an amendment to the application for the underlying product and that it be submitted to the Agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The Agency recommends that a request be submitted as an amendment in this manner for two reasons: To ensure that each request is kept in the administrative file with the entire underlying application and to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency’s tracking databases enables the appropriate Agency official to monitor progress on the resolution of the dispute and to ensure that appropriate steps will be taken in a timely manner.

CDER and CBER have determined and the guidance recommends that the following information should be submitted to the appropriate center with each request for dispute resolution so that the Center may quickly and efficiently respond to the request: (1) A brief but comprehensive statement of each issue to be resolved, including a description of the issue, the nature of the issue (*i.e.*, scientific, procedural, or both), possible solutions based on information in the administrative file,

whether informal dispute resolution was sought prior to the formal appeal, whether advisory committee review is sought, and the expected outcome; (2) a statement identifying the review division/office that issued the original decision on the matter and, if applicable, the last Agency official that attempted to formally resolve the matter; (3) a list of documents in the administrative file, or additional copies of such documents, that are deemed necessary for resolution of the issue(s); and (4) a statement that the previous supervisory level has already had the opportunity to review all of the material relied on for dispute resolution. The information that the Agency suggests submitting with a formal request for dispute resolution consists of: (1) Statements describing the issue from the perspective of the person with a dispute, (2) brief statements describing the history of the matter, and (3) the documents previously submitted to FDA under an OMB approved collection of information.

Based on FDA’s experience with dispute resolution, the Agency expects that most persons seeking formal dispute resolution will have gathered the materials listed previously when identifying the existence of a dispute with the Agency. Consequently, FDA anticipates that the collection of information attributed solely to the guidance will be minimal.

*Description of Respondents:* A sponsor, applicant, or manufacturer of a drug or biological product regulated by the Agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act who requests formal resolution of a scientific or procedural dispute.

In the **Federal Register** of June 2, 2015 (80 FR 31386), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

*Burden Estimate:* Provided in this document is an estimate of the annual reporting burden for requests for dispute resolution. Based on data collected from review divisions and offices within CDER and CBER, FDA estimates that approximately eight sponsors and applicants (respondents) submit requests for formal dispute resolution to CDER annually and approximately one respondent submits requests for formal dispute resolution to CBER annually. The total annual responses are the total number of requests submitted to CDER and CBER in 1 year, including requests for dispute resolution that a single respondent submits more than one time. FDA estimates that CDER receives approximately 31 requests annually and CBER receives approximately 1 request annually. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for formal dispute resolution in accordance with this guidance, including the time it takes to gather and copy brief statements describing the issue from the perspective of the person with the dispute, brief statements describing the history of the matter, and supporting information that has already been submitted to the Agency. Based on experience, FDA estimates that approximately 8 hours on average would be needed per response. Therefore, FDA estimates that 8 hours will be spent per year by respondents requesting formal dispute resolution under the guidance.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Requests for formal dispute resolution	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
CDER .....	8	2	31	8	248
CBER .....	1	1	1	8	8
Total .....					256

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 2, 2015.  
**Leslie Kux**,  
*Associate Commissioner for Policy.*  
 [FR Doc. 2015–25623 Filed 10–7–15; 8:45 am]  
**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**National Institutes of Health**  
**National Heart, Lung, and Blood Institute Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Lung Imaging Phase 2.

*Date:* November 2, 2015.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street NW., Washington, DC 20037.

*Contact Person:* Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301-443-8784, [constantsl@nhlbi.nih.gov](mailto:constantsl@nhlbi.nih.gov)

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; SBIR Phase IIB Small Market Awards.

*Date:* November 4, 2015.

*Time:* 8:30 a.m. to 10:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.

*Contact Person:* Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892-7924, 301-435-0725, [creazzotl@mail.nih.gov](mailto:creazzotl@mail.nih.gov)

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI SBIR Phase IIB Bridge Awards (R44).

*Date:* November 4, 2015.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.

*Contact Person:* Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, [sunnarborgsw@nhlbi.nih.gov](mailto:sunnarborgsw@nhlbi.nih.gov).

(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: October 2, 2015.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-25582 Filed 10-7-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Training for Career Independence in Environmental Health Sciences.

*Date:* November 2, 2015.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Environmental Health Sciences, Keystone Building, Room 1003A, 530 Davis Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

*Contact Person:* Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, (919) 541-1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 2, 2015.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015-25583 Filed 10-7-15; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Therapeutic Strategies for Lysosomal Storage and Amino; Acid Metabolism Disorders.

*Date:* November 3, 2015.

*Time:* 11:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205 MSC7846, Bethesda, MD 20892, (301) 435-1021, [rovescalaa@mail.nih.gov](mailto:rovescalaa@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Laboratory for Fluorescence Dynamics.

*Date:* November 8-10, 2015.

*Time:* 9:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Atrium Hotel, 18700 MacArthur Blvd., Irvine, CA 92612.

*Contact Person:* Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301-435-1728, [rادتکem@csr.nih.gov](mailto:rادتکem@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Informatics.

*Date:* November 9, 2015.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Claire E Gutkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301-594-3139, [gutkincl@csr.nih.gov](mailto:gutkincl@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics, and Biosensors.

*Date:* November 12–13, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* J.W. Marriott Hotel, JW Marriott Hotel New Orleans, 614 Canal Street, New Orleans, LA 70130.

*Contact Person:* Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, [cbackman@mail.nih.gov](mailto:cbackman@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti Infective Therapeutics.

*Date:* November 12–13, 2015.

*Time:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198 MSC 7808, Bethesda, MD 20892, (301) 435–2306, [kaushikbasun@csr.nih.gov](mailto:kaushikbasun@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery, and Nanotechnology.

*Date:* November 12, 2015.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* David Filpula.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Brain Disorders and Related Neurosciences.

*Date:* November 12–13, 2015.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

*Contact Person:* Vilen A Movsesyan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, [movsesyanv@csr.nih.gov](mailto:movsesyanv@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Risk, Prevention and Health Behavior.

*Date:* November 12–13, 2015.

*Time:* 9:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Claire E Gutkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, [gutkincl@csr.nih.gov](mailto:gutkincl@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Nutrition and Metabolic Processes Topics.

*Date:* November 12, 2015.

*Time:* 2:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1044, [chenhui@csr.nih.gov](mailto:chenhui@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Drug Discovery and Mechanisms of Antimicrobial Resistance.

*Date:* November 13, 2015.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–1146, [jig@csr.nih.gov](mailto:jig@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Muscle Physiology and Disease.

*Date:* November 13, 2015.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, [nurminskayam@csr.nih.gov](mailto:nurminskayam@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 2, 2015.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–25584 Filed 10–7–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Environmental Health Sciences Review Committee.

*Date:* November 4, 2015.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Chapel Hill Hotel, 1 Europa Drive, Chapel Hill, NC 27517.

*Contact Person:* Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709 (919) 541–1307.

*Name of Committee:* Environmental Health Sciences Review Committee.

*Date:* November 5–6, 2015.

*Time:* 8:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Chapel Hill Hotel, 1 Europa Drive, Chapel Hill, NC 27517.

*Contact Person:* Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709 (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 2, 2015.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2015–25581 Filed 10–7–15; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Request for Information (RFI): Soliciting Input for the National Center for Advancing Translational Sciences (NCATS) Strategic Planning Process

**SUMMARY:** The National Center for Advancing Translational Sciences (NCATS) seeks input on the development of a five-year strategic plan. We invite input from any and all interested parties.

**DATES:** To ensure consideration, responses must be submitted by Jan. 8, 2016, 11:59:59 p.m. EST.

**ADDRESSES:** Comments must be submitted electronically using the web-based form available at <http://grants.nih.gov/grants/rfi/rfi.cfm?ID=50>.

**FOR FURTHER INFORMATION CONTACT:** Specific questions about this notice should be sent via email to: [NCATSstrategicplan@mail.nih.gov](mailto:NCATSstrategicplan@mail.nih.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Several thousand diseases affect humans of which only about 500 have any treatment. Thanks to our growing understanding of human biology, along with the increased availability of innovative technologies, there is an unprecedented opportunity to translate scientific discoveries more efficiently into new, more effective and safer health interventions. Currently, a novel intervention can take about 14 years and \$2 billion to develop, with a failure rate exceeding 95 percent.

To address the challenges, NCATS strives to develop innovations to reduce, remove or bypass costly and time-consuming bottlenecks in the translational science process in an effort to speed the delivery of interventions (e.g. drugs, diagnostics and medical devices) to patients. Rather than targeting a particular disease or fundamental science, NCATS focuses on what is common across diseases and the translational process. The Center emphasizes innovation and deliverables, relying on the power of data and new technologies to develop, demonstrate and disseminate improvements in translational science that bring about tangible improvements in human health. NCATS' current programs focus on pre-clinical innovation to drive advances in early stages of the translational process, from target validation to first-in-human studies; clinical innovation to support clinical and translational research, creating and sharing expertise, tools and

training needed to develop and deploy effective treatments in people; and reengineering translational science through cross-cutting programs that address common scientific and organizational barriers to enable faster and more effective interventions that tangibly improve human health.

For more information about NCATS, visit <https://ncats.nih.gov>.

##### Translation and Translational Science

NCATS defines translation as the process of turning observations in the laboratory, clinic, and community into interventions that improve the health of individuals and the public—from diagnostics and therapeutics to medical procedures and behavioral changes. Translational science is defined as the field of investigation focused on understanding the scientific and operational principles underlying each step of the translational process.

The translational science process can be envisioned as a spectrum (<https://ncats.nih.gov/translation/spectrum>) encompassing each stage of research along the path from the biological basis of health and disease to interventions that improve the health of individuals and the public. The spectrum is not linear or unidirectional; rather, each of the five stages (Basic Research, Pre-Clinical Research, Clinical Research, Clinical Implementation, and Public Health) builds upon and informs the others. Patient Involvement plays a central role in the entire process.

*Basic Research*, while not typically conducted at NCATS, reveals fundamental mechanisms of biology, disease or behavior that inform and can be informed by each of the other stages. *Pre-clinical Research* connects those basic discoveries made in the laboratory or clinic to a new medical intervention. *Clinical Research* tests the safety and effectiveness of those interventions in human subjects, and also can include behavioral and observational studies, outcomes and health services research, and the testing and refinement of new technologies. Research on the adoption of medical interventions into routine clinical care for the general population, the evaluation of clinical trial results, and the identification of new clinical questions and gaps in care occur in the *Clinical Implementation* stage. The *Public Health* stage of translation includes studies on health outcomes at the population level to determine the effects of diseases and efforts to prevent, diagnose and treat them. Central to the translational science spectrum is *Patient Involvement* in which NCATS researchers collaborate and engage with patients and community members to

better identify and understand public health needs and develop useful medical interventions. For more information, including a graphical depiction of the translational science spectrum, visit <https://ncats.nih.gov/translation/spectrum>.

At all stages of the spectrum, NCATS develops new approaches, demonstrates their usefulness, disseminates the findings, and engages with patients and community members to better identify and understand public health needs.

##### Strategic Planning Process

NCATS is in the process of developing its first strategic plan to set the goals and priorities of the Center over the next five years. We anticipate that the strategic plan will outline and provide a roadmap of translational research priorities and the most pressing scientific and operational opportunities and challenges in translation; emerging research needs; barriers to progress; and the resources, infrastructure, or tools needed to catalyze major scientific advances in translation.

NCATS is soliciting stakeholder input through this Request for Information and through a series of webinars (details at <https://ncats.nih.gov/strategicplan>) to ensure that members of the community and our partners have a voice in framing the Center's future scientific direction.

##### Information Requested

NCATS seeks input on the scientific and operational opportunities, challenges and research needs in translational science to help set the Center's strategic priorities and inform the development of a five-year strategic plan.

Some examples of particular issues of interest that apply across the translational science spectrum include:

- Breaking down professional, cultural and scientific silos across the translational science spectrum
- Focusing on inter-operability of data systems (such as integrating patient data and electronic health records into pre-clinical research)
- Expanding research efforts at NCATS into new therapeutic modalities
- Focusing on patient-driven research and patient/community engagement
- Forming innovative partnerships with a wide variety of stakeholders
- Identifying skillsets and competencies needed for training the next generation of translational scientists
- Utilizing modern communication and dissemination tools to expand awareness of translational science to a wide variety of stakeholders

NCATS encourages stakeholders from all sectors to provide input on these and



any other relevant issues. Stakeholders include, but are not limited to: Patients and members of the health advocacy community; basic, translational and clinical scientists at universities and research institutions; health care providers; biotechnology, venture capital and pharmaceutical industry members; colleagues at other NIH institutes, centers and offices; partners at other government agencies (e.g. the Food and Drug Administration, other agencies of the Department of Health and Human Services, the Environmental Protection Agency, and the Department of Defense); policy makers and funders; as well as the general public. Organizations are encouraged to submit a single response that reflects the views of their organization and membership as a whole.

To respond to this RFI, please go to <http://grants.nih.gov/grants/rfi/rfi.cfm?ID=50>. To ensure consideration, responses must be submitted by Jan. 8, 2016, 11:59:59 p.m. EST.

**General Information**

Responses to this RFI are voluntary. Do not include any proprietary, classified, confidential, trade secret or sensitive information in your response. Respondents are advised that the U.S. Government is under no obligation to acknowledge receipt of the information provided and will not provide feedback to respondents. The Government will use the information submitted in response to this RFI at its discretion. The Government reserves the right to use any submitted information on public NIH Web sites, in reports, in summaries of the state of the science, in any possible resultant solicitation(s), grant(s), or cooperative agreement(s), or in the development of future funding opportunity announcements.

This RFI is for information and planning purposes only and shall not be construed as a solicitation, grant, or cooperative agreement, or as an obligation on the part of the Federal Government, the NIH, or individual NIH Institutes and Centers. The Government will not pay for the preparation of any information submitted or for the Government's use of such information. No basis for claims against the Government shall arise as a result of a response to this request for information

or from the Government's use of such information.

NCATS looks forward to your input and encourages you to share this RFI document and the information about the upcoming webinars with your colleagues.

Dated: September 25, 2015.

**Christopher P. Austin,**

*Director, National Center for Advancing Translational Sciences (NCATS).*

[FR Doc. 2015-24761 Filed 10-7-15; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are 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: Violence Intervention to Enrich Lives (VITEL) Supplement—NEW**

This data collection is to study the intersection of intimate partner violence

(IPV) and trauma for women with HIV, at risk for HIV, and at risk for substance use disorders (SUDs). VITEL provides supplemental funding to existing SAMHSA Targeted Capacity Expansion: Substance Abuse Treatment for Racial/Ethnic Minority Women at High Risk for HIV/AIDS (TCE-HIV: Minority Women) grantees. The goals of the VITEL program are (1) reduce IPV through screening and referrals, (2) reduce risky behaviors that lead to new HIV infections and SUDs, (3) increase access to care and improve health outcomes for people living with HIV and AIDS, (4) reduce HIV-related health disparities resultant from IPV screening tool implementation, and (5) determine the feasibility of integrating IPV screening in behavioral health settings. A multi-stage approach has been used to develop the appropriate theoretical framework, conceptual model, evaluation design and protocols, and data collection instrumentation. Process and outcome measures have been developed to fully capture community and contextual conditions, the scope of the VITEL program implementation and activities, and client outcomes. A mixed-method approach (e.g., surveys, semi-structured interviews, focus groups) will be used, for example, to examine collaborative community linkages established between grantees and other service providers (e.g., primary health care, SUD recovery), determine which program models and what type and amount of client exposure to services contribute to significant changes in IPV, SUD, and HIV risk behaviors of the targeted populations, and determine the impact of VITEL services on providers, clients, and communities.

The data collection for this program will be conducted quarterly (during this one year supplemental period) and the client outcome data collection will be ongoing throughout the program and will be collected at baseline, discharge and 6-months post baseline for all treatment clients. The respondents are clinic-based social workers and counselors, clinic-based administrators and clinic-based clients. The estimated annualized burden is summarized below:

Instrument/activity	Number of respondents	Responses per respondent	Total response numbers	Total response numbers	Hours per response	Total burden hours
Baseline data collection (Clients) .....	500	1	500	500	.42	210
Discharge data collection (Clients) .....	500	1	500	500	.42	210
6-month post Baseline data collection (Clients) .....	500	1	500	500	.42	210

Instrument/activity	Number of respondents	Responses per respondent	Total response numbers	Total response numbers	Hours per response	Total burden hours
Interaction Form (Client) .....	500	1	500	500	.42	210
Treatment Focus Group (Client) .....	45	2	90	90	1.0	90
<i>Client Sub-total</i> .....	<i>2,045</i>	.....	.....	.....	.....	<i>930</i>
Executives and Project Director/Program Manager (Semi-Structured Interviews) .....	10	1	10	10	.75	7.5
Executives and Project Director/Program Manager (Progress Report) ....	5	1	5	5	3.0	15
Direct Staff (Semi-Structured Interviews) .....	10	1	10	10	.75	7.5
Community Collaborators (Semi-Structured Interviews) .....	10	1	10	10	1.0	5
<i>Staff Sub-total</i> .....	<i>35</i>	.....	.....	.....	.....	<i>40</i>
<b>Total</b> .....	<b>2,080</b>	.....	.....	.....	.....	<b>970</b>

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at [summer.king@samhsa.hhs.gov](mailto:summer.king@samhsa.hhs.gov). Written comments should be received by December 7, 2015.

**Summer King,**  
Statistician.

[FR Doc. 2015–25661 Filed 10–7–15; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

#### Project: Behavioral Health Information Technologies and Standards—In-Depth Qualitative Data Collection Activity—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) and Center for Behavioral Health Statistics and Quality (CBHSQ) are proposing to conduct qualitative data collection activities (*i.e.*, focus group and site visits) to assess health information technology (HIT)

adoption practices among SAMHSA grantees. As part of its Strategic Initiative to advance the use of health information technologies to support integrated behavioral health care, SAMHSA has been working to develop questions that will examine HIT adoption by behavioral health service providers who are implementing SAMHSA grant programs. The selected programs are funded by the by the Center for Mental Health Services (CMHS), the Center for Substance Abuse Prevention (CSAP), and (CSAT).

This project seeks to expand data necessary to inform the Agency's strategic initiative that focuses on fostering the adoption of health information technologies in community behavioral health services. The qualitative activities will elicit success stories, challenges to adopting health information technologies, and lessons learned regarding SAMHSA grantee access to and use of health information technology and will provide valuable information to inform the behavioral health information technology literature.

Approval of this data collection effort by the Office of Management and Budget (OMB) will allow SAMHSA to identify the current status of health information technology adoption and use among a select group of grantees who have demonstrated success in at least one of the identified health information technology categories: Certified electronic health records, telehealth technologies, mobile health, and social media-based consumer engagement tools. Data from the focus groups and site visits will allow SAMHSA to enhance the health information technology-related programmatic activities among its

grantees by providing data on how health information technologies facilitate the implementation of different types of SAMHSA grants; thereby fostering the appropriate adoption of health information technologies within SAMSHA-funded programs.

Ten (10) respective focus groups and site visit sessions will collect qualitative data to provide a snapshot view of the current state of health information technology adoption. The focus groups will include up to six participations per session and will be representative of the ten Department of Health and Human Services Regions. Site visit participants will be selected from among SAMHSA-funded grant programs and non-profit community behavioral health providers nominated by Project Officers as exemplars in the field of health information technologies, with recognized success in at least one of the four health information technology domain categories.

The proposed ten (10) in-person focus group sessions will not exceed 90-minutes in duration and will be limited to no less than six (6) and no more than (8) participants. The proposed ten (10) in-person site visit sessions will not exceed eight (8) hours in duration and will include, on average two (2) participants at any one time during the visit. The focus group and site visit sessions are expected to occur between the hours of 9:00 a.m. and 5:00 p.m. and will allow sufficient time for food and personal breaks. The total estimated burden to participate in the focus groups is 120 hours. The total estimated burden to participate in the site visits is 160 hours. The following table summarizes the estimated participation burden:

FOCUS GROUP AND SITE VISIT ESTIMATED ANNUAL HOUR BURDEN

Activity	Number of respondents	Number of responses annually per respondent	Total responses	Average hours per response	Total burden hours
Focus group .....	80	1	80	1.5	120
Site Visits .....	20	1	20	8	160
Total .....	100	.....	100	.....	280

Written comments and recommendations concerning the proposed information collection should be sent by November 9, 2015 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA\_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202-395-7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,  
Statistician.

[FR Doc. 2015-25660 Filed 10-7-15; 8:45 am]  
BILLING CODE 4162-20-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

**Project: National Survey of Substance Abuse Treatment Services (N-SSATS) (OMB No. 0930-0106)—Revision**

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting a revision of the National Survey of Substance Abuse Treatment (N-SSATS) data collection

(OMB No. 0930-0106), which expires on January 31, 2016. N-SSATS provides both national and state-level data on the numbers and types of patients treated and the characteristics of facilities providing substance abuse treatment services. It is conducted under the authority of Section 505 of the Public Health Service Act (42 U.S.C. 290aa-4) to meet the specific mandates for annual information about public and private substance abuse treatment providers and the clients they serve.

This request includes:

- Collection of N-SSATS, which is an annual survey of substance abuse treatment facilities; and
- Updating of the Inventory of Behavioral Health Services (I-BHS) which is the facility universe for the N-SSATS as well as the annual survey of mental health treatment facilities, the National Mental Health Services Survey (N-MHSS). The I-BHS includes all substance abuse treatment and mental health treatment facilities known to SAMHSA. (The N-MHSS data collection is covered under OMB No. 0930-0119.)

The information in I-BHS and N-SSATS is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals. Both I-BHS and N-SSATS are components of the Behavioral Health Services Information System (BHSIS).

The request for OMB approval will include a request to update the I-BHS facility listing on a continuous basis and to conduct the N-SSATS and the between cycle N-SSATS (N-SSATS BC) in 2016, 2017, and 2018. The N-SSATS BC is a procedure for collecting services data from newly identified facilities between main cycles of the survey and will be used to improve the listing of treatment facilities in the online Behavioral Health Treatment Services Locator.

**Planned Changes**

*I-BHS:* No changes.  
*N-SSATS:* The N-SSATS with client counts will continue to be conducted in alternate years, as in the past with an alternate version of the N-SSATS

questionnaire that includes workforce questions as well as questions to update the Treatment Locator conducted in the interim years.

*Version B (2016 and 2018)*

The workforce questions will be conducted in even years in place of the "locator" version of N-SSATS that was completed in even years previously.

The following questions have been deleted:

Questions on religious affiliation, standard operating procedures, how (paper/electronic/both) a facility performs selected activities, questions about reporting client counts, including how the facility will complete client counts; number of facilities in client counts; names and addresses of additional facilities reported for; number of hospital inpatient client counts by category, by number under age 18, number receiving methadone, buprenorphine, or Vivitrol®, and number of dedicated beds; number of residential client counts by category, by number under age 18, and number receiving methadone, buprenorphine, or Vivitrol®, and number of dedicated beds; number of outpatient client counts by category, by number under age 18, and number receiving methadone, buprenorphine, or Vivitrol®, and capacity indicator; type of substance abuse problem, percent of co-occurring clients; and 12-month admissions, and the National Provider Identifier (NPI).

The following questions have been added:

A new question has been added to ascertain the numbers of types of workforce staff and the average number of hours worked per week for each type of staff. Three questions, one for each of the major types of treatment (hospital inpatient, residential, and outpatient) have been added asking for an overall number of active clients on the survey reference date; the purpose is to provide an indication of size of facility for analysis of the added workforce questions.

A question asking overall numbers of active clients in the facility that received methadone, buprenorphine, or Vivitrol® for detoxification or

maintenance purposes has been added to aid in the analysis of the added workforce question.

*Version A (2017)*

Client counts will be conducted in odd years. The National Provider Identifier (NPI) number question has been deleted.

*N-SSATS (Between Cycles-BC):* No changes.

Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
<b>STATES</b>					
I-BHS Online <sup>1</sup> .....	56	75	4,200	0.08	336
State Subtotal .....	56	.....	4,200	.....	336
<b>FACILITIES</b>					
I-BHS application <sup>2</sup> .....	600	1	600	0.08	48
Augmentation screener .....	2,000	1	2,000	0.08	160
N-SSATS questionnaire .....	17,000	1	17,000	0.61	10,370
N-SSATS BC .....	2,000	1	2,000	0.42	840
Facility Subtotal .....	21,600	.....	21,600	.....	11,418
Total .....	21,656	.....	25,800	.....	11,754

<sup>1</sup> States use the I-BHS Online system to submit information on newly licensed/approved facilities and on changes in facility name, address, status, etc.

<sup>2</sup> New facilities complete and submit the online I-BHS application form in order to get listed on the Inventory.

Written comments and recommendations concerning the proposed information collection should be sent by November 9, 2015 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA\_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202-395-7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**  
*Statistician.*

[FR Doc. 2015-25658 Filed 10-7-15; 8:45 am]

**BILLING CODE 4162-20-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Substance Abuse and Mental Health Services Administration**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

**Project: Co-Location and Integration of HIV Prevention and Medical Care Into Behavioral Health Program—Revision**

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services, (CMHS), Center for Substance Abuse Prevention (CSAP), Center for Substance Abuse Treatment (CSAT) are requesting approval from the Office of Management and Budget (OMB) for revised data collection activities associated with their Co-location and Integration of HIV Prevention and Medical Care into Behavioral Health Program.

This information collection is needed to provide SAMHSA with objective information to document the reach and impact of services funded to address HIV and Hepatitis in the context of substance use disorders and mental illness. The information will be used to monitor quality assurance and quality performance outcomes for organizations funded by its grant programs. Collection of the information included in this request is authorized by Section 505 of the Public Health Service Act (42 U.S.C. 290aa-4)—Data Collection.

Further support for this collection was provided in the 2013 Senate Appropriations Report 113-71. The report urged SAMHSA to “focus its efforts on building capacity and outreach to individuals at risk or with a primary substance abuse disorder and to improve efforts to identify such individuals to prevent the spread of HIV.” Additional support for this data collection effort is provided by the 2013 National HIV/AIDS Strategy which instructed SAMHSA to “support and rigorously evaluate the development and implementation of new integrated behavioral health models to address the intersection of substance use, mental health, and HIV.”

The table below reflects the revised annualized hourly burden.

Instrument	Number of respondents	Number of responses per respondent	Total number of responses	Hours per response per respondent	Total burden hours
RHHT Testing Form:					

Instrument	Number of respondents	Number of responses per respondent	Total number of responses	Hours per response per respondent	Total burden hours
Co-Located and Integrated Care Program (CMHS, CSAT, CSAP) .....	5,000	1	5,000	0.13	650
Targeted Capacity Expansion: Substance Use Disorder Treatment for Racial/Ethnic Minority Populations at High-Risk for HIV/AIDS CSAT RFA: TI-15-006 .....	5,000	1	5,000	0.13	650
Targeted Capacity Expansion: Substance Abuse Treatment for Racial/Ethnic Minority Women at High Risk for HIV/AIDS CSAT RFA: TI-13-011 .....	8,000	1	8,000	0.13	1,040
Targeted Capacity Expansion Program: Substance Abuse Treatment for Racial/Ethnic Minority Populations at High-Risk for HIV/AIDS CSAT RFA: TI-12-007 .....	10,400	1	10,400	0.13	1,352
Minority Serving Intuitions (MSI) Partnerships with Community-Based Organizations (CBO) (MSI CBO). FY 2013 CSAP .....	4,000	1	4,000	0.13	520
Minority Serving Intuitions (MSI) Partnerships with Community-Based Organizations (CBO) (MSI CBO). FY 2014 CSAP .....	3,500	1	3,500	0.13	455
Minority Serving Intuitions (MSI) Partnerships with Community-Based Organizations (CBO) (MSI CBO). FY 2015 CSAP .....	5,000	1	5,000	0.13	650
Capacity Building Initiative for Substance Abuse and HIV Prevention Services for At-Risk Racial/Ethnic Minority Youth and Young Adults (HIV CBI) FY 2015 CSAP .....	6,000	1	6,000	0.13	780
<b>Total</b> .....	<b>46,900</b>		<b>46,900</b>		<b>6,097</b>

Written comments and recommendations concerning the proposed information collection should be sent by November 9, 2015 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA\_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202-395-7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**  
Statistician.

[FR Doc. 2015-25659 Filed 10-7-15; 8:45 am]

**BILLING CODE 4162-20-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Safety and Environmental Enforcement**

[Docket ID BSEE-2015-0006; OMB Control Number 1014-0023; 15XE1700DX EEEE500000 EX1SF0000.DAQ000]

**Information Collection Activities: Pollution Prevention and Control; Submitted for Office of Management and Budget (OMB) Review; Comment Request**

**ACTION:** 30-Day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart C, *Pollution Prevention and Control*. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

**DATED:** You must submit comments by November 9, 2015.

**ADDRESSES:** Submit comments by either fax (202) 395-5806 or email (*OIRA\_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer

for the Department of the Interior (1014-0023). Please provide a copy of your comments to BSEE by any of the means below.

- Electronically go to *http://www.regulations.gov*. In the Search box, enter BSEE-2015-0006 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

- Email *cheryl.blundon@bsee.gov*, fax (703) 787-1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Cheryl Blundon; 45600 Woodland Road, Sterling, VA 20166. Please reference ICR 1014-0023 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Regulations and Standards Branch, (703) 787-1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Subpart C, *Pollution Prevention and Control*.  
*OMB Control Number:* 1014-0023.  
*Abstract:* The Outer Continental Shelf (OCS) Lands Act at 43 U.S.C. 1334

authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." Section 1843(b) calls for "regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use."

In addition to the general authority of OCSLA, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. The Secretary has delegated some of the authority under FOGRMA to BSEE.

This authority and responsibility are among those delegated to the Bureau of Safety and Environmental Enforcement (BSEE). These regulatory requirements concern pollution prevention and control and are the subject of this information collection request (ICR). This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

Regulations implementing these responsibilities are among those delegated to BSEE.

Responses are mandatory and are submitted on occasion. No questions of a sensitive nature are asked. BSEE protects information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and DOIs implementing regulations (43 CFR 2),

and under regulations at 30 CFR part 250.197, *Data and information to be made available to the public or for limited inspection*, 30 CFR part 252, *OCS Oil and Gas Information Program*.

The information collected under Subpart C is used to ensure that:

- The lessee or operator records the location of items lost overboard to aid in recovery during site clearance activities on the lease;
- operations are conducted according to all applicable regulations, requirements, and in a safe and workmanlike manner;
- discharge or disposal of drill cuttings, sand, and other well solids, including those containing naturally occurring radioactive materials (NORM), are properly handled for the protection of OCS workers and the environment; and
- facilities are inspected daily for the prevention of pollution, and problems observed are corrected.

*Frequency:* On occasion or as required by regulations.

*Description of Respondents:* Potential respondents comprise OCS Federal oil, gas, or sulphur lessees and/or operators.

*Estimated Reporting and Recordkeeping Hour Burden:* The estimated annual hour burden for this information collection is a total of 137,955 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN TABLE

Citation 30 CFR 250 subpart C and related NTL(s)	Reporting and recordkeeping requirement*	Hour burden	Average number of annual responses	Annual burden hours
<b>Pollution Prevention</b>				
300(b)(1), (2) .....	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM.	Burden covered under APDs or APMs 1014-0025 or 1014-0026.		0.
300(c) .....	Mark items that could snag or damage fishing devices.	1 hour .....	133 markings .....	133.
300(d) .....	Report and record items lost overboard ...	1 hour ea × 2 = 2 hours.	116 reports/records .....	232.
Subtotal .....	.....	.....	249 responses .....	365 hours.
<b>Marine Trash and Debris Awareness/Elimination NTL</b>				
300(a), (b)(6), (c), (d); NTL.	Submit request for training video .....	1 hour .....	106 requests .....	106.
	Submit annual report to BSEE on training process and certification.	1.5 hours .....	212 records .....	318.

BURDEN TABLE—Continued

Citation 30 CFR 250 subpart C and related NTL(s)	Reporting and recordkeeping requirement*	Hour burden	Average number of annual responses	Annual burden hours
	Training recordkeeping; make available upon request.	3 hours .....	212 records .....	636.
	Post placards on vessels and structures (exempt from information collection burden because BSEE is providing exact language for the trash and debris warning, similar to the "Surgeon General's Warning" exemption).			0.
Subtotal .....			530 responses .....	1,060 hours.
<b>Inspection of Facilities</b>				
301; NTL .....	Inspect drilling/production facilities for pollution; maintain inspection/repair records 2 years.	22 min ea inspection × 365 days p/yr/60 mins p/hr = 134 hours. 5 mins every 3rd day (365 days p/yr/3 = 121.6 days × 5 mins p/day/60 mins p/hr) = 10.14 hours.	898 manned facilities .....	120,332.
			1,596 unmanned facilities .....	16,183.
Subtotal .....			2,494 responses .....	136,515 hours.
300–301 .....	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	2.5 hours .....	6 requests .....	15.
Subtotal .....			6 responses .....	15 hours.
Total Burden ..			3,279 responses .....	137,955 hours.

\* In the future, BSEE may require electronic filing of some submissions.

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have not identified any non-hour cost burdens associated with this collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency “. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .” Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on May 22, 2015, we published a **Federal Register** notice

(80 FR 29738) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR 250, Subpart C regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received three comments in response to the **Federal Register** notice or unsolicited comments from respondents covered under these regulations. Two comments, from the same private citizen, were not germane to the paperwork burden. The third comment, from a private citizen, “According to CFR 250.300 (C), marking media must be durable enough to withstand environmental conditions. Please let me know if paint sticks and aerosol paint is considered durable once it dries. This marking media has been used for decades in the offshore environment and is being questioned now.” Our response to the individual was, “For past 15 years or so, defined items not considered durable for marking are as follows: chalk, grease pencil or crayon, marking pens, non-

waterproof decals, and water-based paints. Therefore, a paint stick that uses a water-based paint would not be allowed and paint from a spray can that is water-based would not be allowed.”

*Public Availability of Comments:* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 21, 2015.

**Robert W. Middleton,**  
*Deputy Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2015–25707 Filed 10–7–15; 8:45 am]

**BILLING CODE 4310–VH–P**

**INTERNATIONAL TRADE  
COMMISSION**

[USITC SE-15-033]

**Government in the Sunshine Act  
Meeting****AGENCY HOLDING THE MEETING:** United States International Trade Commission.**TIME AND DATE:** October 14, 2015 at 9:30 a.m.**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.**STATUS:** Open to the public.**MATTERS TO BE CONSIDERED:**

1. Agendas for future meetings: None
  2. Minutes
  3. Ratification List
  4. Vote in Inv. No. 731-TA-149 (Fourth Review) (Barium Chloride from China). The Commission is currently scheduled to complete and file its determination and views of the Commission on October 27, 2015.
  5. Vote in Inv. Nos. 701-TA-437 and 731-TA-1060-1061 (Second Review) (Carbazole Violet Pigment 23 from China and India). The Commission is currently scheduled to complete and file its determinations and views of the Commission on November 2, 2015.
  6. Outstanding action jackets: None
- In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 6, 2015.

**William R. Bishop,**  
*Supervisory Hearings and Information  
Officer.*

[FR Doc. 2015-25846 Filed 10-6-15; 4:15 pm]

**BILLING CODE 7020-02-P****DEPARTMENT OF JUSTICE****Notice of Lodging of Proposed  
Consent Decree Under the Clean Water  
Act**

On September 15, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States v. Puerto Rico Aqueduct and Sewer Authority and the Commonwealth of Puerto Rico*, Civil Action No. 3:15-cv-02283.

The proposed consent decree resolves the United States' claims against the Puerto Rico Aqueduct and Sewer Authority ("PRASA") and the Commonwealth of Puerto Rico under the Clean Water Act (CWA), 33 U.S.C. 1251, *et seq.*, concerning CWA violations at PRASA's water treatment plants (WTPs), wastewater treatment plants (WWTPs), and pump stations. The Commonwealth, a signatory to the consent decree, is named as a defendant under Section 309(e) of the CWA, 33 U.S.C. 1319(e). The proposed consent decree provides for injunctive relief to be implemented by PRASA over the next 15 years at the WWTPs, WTPs, and pump stations at an estimated cost of \$1.5 billion. PRASA is currently under three consent decrees with the United States to address CWA and Safe Drinking Water Act ("SDWA") violations at its WWTPs, WTPs, and pump stations. The proposed consent decree sets forth a comprehensive agreement consolidating all the CWA requirements with the United States to date and supersedes the three prior consent decrees that addressed pump stations, WWTPs, and sludge treatment systems at WTPs.

The publication of this notice opens a period for public comment on the

proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States v. Puerto Rico Aqueduct and Sewer Authority, and the Commonwealth of Puerto Rico*, D.J. Ref. No. 90-5-1-1-08385/4. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department Web site: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$25.75 (25 cents per page reproduction cost) for a copy of the proposed consent decree (copies of the appendices attached to the consent decree are not included in this amount) payable to the United States Treasury.

**Robert E. Maher Jr.,***Assistant Section Chief, Environmental  
Enforcement Section, Environment and  
Natural Resources Division.*



## APPENDIX 1

4410-15

## AVISO

DEPARTAMENTO DE JUSTICIAAVISO DE PRESENTACIÓN DE UN DECRETO DE CONSENTIMIENTO PROPUESTO  
A TRAVÉS DE LA  
LEY DE AGUA LIMPIA

El 15 de septiembre de 2015, el Departamento de Justicia presentó un decreto de consentimiento propuesto ante el Tribunal de Distrito de los Estados Unidos correspondiente al Distrito de Puerto Rico en una demanda judicial titulada *Los Estados Unidos contra la Autoridad de Acueductos y Alcantarillados de Puerto Rico y el Estado Libre Asociado de Puerto Rico*, Causa Civil Núm. 3:15-cv-02283.

El decreto de consentimiento propuesto resuelve las reclamaciones de los Estados Unidos en contra de la Autoridad de Acueductos y Alcantarillado de Puerto Rico ("PRASA") y el Estado Libre Asociado de Puerto Rico a través de la Ley de Agua Limpia, Sección 1251 y siguientes del Título 33 del Código de los Estados Unidos, relacionado con violaciones a la Ley de Agua Limpia en las plantas de tratamiento de agua (water treatment plants, WTP), las plantas de tratamiento de aguas residuales (wastewater treatment plans, WWTP) y las estaciones de bombeo. El Estado Libre Asociado, un signatario del decreto de consentimiento, está nombrado como acusado en virtud de la Sección 309(e) de la Ley de Agua Limpia, y la Sección 1319(e) del Título 33 del Código de los Estados Unidos. El decreto de consentimiento propuesto estipula medidas cautelares que PRASA ha de implementar durante los siguientes 15 años en las plantas de tratamiento de agua, las plantas de tratamiento de aguas residuales y las estaciones de bombeo con un costo aproximado de \$1.5 mil millones. Hay tres decretos de consentimiento con los Estados Unidos vigentes sobre PRASA en la actualidad para corregir violaciones a la Ley de

Agua Limpia y la Ley de Agua Potable Segura (Safe Drinking Water Act, SDWA) en sus plantas de tratamiento de agua, las plantas de tratamiento de aguas residuales y en las estaciones de bombeo. El decreto de consentimiento propuesto establece un acuerdo integral que consolida todos los requisitos de la Ley de Agua Limpia con los Estados Unidos hasta la fecha y reemplaza tres decretos de consentimiento previos que corregían las estaciones de bombeo, las plantas de tratamiento de aguas residuales y los sistemas de tratamiento de lodos en las plantas de tratamiento de agua.

La publicación de este aviso abre un período para recibir los comentarios del público sobre el decreto de consentimiento propuesto. Los comentarios deben dirigirse al Fiscal Auxiliar General, División de Recursos Naturales y Medioambiente, y deben mencionar el caso titulado *Los Estados Unidos contra la Autoridad de Acueductos y Alcantarillados de Puerto Rico y el Estado Libre Asociado de Puerto Rico*, D. J. Ref. núm. 90-5-1-1-08365/4. Todos los comentarios deben enviarse antes de que transcurran treinta (30) días de la fecha de publicación de este aviso. Los comentarios pueden enviarse por correo electrónico o por correo regular:

<i>Para enviar comentarios:</i>	<i>Envíelos a:</i>
Por correo electrónico	Pubcomment- ees.enrd@usdoj.gov
Por correo regular	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

Durante el período de comentarios públicos, el decreto de consentimiento propuesto puede examinarse y descargarse en este sitio web del Departamento de Justicia:.

<http://www.justice.gov/enrd/consent-decrees>. Proporcionaremos una copia impresa del decreto

de consentimiento propuesto bajo previa petición por escrito y pago de los costos de reproducción. Envíe su solicitud y pago a:

Consent Decree Library  
U.S. DOJ – ENRD  
P.O. Box 7611  
Washington, D.C. 20044-7611

Sírvase adjuntar un cheque o giro postal de \$25.75 (25 centavos por el costo de reproducción por página) por una copia del decreto de consentimiento propuesto (las copias de los apéndices adjuntos al decreto de consentimiento no están incluidos en esta cantidad) pagadero al United States Treasury.

Robert E. Maher Jr.  
Jefe Asistente de Sección  
Sección de Seguridad del Medioambiente  
División de Recursos Naturales y Medioambiente.

[FR Doc. 2015–25602 Filed 10–7–15; 8:45 am]  
BILLING CODE 4410–15–P

## DEPARTMENT OF JUSTICE

[OMB Number 1140–0019]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection Federal Firearms License (FFL) RENEWAL Application

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** Correction 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. **DATES:** Comments are encouraged and will be accepted for 60 days until December 7, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, Tracey Robertson, [tracey.robertson@atf.gov](mailto:tracey.robertson@atf.gov)

Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 20226.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection:* Extension without change of a currently approved collection.
2. *The Title of the Form/Collection:* Federal Firearms License (FFL) RENEWAL Application.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: ATF F 8 (5310.11) Part 11.
4. The applicable component within the Department of Justice is the Bureau of Alcohol, Tobacco, Firearms and Explosives.
5. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The form is filed by the licensee desiring to renew a Federal firearms license. It is used to identify the applicant, locate the business/collection premises, identify the type of business/collection activity, and determine the eligibility of the applicant.
6. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 30,000 respondents will complete a 30-minute form.

7. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 15,000 hours. It is estimated that respondents will take .50 or 30 minutes to complete a questionnaire. The burden hours for collecting respondent data sum to 30,000 (30,000 respondents × .50 hours = 15,000 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: September 25, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-25620 Filed 10-7-15; 8:45 am]

**BILLING CODE 4410-FY-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. John E. Wilson*, Civil Action No. 8:15-cv-04051-HMH, was lodged with the United States District Court for the District of South Carolina on September 30, 2015.

This proposed Consent Decree concerns a complaint filed by the United States against Defendant John E. Wilson, pursuant to 33 U.S.C. 1311(a) and 1344, to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas or submit an after-the-fact permit application and perform mitigation and pay a civil penalty. The proposed Consent Decree also provides for the Defendant to perform an Environmental Compliance Promotion Project.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Beth Drake, First Assistant United States Attorney, United States Attorney's Office, 1441 Main Street, Suite 500, Columbia, South Carolina and refer to *United States v. John E. Wilson*, Civil

Action No. 8:15-cv-04051, USAO File No. 2013V01894.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina (Anderson/Greenwood Division), United States Courthouse, 300 East Washington Street, Greenville, South Carolina 29601. In addition, the proposed Consent Decree may be examined electronically at <http://www.justice.gov/enrd/consent-decrees>.

**Cherie L. Rogers,**

*Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 2015-25615 Filed 10-7-15; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1121-0339]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Comments Requested: Generic Clearance for Cognitive, Pilot and Field Studies for Bureau of Justice Statistics Data Collection Activities

**AGENCY:** Bureau of Justice Statistics, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS) intends to request approval from the Office of Management and Budget (OMB) for a generic information collection clearance that will allow BJS to conduct a variety of cognitive, pilot, and field test studies. BJS will submit the request for review and approval in accordance with the Paperwork Reduction Act of 1995.

Over the next three years, BJS anticipates undertaking a variety of new surveys and data collections, as well as reassessing ongoing statistical projects, across a number of areas of criminal justice, including law enforcement, courts, corrections, and victimization. This work will entail development of new survey instruments, redesigning and/or modifying existing surveys, procuring administrative data from state and local government entities, and creating or modifying establishment surveys. In order to inform BJS data collection protocols, to develop accurate estimates of respondent burden, and to minimize respondent burden associated with each new or modified data collection, BJS will engage in cognitive, pilot and field test activities to refine instrumentation and data collection

methodologies. BJS envisions using a variety of techniques, including but not limited to tests of different types of survey and data collection operations, focus groups, cognitive testing, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Following standard Office of Management and Budget (OMB) requirements, BJS will submit a change request to OMB individually for every group of data collection activities undertaken under this generic clearance. BJS will provide OMB with a copy of the individual instruments or questionnaires (if one is used), as well as other materials describing the project.

**DATES:** Comments are encouraged and will be accepted for 60 days until December 7, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Devon Adams, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: [Devon.Adams@usdoj.gov](mailto:Devon.Adams@usdoj.gov); telephone: 202-307-0765).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

## Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Generic Clearance for cognitive, pilot and field studies for Bureau of Justice Statistics data collection Activities.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers not available for generic clearance. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Administrators or staff of state and local agencies or programs in the relevant fields; administrators or staff of non-government agencies or programs in the relevant fields; individuals; policymakers at various levels of government.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* We estimate that approximately 20,000 respondents will be involved in exploratory, field test, pilot, cognitive, and focus group work conducted under this clearance over the requested 3-year clearance period. The average response time per respondent will be specific to each project covered under the clearance. Specific estimates of the number of respondents and the average response time are not known for each pilot study or development project covered under a generic clearance at this time. Project specific estimates will be submitted to OMB separately for each project conducted under this clearance. An estimate of the overall number of burden hours for activities under this generic.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden for identified and future projects covered under this generic clearance over the 3-year clearance period is approximately 15,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 5, 2015.

**Jerri Murray**,  
Department Clearance Officer for PRA, U.S.  
Department of Justice.  
[FR Doc. 2015-25621 Filed 10-7-15; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF JUSTICE

### Parole Commission

#### Sunshine Act Meeting

#### Record of Vote of Meeting Closure (Pub. L. 94-409) (5 U.S.C. Sec. 552b)

I, J. Patricia W. Smoot, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 11:00 a.m., on Tuesday, October 6, 2015 at the U.S. Parole Commission, 90 K Street, NE., Third Floor, Washington, DC 20530. The purpose of the meeting was to discuss six original jurisdiction cases pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: J. Patricia W. Smoot, Patricia Cushwa and Charles T. Massarone.

*In witness whereof*, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: October 6, 2015.

**J. Patricia W. Smoot**,  
Chairman, U.S. Parole Commission.  
[FR Doc. 2015-25857 Filed 10-6-15; 4:15 pm]

**BILLING CODE 4410-31-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978.

NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 9, 2015. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Li Ling Hamady, ACA Permit Officer, at the above address or [ACApermits@nsf.gov](mailto:ACApermits@nsf.gov) or (703) 292-7149.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

### Application Details

#### Permit Application: 2016-016

1. *Applicant:* Dr. Philip R. Kyle, Department of Earth and Environmental Science, New Mexico Institute of Mining and Technology, Socorro, NM 87801.

#### Activity for Which Permit Is Requested

ASPAs entry; Applicant wishes to enter Cape Crozier (ASPAs 124) and High Altitude Geothermal Sites of the Ross Sea Region (ASPAs 175) in order to make GPS measurements to monitor ground deformation to help predict volcanic eruptions. Applicant will also collect some lava samples.

#### Location

ASPAs 124: Cape Crozier; ASPAs 175: High Altitude Geothermal Sites of the Ross Sea Region.

#### Dates

January 1, 2016–February 15, 2017.

#### Nadene G. Kennedy

*Polar Coordination Specialist, Division of Polar Programs.*

[FR Doc. 2015-25610 Filed 10-7-15; 8:45 am]

**BILLING CODE 7555-01-P**

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 50–389; NRC–2015–0235]

**Florida Power and Light Company St. Lucie Plant, Unit 2****AGENCY:** Nuclear Regulatory Commission.**ACTION:** 10 CFR 2.206 request; receipt.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated March 10, 2014, as supplemented, the Southern Alliance for Clean Energy (SACE, the petitioner) has requested that the NRC take enforcement action with regard to Florida Power and Light Company (FPL or the licensee). The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** Please refer to Docket ID NRC–2015–0235 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2015–0235. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**SUPPLEMENTARY INFORMATION:** By letter dated March 10, 2014 (ADAMS Accession No. ML14071A431), as supplemented,<sup>1</sup> SACE requested a

hearing and that the NRC revoke the *de facto* license amendment for the replacement of the steam generators (SGs) under section 50.59 of Title 10 of the *Code of Federal Regulations* (10 CFR). As the basis for this request, the petitioner stated that the § 50.59 process was incorrectly applied and that replacement of the SGs should have required a license amendment under 10 CFR 50.90. The petitioner stated concerns with how the licensee implemented the § 50.59 process.

However, the Commission, by a Memorandum and Order (CLI–14–11)<sup>2</sup> dated December 19, 2014, referred the SACE's hearing request to the Executive Director for Operations for disposition under 10 CFR 2.206.

The request is being treated pursuant to 10 CFR 2.206 of the NRC's regulations. The NRC staff has reviewed the petition and its supplements and referred the request to the Director of the Office of Nuclear Reactor Regulation. The Director determined that the petitioner's request partially meets the criteria for review under 10 CFR 2.206 and partially meets the criteria for rejection.

The parts of the petition that met the criteria for rejection are the SACE's concerns related to the inspection of the replacement SGs, as well as the concerns regarding the effects of the extended power uprate on SG tube inservice inspection and flow-induced effects on the SG internals. These items meet one criterion for rejection in accordance with Management Directive (MD) 8.11, on the basis that these issues have already been reviewed, evaluated, and resolved by the NRC staff. However, the NRC staff determined that part of the petition that addresses SACE's concerns regarding the licensee's application of the § 50.59 process, with respect to the change in a methodology as described in the Updated Final Safety Analysis Report, meets the criteria for review of a petition under 10 CFR 2.206. The NRC staff will take appropriate action on this petition within a reasonable time as provided by 10 CFR 2.206.

Dated at Rockville, Maryland, this 28th day of September 2015.

For the Nuclear Regulatory Commission.

**William M. Dean,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 2015–25696 Filed 10–7–15; 8:45 am]

**BILLING CODE 7590–01–P**

<sup>1</sup> Supplements (ADAMS Accession Nos. ML14071A431, ML14115A457, ML14115A458, ML14125A514, ML14128A557, ML14143A412, ML14147A523, ML14310A811, and ML14337A792).

<sup>2</sup> Commission Memorandum and Order dated December 19, 2014 (ADAMS Accession No. ML14353A114).

**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 052–00025 and 052–00026; NRC–2008–0252]

**Vogtle Electric Generating Plant, Units 3 and 4****AGENCY:** Nuclear Regulatory Commission.**ACTION:** License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Combined Licenses (NPF–91 and NPF–92), issued to Southern Nuclear Operating Company, Inc. (SNC), Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC., MEAG Power SPVJ, LLC., MEAG Power SPVP, LLC., and the City of Dalton, Georgia (together "the licensees"), for construction and operation of the Vogtle Electric Generating Plant (VEGP), Units 3 and 4, located in Burke County, Georgia.

**DATES:** Submit comments by November 9, 2015. Requests for a hearing or petition for leave to intervene must be filed by December 7, 2015.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2008–0252. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ruth C. Reyes, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–000; telephone: 301–415–3249; email: [Ruth.Reyes@nrc.gov](mailto:Ruth.Reyes@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site*: Go to <http://www.regulations.gov> and search for Docket ID NRC–2008–0252.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The application for amendment, dated September 18, 2015, is available in ADAMS under Accession No. ML15261A757.

- *NRC's PDR*: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### B. Submitting Comments

Please include Docket ID NRC–2008–0252 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at <http://www.regulations.gov> as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## II. Introduction

The NRC is considering issuance of an amendment to Facility Operating

License Nos. NPF–91 and NPF–92, issued to SNC and Georgia Power Company for operation of the Vogtle Electric Generating Plant, Units 3 and 4, located in Burke County, Georgia.

The proposed changes would revise the Combined Licenses (COLs) by increasing the tolerances listed for four concrete thicknesses in COL Appendix C and plant-specific Tier 1 Table 3.3–1, "Definition of Wall Thicknesses for Nuclear Island Buildings, Turbine Building, and Annex Building," from  $\pm 1''$  to  $\pm 1\frac{5}{8}''$ . Because, this proposed change requires a departure from Tier 1 information in the Westinghouse Advanced Passive 1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 52.63(b)(1).

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

As indicated in the Updated Final Safety Analysis Report, Subsection 3.8.3.1, the containment internal structures and associated modules support the reactor coolant system components and related piping systems and equipment. The increase in tolerance associated with the concrete thickness of four of these containment internal structure walls and the deviation from American Concrete Institute (ACI) 117 do not involve any accident initiating components or events, thus leaving the probabilities of an accident unaltered. The increased tolerance does not adversely affect any safety-related structures or equipment

nor does the increased tolerance reduce the effectiveness of a radioactive material barrier. Thus, the proposed changes would not affect any safety-related accident mitigating function served by the containment internal structures.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed tolerance increases and the code deviation from ACI 117 do not change the performance of the affected containment internal structures. As demonstrated by the continued conformance to the other applicable codes and standards governing the design of the structures, the walls with an increased concrete thickness tolerance continue to withstand the same effects as previously evaluated. There is no change to the design function of the affected modules and walls, and no new failure mechanisms are identified as the same types of accidents are presented to the walls before and after the change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to increase the concrete thickness tolerance for four walls identified in COL Appendix C Table 3.3–1 does not alter any design function, design analysis, or safety analysis input or result, and sufficient margin exists to justify departure from the ACI 117 requirements for the four affected walls. As such, because the system continues to respond to design basis accidents in the same manner as before without any changes to the expected response of the structure, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes. Accordingly, no safety margin is reduced by the increase of the wall concrete thickness tolerance.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license

amendment request involves a No Significant Hazards Consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

### III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who desires to participate as a party in the proceeding must file a written request for hearing or a petition for leave to intervene specifying the contentions which the person seeks to have litigated in the hearing with respect to the license amendment request. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the NRC's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>.

As required by 10 CFR 2.309, a request for hearing or petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing

request or petition must specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The hearing request or petition must also include the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings that the NRC must make to support the granting of a license amendment in response to the application. The hearing request or petition must also include a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely at the hearing, together with references to those specific sources and documents. The hearing request or petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute. If the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the requestor/petitioner must identify each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who does not satisfy these requirements for at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions,

including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Hearing requests or petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)-(iii).

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

### IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.



To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered

complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding

officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated September 18, 2015.

*Attorney for licensee:* Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203-2015.

*NRC Branch Chief:* Lawrence Burkhardt.

Dated at Rockville, Maryland, this 1st day of October 2015.

For the Nuclear Regulatory Commission.

**Lawrence Burkhardt,**

*Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2015-25688 Filed 10-7-15; 8:45 am]

**BILLING CODE 7590-01-P**

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

*Extension:* Rule 17Ad-11

[SEC File No. 270-261, OMB Control No. 3235-0274]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the

Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 17Ad-11 (17 CFR 240.17Ad-11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 17Ad-11 requires every registered recordkeeping transfer agent to report to issuers and its appropriate regulatory agency in the event that the aggregate market value of an aged record difference exceeds certain thresholds. A record difference occurs when an issuer’s records do not agree with those of securityholders as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption or transfer. An aged record difference is a record difference that has existed for more than 30 calendar days. In addition, the rule requires every recordkeeping transfer agent to report to its appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within five business days of the time required by Rule 17Ad-10 (17 CFR 240.10). Also, a transfer agent must maintain a copy of any report required under Rule 17Ad-11 for a period of not less than three years following the date of the report, the first year in an easily accessible place. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

Because the information required by Rule 17Ad-11 is already available to transfer agents, any collection burden for small transfer agents is minimal. Based on a review of the number of Rule 17Ad-11 reports the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation received since 2012, the Commission estimates that 10 respondents will file a total of approximately 12 reports annually. The Commission staff estimates that, on average, each report requires approximately 30 minutes to prepare. Therefore, the Commission staff estimates that the total annual hourly burden to the entire transfer agent industry is approximately six hours (30 minutes x 12 reports). Assuming an average hourly rate of \$25 for a transfer agent staff employee, the average total internal cost of the report is \$12.50. The total annual internal cost of compliance for the approximated 10 respondents is approximately \$150.00 (12 reports x \$12.50).

Written comments are invited on: (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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA\_Mailbox@sec.gov*.

Dated: October 2, 2015.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-25600 Filed 10-7-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76068; File No. SR-CBOE-2015-077]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating To Margin Requirements

October 2, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 22, 2015, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to margin requirements. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

\* \* \* \* \*

#### Chicago Board Options Exchange, Incorporated Rules

\* \* \* \* \*

##### Rule 12.3. Margin Requirements

(a)–(b) No change.

(c) Customer Margin Account—Exception. The foregoing requirements are subject to the following exceptions. Nothing in this paragraph (c) shall prevent a broker-dealer from requiring margin from any account in excess of the amounts specified in these provisions.

(1)–(4) No change.

(5) Initial and Maintenance Margin Requirements on Short Options, Stock Index Warrants, Currency Index Warrants and Currency Warrants.

(A)–(B) No change.

(C) Related Securities Positions—Listed or OTC Options. Unless otherwise specified, margin must be deposited and maintained in the following amounts for each of the following types of positions.

(1) No change.

(2) Covered Calls/Covered Puts.

(a) No margin [need be]is required [in respect of]for a[n] call (put) option contract[, stock index warrant, currency index warrant] or [currency]warrant carried in a short position [which is covered by] where there is carried in the same account a long (short) position in equivalent units of the underlying security[ in the case of a call, or a short position in equivalent units of the underlying security in the case of a put, provided, however, in computing margin on such position in the underlying security, the current market value to be used shall not be greater than the exercise price in the case of a call. In the case of a put, in computing margin on the underlying position, margin shall be the amount required by subparagraph (b)(2) of this Rule, plus the amount, if any, by which the exercise price of the put exceeds the current market value of the underlying].

(b) No margin is required for[In respect of an] a call (put) index option contract or warrant [on a market index]carried in a short position[,] where there is carried in the same account a long (short) position in an (i) underlying stock basket, (ii) index mutual fund, (iii) IPR (as defined in Rule 1.1, Interpretation and Policy .02), or (iv) IPS (as defined in Rule 1.1, Interpretation and Policy .03), that is based on the same index underlying the index option or warrant and having a market value at least equal to the aggregate current index value [subject to the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

same requirements for computing margin, may serve as cover].

[No margin is required in respect of a call option contract on a Standard and Poor's 500 (S&P 500) market index carried in a short position where there is carried for the same account a long position in the underlying open-end index mutual fund (which shall be specifically designated by the Exchange) having an aggregate market value at least equal to the underlying value of the S&P 500 contracts to be covered.]

(c) In order for the exceptions in subparagraphs (a) and (b) above to apply, in computing margin on positions in the underlying security, underlying stock basket, index mutual fund, IPR or IPS, as applicable, (i) in the case of a call, the current market value to be used shall not be greater than the exercise price, and (ii) in the case of a put, margin shall be the amount required by subparagraph (b)(2) of this Rule, plus the amount, if any, by which the exercise price exceeds the current market value.

(3)–(4) No change.

(d)–(n) No change.

. . . Interpretations and Policies:

.01–.19 No change.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Rule 12.3 sets forth margin requirements, and certain exceptions to those requirements, applicable to security positions of Trading Permit Holders' customers. Rule 12.3(c)(5)(C)(2) currently requires no margin for covered calls and puts. Specifically, that rule provides the following:

- No margin need be required in respect of an option contract, stock index warrant, currency index warrant or currency warrant carried in a short

position which is covered by a long position in equivalent units of the underlying security in the case of a call (covered call), or a short position in equivalent units of the underlying security in the case of a put (covered put).<sup>3</sup>

- An underlying stock basket<sup>4</sup> may serve as cover for an option contract or warrant on a market index carried short (subject to the same requirements for computing margin).

- No margin is required in respect of a call option on a Standard and Poor's 500 (S&P 500) market index carried in a short position where there is carried for the same account a long position in an underlying open-end index mutual fund (which will be specifically designated by the Exchange) having an aggregate market value at least equal to the underlying value of the S&P 500 contracts to be covered.

First, the proposed rule change makes some nonsubstantive changes to Rule 12.3(c)(5)(C)(2). The proposed rule change letters the provisions listed in the first two bulleted paragraphs above to become subparagraphs (2)(a) and (b) and moves part of the provision in the first bulleted paragraph to proposed subparagraph (2)(c) (as discussed below, the proposed rule change deletes the third bulleted paragraph above). Additionally, the proposed rule change revises the language to be consistent throughout these provisions, including clarifying that the underlying security or one of the other permissible offsets must be carried in the same account as the option position. The proposed rule change also makes the language more plain English, eliminates repetitive language, and inserts a missing space in proposed subparagraph (b).

Second, the proposed rule change adds circumstances in which covered calls and puts require no margin. The proposed rule change applies the provision in proposed subparagraph (b)

<sup>3</sup> In computing margin on such a position in the underlying security, (a) in the case of a call, the current market value to be used shall not be greater than the exercise price and (b) in the case of a put, margin will be the amount required by Rule 12.3(b)(2), plus the amount, if any, by which the exercise price of the put exceeds the current market value of the underlying.

<sup>4</sup> An "underlying stock basket" means a group of securities that includes each of the component securities of the applicable index and which meets the following conditions: (a) The quantity of each stock in the basket is proportional to its representation in the index, (b) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered, (c) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value and (d) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account. See Rule 12.3(a)(7).

to index mutual funds, index portfolio receipts ("IPRs"),<sup>5</sup> and index portfolio shares ("IPSS"),<sup>6</sup> in addition to underlying stock baskets, based on the same index underlying the index option and having a market value at least equal to the aggregate current index value.<sup>7</sup> IPRs and IPSSs are commonly referred to as exchange-traded funds ("ETFs"). The proposed rule change also deletes the provision that provides no margin is required in respect of options on a Standard and Poor's 500 (S&P 500) market index carried in a short position where there is carried for the same account a long position in the underlying open-end index mutual fund having an aggregate market value at least equal to the underlying value of the S&P 500 contracts to be covered.<sup>8</sup> Proposed subparagraph (b) extends the same margin exception to any index option offset by a position in a mutual fund based on the same underlying index, making this current provision duplicative.

<sup>5</sup> The term "index portfolio receipts" or "IPRs" means securities that (a) represent an interest in a unit investment trust ("UIT") which holds the securities that comprise an index on which a series of IPRs is based; (b) are issued by the UIT in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount; (c) when aggregated in the same specified minimum number, may be redeemed from the UIT which will pay to the redeeming holder the stock and cash then comprising the Portfolio Deposit; and (d) pay holders a periodic cash payment corresponding to the regular cash dividends or distributions declared and paid with respect to the component securities of the stock index on which the IPRs are based, less certain expenses and other charges as set forth in the UIT prospectus. IPRs are "UIT interests" within the meaning of the CBOE Rules. See CBOE Rule 1.1, Interpretation and Policy .02.

<sup>6</sup> The term "index portfolio shares" or "IPSS" means securities that (a) are issued by an open-end management investment company based on a portfolio of stocks or fixed income securities designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index; (b) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified number of shares of stock and/or a cash amount, or a specified portfolio of fixed income securities and/or a cash amount, with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company which will pay to the redeeming holder stock and/or cash, or a specified portfolio of fixed income securities and/or cash with a value equal to the next determined net asset value. See CBOE Rule 1.1, Interpretation and Policy .03.

<sup>7</sup> The term "aggregate current index value" means the current index value times the index multiplier. See CBOE Rule 12.3, Interpretation and Policy .07.

<sup>8</sup> The proposed rule change also deletes the requirement for CBOE to specifically designate funds, as it thinks this is no longer necessary due to the continued increase in availability of these types of products, as discussed below.

Index ETFs and mutual funds function in a similar manner to underlying stock baskets, as they are intended to replicate the performance of their underlying market indexes. The types and diversity of products available on the market that track indexes continues to increase and provide additional investment and hedging opportunities. While an ETF or mutual fund may not meet the definition of an underlying stock basket (for example, some ETFs have a sampling of the securities that comprise the underlying index), it essentially has the same purpose as an underlying stock basket for investors. It closely tracks an underlying index, and thus can function as an offsetting position to an index option overlying the same index in the same way as an underlying stock basket.<sup>9</sup>

The Board of Governors of the Federal Reserve System (“FRB”) previously indicated that no margin would be required if an index option (on a broad-based stock index with at least a 99% correlation with the S&P 500 index) is covered by an offsetting position in S&P Index Depository Receipts (SPDRS), but rather such SPDR positions would be treated as cover in accordance with Section 220.5(c)(3) of Regulation T.<sup>10</sup> CBOE and another exchange later afforded the same margin treatment to options on the Dow Jones Industrial Average (DJIA) covered by units of the DIAMONDS Trust held in the same account.<sup>11</sup> Based on this previous

<sup>9</sup> The Exchange notes that current federal net capital rules that apply to options define a qualified stock basket to mean a set or basket of stock positions which represents no less than 50% of the capitalization for a high-capitalization or non-high-capitalization diversified market index or no less than 95% of the capitalization of a narrow-based index. Those rules require positions in index options be grouped with related instruments within the option’s class and qualified stock baskets in the same index. See 17 CFR 240.15c3-1a(b)(1)(i)(D) and (ii). Similar to a qualified stock basket, while an ETF or mutual fund may not hold every stock included in the underlying market index, its holdings are intended to track the index.

<sup>10</sup> See Letter dated February 1, 1993 from Michael J. Schoenfeld, FRB, to James McNeil, American Stock Exchange (“Amex”); see also Letter dated August 19, 1992 from James M. McNeil, Amex, to Sharon Lawson, Commission, and Letter dated January 14, 1993 from James M. McNeil, Amex, to Laura M. Homer, FRB. The section of Regulation T referenced in these letters currently corresponds to Section 220.4(b)(4), which provides margin requirements when stock is used as cover for short option positions.

<sup>11</sup> See Letter dated December 3, 1997 from James M. McNeil, Amex, to Scott Holz, FRB, and Letter dated January 8, 1998 from Scott Holz, FRB to James M. McNeil, Amex; see also Letter dated December 16, 1997 from Richard Lewandowski, CBOE, to Mr. Michael Walinskas, Commission. There was no objection from the FRB or the Commission to Amex’s or CBOE’s extension of the margin treatment previously provided to SPDRS to DIAMONDS.

guidance from the FRB and the Commission, and in conjunction with the Exchange’s current rules, CBOE has applied this margin treatment to short index option positions where there are offsetting positions in an ETF that tracks the same underlying index held in the same margin account (which treatment the Exchange has announced in Regulatory Circulars).<sup>12</sup> The proposed rule change is consistent with these previous findings and applies this margin treatment generally to all ETFs and mutual funds that overlie market indexes, in the same manner that the rules currently apply to underlying stock baskets. Given that the Exchange regularly lists new products, including index options, the Exchange believes it is appropriate to have a more general rule related to margin on these index option products that applies in the same manner rather than identifying this margin treatment in Regulatory Circulars.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>14</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>15</sup> requirement that the rules of an exchange not be designed

to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change provides for a specific margin treatment related to covered puts and calls to apply to all index options in the same manner. The current rules, together with a no-action letter from the FRB and Regulatory Circulars, provide that no margin is required for a short position in certain specified index options if a long position in an underlying stock basket that meets a specific definition or certain specified ETFs that relate to the index are also held in the same account. The proposed rule change merely expands the availability of this margin treatment to all index options to the extent covered by any ETF based on the same index underlying the index option. Similarly, current rules provide for this margin treatment to apply to SPX options if covered by an approved mutual fund, and the proposed rule change merely expands the availability of this margin treatment to any mutual fund based on the same index underlying the index option. Stock baskets, ETFs and mutual funds that track a reference index can generally provide the same economic function as a security underlying an option. Therefore, the Exchange believes it is appropriate to extend the same ability to secure short index option positions to ETFs and mutual funds that is currently available to underlying stock baskets. Allowing this singular margin treatment to securities providing a similar economic function promotes just and equitable principles of trade. The Exchange believes including this in its rules, rather than specifying single indexes covered by this rule in Regulatory Circulars, and creating this clarity and consistency in margin requirements will remove impediments to and perfect the mechanisms of a free and open market and a national market system. Additionally, proposed subparagraph (b) is substantially similar to the rules of another options exchange.<sup>16</sup>

The Exchange also believes the proposed rule change furthers the objectives of section 6(c)(3) of the Act,<sup>17</sup> which authorizes the Exchange to, among other things, prescribe standards of financial responsibility or operational capability and standards of training, experience and competence for its Trading Permit Holders and person associated with Trading Permit Holders, as well as Regulation T issued by the

<sup>16</sup> See NYSE MKT LLC (“NYSE MKT”) Section 7, Rule 462(d)(12)(B)(ii)(C) and Interpretation and Policy .06.

<sup>17</sup> 15 U.S.C. 78f(c)(3).

<sup>12</sup> See Regulatory Circulars RG99-09 (permitting SPDRS and DIAMONDS to cover short positions of options on the S&P 500 (“SPX options”) and on the DJIA (DJX), respectively); RG00-171 (permitting units of iShares S&P 100 Index Fund to cover short positions of options on the S&P 100 Index (OEX)); RG01-119 (permitting Nasdaq-100 Index Tracking Shares to cover short positions of options on the Nasdaq-100 Shares (QQQ), the Nasdaq 100 Index (NDX) or the Mini-Nasdaq 100 Index (MNX); RG02-110 (permitting units of the iShares S&P 500 Fund (IVV) to cover short SPX option positions); and RG07-126 (permitting units of the iShares Russell 200 Index Fund (IWM) to cover short positions of options on the Russell 2000 index (RUT)).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Id.*

FRB. As discussed above, the proposed rule change is merely an extension of current margin standards and is consistent with an FRB no-action letter that permitted the applicable margin treatment for a specific index option and related ETF.

The proposed nonsubstantive, technical changes provide for more consistent and plain English language in similar rule provisions, which will ultimately benefit investors.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change applies to all Trading Permit Holders in the same manner and makes the same margin treatment available to all Trading Permit Holders. The proposed rule change is unrelated to competition and instead is intended to bring uniformity to CBOE's margin rules. It is consistent with current rules and interpretations set forth in Regulatory Circulars, as well as regulatory guidance, and is not intended to impact trading on the Exchange. As discussed above, proposed subparagraph (b) is also substantially similar to the rule of another options exchange.<sup>18</sup>

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2015-077 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-077. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2015-077 and should be submitted on or before October 29, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-25598 Filed 10-7-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76069; File No. SR-ICEEU-2015-016]

### **Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearance of New Natural Gas Futures Contracts**

October 2, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 18, 2015, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rules 19b-4(f)(4)(ii)<sup>4</sup> thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The principal purpose of the proposed rule change is to modify the ICE Clear Europe Delivery Procedures with respect to the settlement of certain European natural gas futures contracts that will be traded on the ICE Endex market and cleared by ICE Clear Europe.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>18</sup> See *supra* note 16.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to modify the ICE Clear Europe Delivery Procedures in connection with the launch by the ICE Endex market of new natural gas futures contracts that will be cleared by ICE Clear Europe, namely the ICE Endex Italian PSV Natural Gas Futures Contracts (the "PSV Natural Gas Contracts"). ICE Clear Europe does not otherwise propose to amend its clearing rules or procedures in connection with the PSV Natural Gas Contracts.

The amendments adopt a new part AA to the Delivery Procedures, applicable to the PSV Natural Gas Contracts. The amendments provide, among other matters, specifications for delivery of natural gas under a PSV Natural Gas Contract, including relevant definitions and a detailed delivery timetable for the contracts. The amendments also address invoicing and payment for delivery. The amendments provide for calculation by ICE Clear Europe of buyer's and seller's security to cover delivery obligations and related liabilities, costs or charges, as well as procedures to address failed deliveries. The revised procedures also set out various documentation requirements for the relevant parties. In addition, changes are made to paragraph 5.1 of the Delivery Procedures to include the PSV Natural Gas Contracts in the list of contracts for which parties may nominate transferors and transferees to make and take delivery.

2. Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.<sup>6</sup> Specifically, the amendments are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of section 17A(b)(3)(F) of the Act.<sup>7</sup> The PSV Natural Gas Contracts have similar characteristics to other ICE Endex

natural gas contracts currently cleared by ICE Clear Europe, and ICE Clear Europe believes that its existing financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such products (and to address physical delivery under such contracts).

Specifically, ICE Clear Europe believes that it will be able to manage the risks associated with acceptance of the PSV Natural Gas Contracts for clearing and physical delivery in such contracts. The PSV Natural Gas Contracts present a similar risk profile to other ICE Endex contracts currently cleared by ICE Clear Europe, and ICE Clear Europe believes that its existing risk management and margin framework is sufficient for purposes of risk management of the PSV Natural Gas Contracts and related deliveries. Similarly, ICE Clear Europe has established appropriate standards for determining the eligibility of contracts submitted to the clearinghouse for clearing, and ICE Clear Europe believes that its existing systems are appropriately scalable to handle the PSV Natural Gas Contracts, which are generally similar from an operational perspective to the other ICE Endex power contracts currently cleared by ICE Clear Europe.

For the reasons noted above, ICE Clear Europe believes that the proposed rule change is consistent with the requirements of section 17A of the Act and regulations thereunder applicable to it.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. ICE Clear Europe is adopting the amendments to the Delivery Procedures principally in connection with the listing of new contracts for trading on the ICE Endex market. ICE Clear Europe believes that such contracts will provide additional opportunities for interested market participants to engage in trading activity relating to the relevant underlying gas markets. ICE Clear Europe does not believe the adoption of related Delivery Procedures amendments would adversely affect access to clearing for clearing members or their customers, or otherwise adversely affect competition in clearing services.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(4)(ii)<sup>9</sup> thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2015-016 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 17 CFR 240.17Ad-22.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(4)(ii).

All submissions should refer to File Number SR–ICEEU–2015–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at <https://www.theice.com/clear-europe/regulation#rule-filings>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2015–016 and should be submitted on or before October 29, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015–25599 Filed 10–7–15; 8:45 am]

**BILLING CODE 8011–01–P**

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## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2015–0031]

### Privacy Act of 1974, as Amended; Computer Matching Program (SSA/ Office of Personnel Management (OPM))—Match Numbers 1005, 1019, 1020, and 1021

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a renewal of existing computer matching programs that will expire on October 12, 2015.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of existing computer matching programs that we are currently conducting with OPM.

**DATES:** We will file a report of the subject matching programs with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching programs will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;
- (3) Publish notice of the computer matching program in the **Federal Register**;

- (4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

### B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

**Mary Ann Zimmerman,**

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

### Notice of Computer Matching Program, SSA With the Office of Personnel Management (OPM)

#### A. Participating Agencies

SSA and OPM.

#### B. Purpose of the Matching Program

The purpose of this matching program is to set forth the terms, conditions, and safeguards under which OPM will disclose civil service benefit and payment data to us. We are legally required to offset specific benefits by a percentage of civil service benefits received (Spousal and Survivors benefits, Supplemental Security Income (SSI) benefits, and Disability Insurance Benefits are offset by a percentage of the recipients own Federal Government pension benefits). We administer the Old Age, Survivors, Disability Insurance (OASDI), SSI, and Special Veterans' Benefits (SVB) programs. We will use the match results under this agreement to meet our civil service benefit offset obligations. Appendices A, B, C, and D of this agreement contain specific information on the matching programs that we will conduct under this agreement. Our Office of the Chief Actuary (OCA) will also use OPM's data for statistical and research purposes in tracking the size of, and impact on, subpopulations of government annuitants affected by the Government Pension Offset (GPO), the Windfall Elimination Provision (WEP), and in cost estimates of proposals to change the two provisions.

#### C. Authority for Conducting the Matching Program

The legal authority for us to conduct this matching activity for SSI purposes is section 1631(e)(1)(B) and (f) of the Social Security Act (Act) (42 U.S.C. 1383(e)(1)(B) and (f)), and for SVB purposes, is section 806 of the Act (42 U.S.C. 1006). Section 224 of the Act (42 U.S.C. 424a) provides for the reduction

<sup>10</sup> 17 CFR 200.30–3(a)(12).

of Social Security disability benefits when the disabled worker is also entitled to a Public Disability Benefit (PBD).

Section 1631(f) of the Act (42 U.S.C. 1383 (f)) requires Federal agencies to furnish us with information necessary to verify eligibility. Section 224(h)(1) of the Act (42 U.S.C. 424a(h)(1)) requires any Federal agency to provide us with information in its possession that we may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Act (42 U.S.C. 424a).

This agreement is executed in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, and the regulations and guidance promulgated thereunder.

#### D. Categories of Records and Persons Covered by the Matching Program

OPM will provide us with monthly electronic files from the OPM system of record (SOR) published as OPM/Central-1 (Civil Service Retirement and Insurance Records). The files will contain civil service benefit and payment data, including: name; Social Security number (SSN); date of birth; civil service claim number; first potential month and year of eligibility; first month, day, and year of entitlement; and amount of current gross civil service benefits. OPM will also disclose date of death to us for the purposes captured in Appendices C and D.

We will conduct the match using the individual's SSN, name, and date of birth on both the OPM file and our databases covered under our following SORs: The Master Files of SSN Holders and SSN Applications (Numident), 60-0058; the Master Beneficiary Record (MBR), 60-0090; and the SSI Record and Special Veterans Benefits Record (SSR/SVB), 60-0103.

We will use the information to: (1) Identify SSI and SVB recipients with unreported income from civil service pensions (Match 1005, Appendix A); (2) identify beneficiaries receiving Title II disability insurance benefits who are also receiving a Federal civil service disability benefit (Match 1019, Appendix B); (3) identify Title II beneficiaries receiving retirement or disability insurance benefits who are also receiving a Federal Government pension benefit (Match 1020, Appendix C); and (4) identify Title II beneficiaries receiving auxiliary or survivor Social Security benefits, who are also receiving Federal Government pension benefits as retired civil service employees (Match

1021, Appendix D). See Appendices A–D.

Our OCA will use OPM's monthly extract files for statistical and research purposes in tracking the size of, and impact on, subpopulations of government annuitants affected by the GPO, WEP, and in cost estimates of proposals to change the two provisions.

#### E. Inclusive Dates of the Matching Program

The effective date of this matching program is October 13, 2015, provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2015-25601 Filed 10-7-15; 8:45 am]

BILLING CODE 4191-02-P

### SUSQUEHANNA RIVER BASIN COMMISSION

#### Projects Approved for Consumptive Uses of Water

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice.

**SUMMARY:** This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** July 1–31, 2015.

**ADDRESSES:** Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

**FOR FURTHER INFORMATION CONTACT:**

Jason E. Oyler, General Counsel, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; email: [joyler@srbc.net](mailto:joyler@srbc.net). Regular mail inquiries may be sent to the above address.

**SUPPLEMENTARY INFORMATION:** This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

#### Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Talisman Energy USA Inc., Pad ID: Roy 03 039, ABR-20100630.R1, Wells Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 6, 2015.

2. Talisman Energy USA Inc., Pad ID: Harnish 01 032, ABR-20100647.R1, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 6, 2015.
3. Talisman Energy USA Inc., Pad ID: Wray 03 058, ABR-20100649.R1, Wells Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 6, 2015.
4. Talisman Energy USA Inc., Pad ID: Schucker 03 006, ABR-20100654.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 6, 2015.
5. Talisman Energy USA Inc., Pad ID: Morgan 01 073, ABR-20100693.R1, Armenia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 6, 2015.
6. Talisman Energy USA Inc., Pad ID: Lyon 01 078, ABR-20100696.R1, Troy Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 6, 2015.
7. Talisman Energy USA Inc., Pad ID: Feusner 03 053, ABR-201006100.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 6, 2015.
8. Talisman Energy USA Inc., Pad ID: White 03 025, ABR-201006101.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 6, 2015.
9. XTO Energy Incorporated, Pad ID: Temple, ABR-20090714.R1, Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 6, 2015.
10. XTO Energy Incorporated, Pad ID: PA TRACT 8546H, ABR-201010070.R1, Chapman Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 6, 2015.
11. XTO Energy Incorporated, Pad ID: Houseweart 8527H, ABR-201009028.R1, Pine Township, Columbia County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 6, 2015.
12. Seneca Resources Corporation, Pad ID: C09-A, ABR-201507001, Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 8, 2015.
13. Seneca Resources Corporation, Pad ID: C09-J, ABR-201507002, Shippen Township, Cameron



- County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 8, 2015.
14. Chesapeake Appalachia, LLC, Pad ID: Crystal, ABR-201011009.R1, North Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 8, 2015.
15. Chesapeake Appalachia, LLC, Pad ID: Lytwyn, ABR-201011028.R1, Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 8, 2015.
16. Chesapeake Appalachia, LLC, Pad ID: Taylor, ABR-201011034.R1, Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 8, 2015.
17. Chesapeake Appalachia, LLC, Pad ID: Roeber, ABR-201011037.R1, Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 8, 2015.
18. Chesapeake Appalachia, LLC, Pad ID: Epler, ABR-201011041.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 8, 2015.
19. Chesapeake Appalachia, LLC, Pad ID: Comstock, ABR-201011053.R1, Rome Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 8, 2015.
20. Chesapeake Appalachia, LLC, Pad ID: Dunny, ABR-201011066.R1, Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 8, 2015.
21. EXCO Resources (PA), LLC, Pad ID: Barto Unit #1H, #2H, ABR-20090514.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 8, 2015.
22. EXCO Resources (PA), LLC, Pad ID: Zinck Unit #1H, ABR-20090718.R1, Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 8, 2015.
23. EXCO Resources (PA), LLC, Pad ID: Bower Unit #1H Drilling Pad, ABR-20090815.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 8, 2015.
24. Cabot Oil & Gas Corporation, Pad ID: KrisuleviczV P1, ABR-201102027.R1, Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: July 14, 2015.
25. Cabot Oil & Gas Corporation, Pad ID: LymanJ P1, ABR-201104018.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: July 14, 2015.
26. Cabot Oil & Gas Corporation, Pad ID: Augustine P1, ABR-201105002.R1, Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: July 14, 2015.
27. Chesapeake Appalachia, LLC, Pad ID: Primrose, ABR-201011035.R1, Standing Stone Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 14, 2015.
28. Chesapeake Appalachia, LLC, Pad ID: Penecale, ABR-201011060.R1, North Branch Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 14, 2015.
29. EXCO Resources (PA), LLC, Pad ID: Maguire Unit Drilling Pad #1, ABR-20090923.R1, Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 14, 2015.
30. EXCO Resources (PA), LLC, Pad ID: Kitzmiller Drilling Pad #1, ABR-20100546.R1, Jordan Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 14, 2015.
31. EXCO Resources (PA), LLC, Pad ID: Fulmer Drilling Pad #1, ABR-20100616.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 14, 2015.
32. EXCO Resources (PA), LLC, Pad ID: Poor Shot East Drilling Pad #2, ABR-20100681.R1, Anthony Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: July 14, 2015.
33. SWN Production Company, LLC, Pad ID: NR-19-Walker Diehl, ABR-201507003, Oakland Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 17, 2015.
34. Cabot Oil & Gas Corporation, Pad ID: ArnoneJ P1, ABR-201507004, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.2500 mgd; Approval Date: July 17, 2015.
35. Cabot Oil & Gas Corporation, Pad ID: BistisM P1, ABR-201507005, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.2500 mgd; Approval Date: July 17, 2015.
36. Cabot Oil & Gas Corporation, Pad ID: LambertR P1, ABR-201507006, Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.2500 mgd; Approval Date: July 17, 2015.
37. EXCO Resources (PA), LLC, Pad ID: Falk Unit #1H, ABR-20090920.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 20, 2015.
38. Cabot Oil & Gas Corporation, Pad ID: WarrinerR P5, ABR-20100519.R1, Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: July 21, 2015.
39. Cabot Oil & Gas Corporation, Pad ID: Daniels Pad, ABR-201010018.R1, Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.9900 mgd; Approval Date: July 21, 2015.
40. Cabot Oil & Gas Corporation, Pad ID: StalterD P1, ABR-201011030.R1, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: July 21, 2015.
41. Cabot Oil & Gas Corporation, Pad ID: DerianchoF P1, ABR-201011055.R1, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: July 21, 2015.
42. Cabot Oil & Gas Corporation, Pad ID: HawleyJ P1, ABR-201103009.R1, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: July 21, 2015.
43. Cabot Oil & Gas Corporation, Pad ID: ZickJ P1, ABR-201003020.R1, Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 3.5750 mgd; Approval Date: July 21, 2015.
44. Chesapeake Appalachia, LLC, Pad ID: Norton, ABR-201011008.R1, Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 21, 2015.
45. EOG Resources, Inc., Pad ID: Housknecht 3H, ABR-20090422.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 0.4900 mgd; Approval Date: July 21, 2015.
46. EOG Resources, Inc., Pad ID: Housknecht 1H, ABR-20090423.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 1.9990 mgd; Approval Date: July 21, 2015.
47. EOG Resources, Inc., Pad ID: PHC 4H, ABR-20090501.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 21, 2015.

48. EOG Resources, Inc., Pad ID: PHC 5H, ABR-20090502.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 21, 2015.
49. EOG Resources, Inc., Pad ID: PHC 9H, ABR-20090503.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 0.9990 mgd; Approval Date: July 21, 2015.
50. EOG Resources, Inc., Pad ID: PHC 11V, ABR-20090720.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 0.9999 mgd; Approval Date: July 21, 2015.
51. EOG Resources, Inc., Pad ID: PHC Pad R, ABR-20100690.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: July 21, 2015.
52. EOG Resources, Inc., Pad ID: PHC 10V, ABR-20090719.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 0.9999 mgd; Approval Date: July 21, 2015.
53. EXCO Resources (PA), LLC, Pad ID: Taylor (Pad 33), ABR-20100611.R1, Burnside Township, Centre County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: July 21, 2015.
54. Talisman Energy USA Inc., Pad ID: Boor 03 010, ABR-20100665.R1, Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 21, 2015.
55. Seneca Resources, Pad ID: D08-M, ABR-201507007, Norwich Township, McKean County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 22, 2015.
56. Range Resources Appalachia, LLC, Pad ID: Ogontz 3, ABR-20090606.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2015.
57. Range Resources Appalachia, LLC, Pad ID: McWilliams 1, ABR-20090607.R1, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2015.
58. Range Resources Appalachia, LLC, Pad ID: Genter 3, ABR-20100153.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2015.
59. Range Resources Appalachia, LLC, Pad ID: Dog Run Hunting Club Unit, ABR-20100456.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2015.
60. Range Resources Appalachia, LLC, Pad ID: Harman, Lewis Unit #1H, ABR-20100554.R1, Moreland Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2015.
61. Range Resources Appalachia, LLC, Pad ID: Ogontz Fishing Club Unit #12H-#17H, ABR-20100648.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2015.
62. Range Resources Appalachia, LLC, Pad ID: Lone Walnut H.C. Unit #3H Drilling Pad, ABR-201007031.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 23, 2015.
63. Chesapeake Appalachia, LLC, Pad ID: Ruth, ABR-201507008, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 27, 2015.
64. Chesapeake Appalachia, LLC, Pad ID: M&M Estates, ABR-201011013.R1, Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 27, 2015.
65. SWEPI LP, Pad ID: Young 431, ABR-20100561.R1, Shippen Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2015.
66. SWEPI LP, Pad ID: Mitchell 456, ABR-20100615.R1, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2015.
67. Talisman Energy USA Inc., Pad ID: 02 205 DCNR 594, ABR-201008040.R1, Bloss Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2015.
68. Talisman Energy USA Inc., Pad ID: 02 101 Olson, ABR-201209024.R1, Hamilton Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2015.
69. XTO Energy Incorporated, Pad ID: Marquardt, ABR-20090712.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: July 27, 2015.
70. EXCO Resources (PA), LLC, Pad ID: Litke 1H, 2H, ABR-20090425.R1, Burnside Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 31, 2015.
71. EXCO Resources (PA), LLC, Pad ID: Litke (7H & 8H), ABR-20090426.R1, Burnside Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 31, 2015.
72. EXCO Resources (PA), LLC, Pad ID: Snyder Unit #1, ABR-20090430.R1, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: July 31, 2015.
73. EXCO Resources (PA), LLC, Pad ID: Spotts Unit Drilling Pad #1, ABR-20090921.R1, Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 31, 2015.
74. EXCO Resources (PA), LLC, Pad ID: Stroble Unit Drilling Pad #1, ABR-20090924.R1, Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 31, 2015.
75. EXCO Resources (PA), LLC, Pad ID: Poor Shot Unit Drilling Pad #1, ABR-20090925.R1, Anthony Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 31, 2015.
76. EXCO Resources (PA), LLC, Pad ID: Poor Shot East Unit Drilling Pad #1, ABR-20091002.R1, Anthony Township, Lycoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 31, 2015.
77. EXCO Resources (PA), LLC, Pad ID: Kensinger 3H Drilling Pad #1, ABR-20100205.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: July 31, 2015.
78. EXCO Resources (PA), LLC, Pad ID: Myers Drilling Pad #1, ABR-20100416.R1, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 31, 2015.
79. EXCO Resources (PA), LLC, Pad ID: Warner Drilling Pad #1, ABR-20100451.R1, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: July 31, 2015.

**Authority:** Public Law 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: October 2, 2015.

**Stephanie L. Richardson,**  
*Secretary to the Commission.*

[FR Doc. 2015-25612 Filed 10-7-15; 8:45 am]

**BILLING CODE 7040-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Thirty-Sixth Meeting: Special Committee (224) Airport Security Access Control Systems**

**AGENCY:** Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of Thirty-Sixth Special Committee 224 Meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of the thirty-sixth Special Committee 224 meeting.

**DATES:** The meeting will be held October 29th from 10:00 a.m.–3:00 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 450, Washington, DC 20036, Tel: (202) 330-0680.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org> or Karan Hofmann, Program Director, RTCA, Inc., [khofmann@rtca.org](mailto:khofmann@rtca.org), (202) 330-0680.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

**Thursday, October 29, 2015**

1. Welcome/Introductions/  
Administrative Remarks
2. Review/Approve Previous Meeting Summary
3. Report from the TSA
4. Report on Safe Skies on Document Distribution
5. Review of FRAC comments/  
worksheet and committee  
resolution of comments
6. Approve release of DO-230 F to go to PMC
7. Review of Other DO-230G Sections
8. Action Items for Next Meeting
9. Time and Place of Next Meeting
10. Any Other Business
11. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 30, 2015.

**Latasha Robinson,**

*Management & Program Analyst, Next Generation, Enterprise Support Services Division, Federal Aviation Administration.*

[FR Doc. 2015-25402 Filed 10-7-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) Transport Airplane and Engine (TAE) Subcommittee to discuss TAE issues.

**DATES:** The meeting is scheduled for Wednesday, November 04, 2015, starting at 9:00 a.m. Pacific Standard Time. Arrange for oral presentations by October 16, 2015.

**ADDRESSES:** FAA-Northwest Mountain Region Office, Conference Room 122, 1601 Lind Ave. SW., Renton, WA 98057.

**FOR FURTHER INFORMATION CONTACT:** Ralen Gao, Office of Rulemaking, ARM-209, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-3168, Fax (202) 267-5075, or email at [ralen.gao@faa.gov](mailto:ralen.gao@faa.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held November 4, 2015.

The agenda for the meeting is as follows:

- Opening Remarks, Review Agenda and Minutes
- FAA Report
- ARAC Report
- Transport Canada Report
- EASA Report
- Engine HWG Report
- Airworthiness Assurance HWG Report
- Flight Test HWG Report
- Materials Flammability WG Report
- Metallic and Composite Structures WG Report
- Crashworthiness and Ditching WG Report
- Any Other Business
- Action Item Review

Participation is open to the public, but will be limited to the availability of teleconference lines.

To participate, please contact the person listed in **FOR FURTHER INFORMATION CONTACT** by email or phone for the teleconference call-in number and passcode. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are participating as a public citizen, please indicate so. Participants are responsible for any telephone, data usage or other similar expenses related to this meeting.

The public must make arrangements by October 16, 2015, to present oral or written statements at the meeting. Written statements may be presented to the Subcommittee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Copies of the documents to be presented to the Subcommittee may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on October 2, 2015.

**Lirio Liu,**

*Designated Federal Officer, Aviation Rulemaking Advisory Committee.*

[FR Doc. 2015-25608 Filed 10-7-15; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration**

[Docket No. FHWA-2014-0006]

**Draft Availability Payment Concessions Public-Private Partnership Model Contract Guide**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice; request for comments.

**SUMMARY:** On July 17, 2014, the President announced the Build America Investment Initiative, a government-wide effort to increase infrastructure investment and economic growth by engaging with state and local governments and private sector investors to encourage collaboration, expand the market for public-private partnerships (P3s) and put Federal credit programs to greater use. As part of that effort, the Presidential Memorandum tasked the U.S.

Department of Transportation (USDOT) to establish the Build America Transportation Investment Center (BATIC), a one-stop-shop for state and local governments, public and private developers and investors seeking to utilize innovative financing and P3s to deliver transportation projects. USDOT has made significant progress in its work to expand access to USDOT credit programs, spread innovation through tools that build capacity across the country, and deliver project-focused technical assistance to help high-impact projects develop plans, navigate Federal programs and requirements, and evaluate and pursue financing opportunities. This includes an effort to provide a range of technical assistance tools to project sponsors, including a series of model contract provisions for popular P3 project types. Development of these tools fulfills a requirement under Moving Ahead for Progress in the 21st Century Act (MAP-21) that FHWA to develop public-private partnership (P3) transaction model contracts for the most popular type of P3s for transportation projects. Based on public input favoring an educational, rather than prescriptive, contract model, FHWA is publishing a series of guides describing terms and conditions typically adopted in P3 concession agreements. The FHWA values public input in the development of the model contract guides, and seeks continuing input. All documents in this series share the same Docket Number (FHWA-2014-0006).

To address the most popular types of P3s, FHWA is producing separate guides to the two most common agreements for concessionaire compensation: user tolls and availability payments (APs). For the purpose of public comment, the Toll Concessions Guide was divided into two parts. The first part, addressing the highest profile ("Core") provisions, was published in final form on September 10, 2014. The second part (the "Addendum"), addressing additional substantive provisions, was published in draft form on January 16, 2015. As described below, FHWA is deferring publication of the final version of the Addendum in order to obtain public comment on additional material (provided with this announcement) relevant to the concessions guides.

With this notice, FHWA publishes a Draft Availability Payment Concessions P3 Model Contract Guide ("AP Concessions Guide") so that the general public and interested stakeholders may provide comments. The AP Concessions Guide can be found on the Docket (FHWA-2014-0006) and at the

following link: <http://www.fhwa.dot.gov/ipd/pdfs/p3/apguide.pdf>. This model contract guide has been prepared solely for informational purposes and should not be construed as a statement of DOT or FHWA policy.

In addition, a separate chapter on Labor Best Practices recommended by the U.S. Department of Labor has been added to the Docket and is available at the following link: <http://www.fhwa.dot.gov/ipd/pdfs/p3/laborbestpractices.pdf>. This chapter discusses labor provisions recommended by the U.S. Department of Labor for all P3 concession agreements, following a collaboration with USDOT, regardless of source of funding (*i.e.*, Federal, State, or private) or form of compensation (*i.e.*, user tolls or APs). The FHWA intends to incorporate this chapter into the final contract guides for both user toll and AP concessions; therefore, FHWA is seeking public comment on this document prior to finalizing the Toll Concession Addendum.

**DATES:** Comments must be received on or before October 29, 2015. Late comments will be considered to the extent possible.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590-0001.
- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mark Sullivan, Office of Innovative Program Delivery, (202) 366-5785, [mark.sullivan@dot.gov](mailto:mark.sullivan@dot.gov), Federal Highway Administration, 1200 New Jersey Avenue SE., Washington DC 20590, or Alla Shaw, Office of the Chief Counsel, (202) 366-1042, [alla.shaw@dot.gov](mailto:alla.shaw@dot.gov), Federal Highway Administration, 1200 New Jersey Avenue SE., Washington DC 20590.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: <http://www.regulations.gov>. The Web site is available 24 hours every day of the year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register) and the Government Printing Office's Web page at: <http://www.gpoaccess.gov>.

## Background

P3s are contractual arrangements between public and private sector entities that allow for greater participation by the private sector in the delivery of surface transportation projects and associated services. Generally, in addition to designing or building a project, a private partner in a P3 may be involved in financing, operating and maintaining the project. By transferring certain risks and responsibilities to the private partner, P3s can result in more efficient and effective project delivery. However, P3 contracts are more complex and of a much longer duration than traditional construction contracts. Their terms and conditions address many non-traditional requirements, such as financing arrangements and performance during the lengthy concession period. Public agencies need expertise to negotiate P3 concession agreements successfully. Section 1534(d) of MAP-21 (Pub. L. 112-141; 126 Stat. 584) requires the DOT to develop P3 contracts that could serve as a model to States and other public transportation providers in developing their own P3 contracts.

After considering written comments responding to a notice published at 78 FR 1918 on January 9, 2013, as well as those received during a Listening Session on January 16, 2013, FHWA chose to develop the model contracts as informational guides, rather than prescriptive templates, for State and local governments entering into P3 transactions.

## About the Availability Payment Concessions P3 Model Contract Guide

The second most common P3 contract uses APs to compensate a concessionaire. In an AP concession, scheduled government appropriations provide periodic payment to the concessionaire during the term of the agreement, which is typically 30 to 40 years. Payments can be adjusted for

non-availability of the facility or for operational non-performance. Many provisions in AP contracts are similar to those in toll revenue contracts.

The AP Concessions Guide focuses on issues critical to achieving public sector objectives and protecting the interest of the taxpaying and traveling public. The Draft AP Concessions Guide focuses on nineteen specific provisions. Unlike the Toll Concessions Guide, which for reasons of public comment was split into separate Core and Addendum sections, the AP Concessions Guide incorporates all provisions into a single document, with the following chapter headings:

1. Introduction
2. Completion Testing and Performance Security
3. Availability Requirements
4. Maintenance and Handback Requirements
5. Payment Mechanism, Performance Monitoring and Financial Model Adjustments
6. Insurance
7. Contract Term and Nature of the Proprietary Interest
8. Supervening Events
9. Change in Law
10. Department and Developer Changes
11. Assignment and Changes in Equity Interests
12. Defaults, Early Termination, and Termination Compensation
13. Indemnities
14. Federal Requirements
15. Amendment to Key Developer Documents
16. Lenders Rights and Direct Agreement
17. Department Step-In
18. Disputes
19. Intellectual Property
20. General Provisions

The AP Guide Concessions Guide can be found on the Docket (FHWA–2014–0006) and at the following link: <http://www.fhwa.dot.gov/ipd/pdfs/p3/apguide.pdf>.

#### About the Labor Best Practices Recommendations

Any project, including a P3 concession, that receives Federal assistance pursuant to title 23 of the United States Code, must comply with all Federal laws, including labor laws, pertaining to the use of Federal funds. However, as a best practice, the U.S. Department of Labor encourages parties to a P3 agreement to consider adopting labor practices that provide worker protections beyond those required by law.

With this notice, FHWA is also publishing for public comment a

separate chapter, authored by the U.S. Department of Labor, in collaboration with USDOT, on Labor Best Practices in P3 concessions. Because this chapter discusses issues applicable to both toll and AP concession contracts, FHWA will defer publication of the Final Toll Concessions P3 Model Contract Guide Addendum until receiving comments on this additional document. The Labor Best Practices chapter includes the following topics:

- Prevailing Wages and Fringe Benefits
- Employee Benefits
- Incumbent Worker Nondisplacement and Protections
- Workforce Development and Apprenticeship
- Workplace Health and Safety
- Wage and Classification Transparency
- Equal Employment Opportunity
- Project Labor Agreements
- Responsible Contractor Policy

The Labor Best Practices chapter can be found on the Docket (FHWA–2014–0006) and at the following link: <http://www.fhwa.dot.gov/ipd/pdfs/p3/laborbestpractices.pdf>.

The FHWA intends to incorporate the Labor Best Practices chapter into both of its P3 concession guides. Upon conclusion of the public comment process, the final Toll Concessions Guide (combining the Core and Addendum provisions) and the final AP Concessions Guide will be posted on the FHWA Web site at <http://www.fhwa.dot.gov/ipd/p3/>.

**Authority:** Section 1534(d) of Moving Ahead for Progress in the 21st Century, MAP–21, enacted Oct 1 2012.

Issued on: September 21, 2015.

**Gregory G. Nadeau,**  
*Administrator, Federal Highway Administration.*

[FR Doc. 2015–25656 Filed 10–7–15; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA–2010–0048]

#### Positive Train Control Safety Plan for the Southern California Regional Rail Authority

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** This document provides the public notice that by a document dated September 19, 2015, the Southern California Regional Rail Authority

(SCRRA) submitted to FRA its Positive Train Control Safety Plan (PTCSP) Version 1.7 for approval under the Federal railroad safety regulations in Title 49 Code of Federal Regulations (CFR) Part 236, Subpart I, Positive Train Control Systems. SCRRA asks FRA to approve its PTCSP and to provide PTC System Certification for SCRRA's implementation of its Interoperable-Electronic Train Management System (I–ETMS). In its PTCSP, SCRRA asserts that its I–ETMS is designed as a vital overlay PTC system in compliance with the PTCSP requirements. The PTCSP describes the SCRRA I–ETMS implementation and the associated I–ETMS safety processes; safety analyses; and test, validation, and verification processes used during development of I–ETMS. The PTCSP also contains SCRRA operational and support requirements and procedures.

SCRRA's PTCSP and the accompanying request for approval are available for review online at [www.regulations.gov](http://www.regulations.gov) (Docket No. FRA–2010–0048) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to comment on the PTCSP by submitting written comments or data. During its review of the PTCSP, FRA will consider any comments or data submitted. However, FRA may not respond to any comment and, under 49 CFR 236.1009(d)(3), FRA maintains the authority to approve or disapprove the PTCSP at its sole discretion. FRA does not anticipate scheduling a public hearing regarding these proceedings because the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

**DATES:** FRA will consider communications received by January 6, 2016 before taking final action on the PTCSP. Comments received after that date will be considered as far as practicable.

**ADDRESSES:** All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy). See <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark Hartong, PE, Senior Scientific Technical Advisor at (202) 493-1332, [Mark.Hartong@dot.gov](mailto:Mark.Hartong@dot.gov); or Mr. David Blackmore, Railroad Safety Program Manager for Advanced Technology at (312) 835-3903, [David.Blackmore@dot.gov](mailto:David.Blackmore@dot.gov).

Issued in Washington, DC, on October 2, 2015.

**Ron Hynes,**

*Director, Office of Technical Oversight.*

[FR Doc. 2015-25573 Filed 10-7-15; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket Number FRA-2015-0068]

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 18, 2015, the Southeastern Pennsylvania Transportation Authority (SEPTA) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 238.309(b)(2). FRA assigned the petition Docket Number FRA-2015-0068.

Title 49 CFR 238.309(b)(2) requires that brake equipment and brake

cylinders of each multiple unit (MU) locomotive be cleaned, repaired, and tested at intervals of every 1,104 days if the MU locomotive is part of a fleet that is 100 percent equipped with air dryers, and has a brake system using RT-5A-style valves (among others). The RT-5A+ brake system in use on the Silverliner V MU fleet employs a microprocessor-based control system, and uses active and passive diagnostics to monitor brake performance. Currently, other air brake systems that incorporate microprocessor controls are subject to overhaul intervals of 1,840 days (see 49 CFR 238.309(b)(3) and 238.309(e)(1)). SEPTA therefore submitted an alternate proposal to increase the periodic brake equipment maintenance interval for the Silverliner V air brake system to a minimum of 1,840 days.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at [www.regulations.gov](http://www.regulations.gov) and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 23, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy). See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on October 2, 2015.

**Ron Hynes,**

*Director, Office of Technical Oversight.*

[FR Doc. 2015-25609 Filed 10-7-15; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Fiscal Year 2015 Innovative Public Transportation Workforce Development Program Project Selections

**AGENCY:** Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

**ACTION:** Innovative Public Transportation Workforce Development Program Announcement of Project Selections.

**SUMMARY:** The U.S. Department of Transportation's (DOT), Federal Transit Administration (FTA) announces the selection of projects for the Fiscal Year (FY) 2015 Innovative Public Transportation Workforce Development Program (Workforce Development Program). Under the prior authorization, the Workforce Development Program was authorized under 49 U.S.C. 5322. Under the Moving Ahead for Progress in the 21st Century (MAP-21) Act, the program is authorized at 49 U.S.C. 5322(b). These projects are funded with a combination of \$4 million of unallocated Section 5314 Federal funds appropriated in FY 2012, and a total of \$5.5 million authorized under MAP-21 and appropriated in FYs 2013, 2014, and 2015 for Section 5322. These program dollars will provide financial assistance to promote diverse and innovative workforce development models and programs that specifically

target unemployment training programs, outreach to increase minority and female employment, and training for minority business opportunities.

**FOR FURTHER INFORMATION CONTACT:**

FTA’s Office of Research, Demonstration and Innovation (TRI) will contact successful applicants regarding next steps in applying for the funds or program-specific information (see Table 1 below). Unsuccessful Workforce Development Program applicants may contact Mackenzie Thiessen, Office of Research Management; at email address [mackenzie.thiessen@dot.gov](mailto:mackenzie.thiessen@dot.gov) to arrange a proposal debriefing within 30 days of this announcement. Telecommunications Devices for the Deaf (TDD) is available at 1–800–877–8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:** On October 24, 2014, FTA published a Notice of Funding Availability (NOFA) (79 FR 63659, which can be found at <http://www.gpo.gov/fdsys/pkg/FR-2014-10-24/pdf/2014-25310.pdf>) announcing the availability of approximately \$9.5 million. In response to the Workforce Development Program NOFA, FTA received 50 proposals requesting approximately \$27 million in Federal funds. The FTA evaluated project proposals based on each applicant’s responsiveness to the program evaluation criteria as detailed in the NOFA. The FTA is funding 19 Workforce Development projects, as shown in Table 1, for a total of \$9,481,721. These competitive program funds will support projects at transit and local government agencies, academic institutions, and nationwide that will recruit, train, retain, and educate a high-quality transportation

workforce to meet current and future transportation industry needs.

Applicants selected for competitive discretionary funding for the Workforce Development Program should work with FTA’s TRI staff identified in the contacts section of this notice to finalize the cooperative agreements in FTA’s Transportation Electronic Awards Management System (TEAM) or its successor system, so that Federal funds can be obligated expeditiously.

Cooperative agreements must include only eligible activities applied for in the original project application. The Federal funds must be used consistent with the competitive proposal and for the eligible purposes established in the NOFA and described in FTA Circular 6100.1E, *Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines*. In cases where the allocation amount is less than the applicant’s requested amount, applicants should work with TRI staff to reduce scope or scale the project as needed. Applicants are reminded that program requirements such as cost sharing or local match can be found in the NOFA. Under the FY 2015 Workforce Development Program, all projects are required to have at least 50 percent local match. Local match must be consistent with the proposed match identified in the applicant’s proposal, identified in the cooperative agreement at the time of obligation, and available at the time of expenditure. The FTA has assigned a discretionary research project identification number to each project (see Table 1 of this notice) for tracking purposes and must be used in the TEAM or successor system, application.

Applicants interested in requesting pre-award authority should contact the

program manager listed above. Pre-award authority may be granted through the issuance of a Letter of No Prejudice in accordance with FTA’s Pre-award Authority Policy, set forth in the FY 2015 Annual Apportionments, Allocations, and Program Information Notice, published on February, 9, 2015 and available at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-09/pdf/2015-02555.pdf>.

Post-award reporting requirements include submission of the Federal Financial Report and Milestone Progress reports in TEAM as appropriate (see FTA Circular 6100.1E) and a narrative summary of project activities. The grantees must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements detailed in the FY 2015 Master Agreement in carrying out the project supported by the FTA research grant. The FY 2015 Master Agreement can be found at the following Internet address: <http://www.fta.dot.gov/documents/21-Master.pdf>.

Each recipient will provide the necessary measurable outcomes and deliverables for Congressional reporting efforts as mandated under MAP–21. This information will also be used to conduct an anticipated program evaluation of the 2015 Workforce Development projects.

The FTA emphasizes that grantees must follow all third-party procurement guidance, as described in FTA Circular 4220.1F, *Third Party Contracting Guidance*.

**Therese W. McMillan,**  
*Acting Administrator.*

TABLE 1—INNOVATIVE PUBLIC TRANSPORTATION WORKFORCE DEVELOPMENT PROGRAM

Project ID	State	Project sponsor	Project description	Amount
D2015–WFD–001	CA	Los Angeles Trade-Technical College	Institute for Advanced Transportation Technology Training.	\$750,000
D2015–WFD–002	CA	Community Career Development, Inc	Moving Employees into Transit Related Opportunities (METRO) program.	331,313
D2015–WFD–003	CA	Santa Clara Valley Transportation Authority (VTA).	Discover Opportunities—In Transit! (DO IT!) program.	200,000
D2015–WFD–004	CA	Bay Area Rapid Transit District (BART).	Transit Career Ladders Training (TCLT) Program.	750,000
D2015–WFD–005	CO	Regional Transportation District (RTD)	Workforce Investment Now! (WIN) Program.	663,256
D2015–WFD–006	FL	Jacksonville Transportation Authority (JTA).	Back-2-Work Program	200,000
D2015–WFD–007	IL	Chicago Transit Authority (CTA)	Second Chance Program	750,000
D2015–WFD–008	MA	Massachusetts Department of Transportation.	Construction Career Development (MCCD) Program.	750,000
D2015–WFD–009	MD	International Transportation Learning Center.	Rail Car Workforce Program	750,000

TABLE 1—INNOVATIVE PUBLIC TRANSPORTATION WORKFORCE DEVELOPMENT PROGRAM—Continued

Project ID	State	Project sponsor	Project description	Amount
D2015-WFD-12010; D2015-WFD-13010; D2015-WFD-14010; D2015-WFD-15010.	MD	International Transportation Learning Center.	Signaling Career Pathways Program. D2015-WFD-12010 (\$4,185); D2015-WFD-13010 (\$535); D2015-WFD-14010 (\$564,517); D2015-WFD-15010 (\$4,945).	574,182
D2015-WFD-011 .....	MN	Metropolitan Council/Metro Transit .....	Mass Transit Technician (MTT) Program.	203,210
D2015-WFD-012 .....	NJ	Jersey City Employment Training Program, Inc. (JCETP).	The Jersey City Employment Training Program, Inc. (JCETP).	604,896
D2015-WFD-013 .....	NY	NY Metropolitan Transportation Authority (MTA).	Workforce Investment Now—New York (WIN—NY) program.	739,605
D2015-WFD-014 .....	NY	Niagara Frontier Transportation Authority.	Skilled Laborer Jobs Training Program.	303,000
D2015-WFD-015 .....	OH	Greater Cleveland Regional Transportation Authority (GCRTA).	Career Pathways Program (CPP) .....	407,780
D2015-WFD-016 .....	OK	Grand Gateway Economic Development Association (EDA).	N2N Automotive University .....	399,933
D2015-WFD-017 .....	TX	Texoma Area Paratransit System, Inc	TAPS University Employment Enrichment Initiative.	427,770
D2015-WFD-018 .....	WA	Intercity Transit .....	Village Vans Program .....	200,000
D2015-WFD-019 .....	WA	Workforce Development Council of Snohomish County.	Puget Sound Region Ladders to Opportunity Initiative.	476,776
Total .....	.....	.....	.....	9,481,721

[FR Doc. 2015-25628 Filed 10-7-15; 8:45 am]

## BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0092; Notice 1]

## DRV, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** DRV, LLC (DRV), a wholly owned subsidiary of Thor Industries, Inc., has determined that certain model year (MY) 2003-2016 DRV trailers do not fully comply with paragraph S8.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. DRV filed a report dated July 31, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. On August 18, 2015, subsequent to filing the subject petition, DRV revised that report to include more complete information concerning the affected vehicles.

**DATES:** The closing date for comments on the petition is November 9, 2015.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and

notice number cited at the beginning of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Deliver:** Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov/>. Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov/>, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <http://www.regulations.gov> by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

## SUPPLEMENTARY INFORMATION:

## I. Overview

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), DRV submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of DRV's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.



**II. Trailers Involved**

Affected are approximately 7,465 of the following trailers:

- MY 2003–2016 DRV Mobile Suites (Manufactured between April 22, 2003 and July 22, 2015)
- MY 2014–2015 DRV Traditions (Manufactured between April 1, 2013 and July 24, 2015)
- MY 2013–2016 DRV Estates (Manufactured between April 1, 2012 and July 24, 2015)

- MY 2006–2016 DRV Elite Suites (Manufactured April 1, 2005 and July 24, 2015)
- MY 2014–2016 DRV Full House (Manufactured April 1, 2013 and July 24, 2015)

**III. Noncompliance**

DRV explained that the noncompliance is that the location of the front side reflex reflectors on the subject trailers are mounted between approximately 8" and 10" above the

required 60" height-above-road surface required by paragraph S8.1 of FMVSS No. 108.

**IV. Rule Text**

Paragraph S8.1 of FMVSS No. 108 requires in pertinent part:

- S8.1 *Reflex reflectors.*  
\* \* \* \* \*
- S8.1.4 *Mounting Height.* See Tables I–a, I–b, I–c.  
\* \* \* \* \*

TABLE I–b—REQUIRED LAMPS AND REFLECTIVE DEVICES

Lighting device	Number and color	Mounting location	Mounting height	Device activation
<b>All Trailers</b>				
*	*	*	*	*
Reflex Reflectors. A trailer equipped with a conspicuity treatment in conformance with S8.2 of this standard need not be equipped with reflex reflectors if the conspicuity material is placed at the locations of the required reflex reflectors.	2 Amber None required on trailers less than 1829 mm [6 ft] in overall length including the trailer tongue.	On each side as far to the front as practicable exclusive of the trailer tongue.	Not less than 15 inches, nor more than 60 inches.	Not applicable.
*	*	*	*	*

**V. Summary of DRV's Arguments**

DRV stated its belief that the subject noncompliance is inconsequential to motor vehicle safety because the reflector is present as required by FMVSS No. 108 except that it is located above the maximum allowable height.

DRV also has no complaints and does not know of any accidents that have occurred due to the reflectors being in their current positions.

In summation, DRV believes that the described noncompliance of the subject trailers is inconsequential to motor vehicle safety, and that its petition, to exempt DRV from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject trailers that DRV no longer controlled at the time it determined that the noncompliance existed. However,

any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant trailers under their control after DRV notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Jeffrey Giuseppe,**  
*Director, Office of Trailer Safety Compliance.*  
[FR Doc. 2015–25641 Filed 10–7–15; 8:45 am]

**BILLING CODE 4910–59–P**

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**Proposed Collection; Comment Request for Electronic License Application Form**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on

proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's Electronic License Application Form TD–F 90–22.54, which is referred to throughout this Notice as the "OFAC Application for the Release of Blocked Funds."

**DATES:** Written comments must be submitted on or before December 7, 2015 to be assured of consideration.

**ADDRESSES:** You may submit comments by any of the following methods:

*Federal eRulemaking Portal:*  
[www.regulations.gov](http://www.regulations.gov). Follow the instructions on the Web site for submitting comments.

*Fax:* Attn: Request for Comments (OFAC Application for the Release of Blocked Funds) 202–622–1657.

*Mail:* Attn: Request for Comments (OFAC Application for the Release of Blocked Funds), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

*Instructions:* All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made

available to the public via regulations.gov or upon request, without change and including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202-622-2480, Assistant Director for Regulatory Affairs, tel.: 202-622-4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202-622-2410.

**SUPPLEMENTARY INFORMATION:**

*Title:* OFAC Application for the Release of Blocked Funds.

*OMB Number:* 1505-0170.

*Abstract:* Transactions prohibited pursuant to the Trading With the Enemy Act, 50 U.S.C. App. 1-44, the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and other authorities may be authorized by means of specific licenses issued by OFAC. Such licenses are issued in response to applications submitted by persons whose property and interests in property have been blocked or who wish to engage in transactions that would otherwise be prohibited. The OFAC Application for the Release of Blocked Funds, which provides a standardized method of application for all applicants seeking the unblocking of funds, is available in electronic format on OFAC's Web site. Use of the form greatly facilitates and speeds applicants' submissions and OFAC's processing of such applications. By obviating the need for applicants to write lengthy letters to OFAC, this form reduces the overall burden of the application process. Since February 2000, use of the OFAC Application for the Release of Blocked Funds to apply for the unblocking of funds has been mandatory pursuant to a revision in OFAC's regulations at 31 CFR 501.801. *See 65 FR 10707* (February 29, 2000).

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals/businesses and other for-profit institutions/banking institutions.

*Estimated Number of Respondents:* 2,400.

*Estimated Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 1,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (OMB) control number. Books or records relating to a collection of information must be retained for five years.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2015-25662 Filed 10-7-15; 8:45 am]

**BILLING CODE 4810-AL-P**

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**Sanctions Actions Pursuant to Executive Order 13224**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 3 individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

**DATES:** OFAC's actions described in this notice are effective on October 5, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Associate Director for Global Targeting, tel.: 202/622-2420, Assistant Director

for Sanctions Compliance & Evaluation, tel.: 202/622-2490, Assistant Director for Licensing, tel.: 202/622-2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622-2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site ([www.treasury.gov/ofac](http://www.treasury.gov/ofac)). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

**Notice of OFAC Actions**

On October 5, 2015, OFAC blocked the property and interests in property of the following individuals pursuant to E.O. 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism":

1. ATABIYEV, Islam Seit-Umarovich (a.k.a. ATABIEV, Islam; a.k.a. ATABIYEV, Islam; a.k.a. DZHIKHAD, Abu; a.k.a. "AL-SHISHANI, Abu-Jihad"; a.k.a. "THE CHECHEN, Abu Jihad"); DOB 29 Jun 1983; POB Stavropol Region, Russia; nationality Russia; Passport 620169661 (Russia); alt. Passport 9103314932 (Russia) issued 16 Aug 2003 (individual) [SDGT] (Linked To: JAM'AT AL TAWHID WA'AL-JIHAD).
2. GUCHAYEV, Zaurbek (a.k.a. GUCHAEV, Zaurbek; a.k.a. "AZIZ, Abdul"); DOB 04 Sep 1975; POB Chegem/Kabardino-Balkaria, Russia (individual) [SDGT] (Linked To: CAUCASUS EMIRATE).
3. CHATAYEV, Akhmed (a.k.a. CHATAEV, Ahmed; a.k.a. CHATAEV, Akhmed Rajapovich; a.k.a. CHATAEV, Akhmet; a.k.a. CHATAYEV, Akhmad; a.k.a. CHATAYEV, Akhmet; a.k.a. MAYER, David; a.k.a. SENE, Elmir; a.k.a. TSCHATAJEV, Achmed Radschapovitsch; a.k.a. TSCHATAJEV, Ahmed Radschapovitsch; a.k.a. TSCHATAJEV, Achmed Radschapovitsch; a.k.a. TSCHATAJEV, Ahmed Radschapovitsch; a.k.a. "Akhmed Odnorukiy"; a.k.a. "Akhmed the One-Armed"; a.k.a. "AL-SHISHANI, Akhmed"; a.k.a. "CHATAEV, A.R."; a.k.a. "Odnorukiy"; a.k.a. "SHISHANI, Akhmad"; DOB 14 Jul 1980; POB Vedeno Village, Vedenskiy District, the Republic of Chechnya, Russia; citizen Russia; Passport 96001331958 (Russia) (individual) [SDGT] (Linked To: JAM'AT AL TAWHID WA'AL-JIHAD).

Dated: October 5, 2015.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2015-25618 Filed 10-7-15; 8:45 am]

**BILLING CODE 4810-AL-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, November 12, 2015.

**FOR FURTHER INFORMATION CONTACT:** Theresa Singleton at 1-888-912-1227 or 202-317-3329.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Thursday, November 12, 2015, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Theresa Singleton. For more information please contact: Theresa Singleton at 1-888-912-1227 or 202-317-3329, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: October 1, 2015.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2015-25669 Filed 10-7-15; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, November 12, 2015.

**FOR FURTHER INFORMATION CONTACT:** Otis Simpson at 1-888-912-1227 or 202-317-3332.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Thursday, November 12, 2015, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact: Otis Simpson at 1-888-912-1227 or 202-317-3332, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: <http://www.improveirs.org>.

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: October 1, 2015.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2015-25672 Filed 10-7-15; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, November 5, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Antoinette Ross at 1-888-912-1227 or (202) 317-4110.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, November 5, 2015, at 3:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1-888-912-1227 or (202) 317-4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: <http://www.improveirs.org>.

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: October 1, 2015.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2015-25657 Filed 10-7-15; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Joint Committee**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, November 25, 2015.

**FOR FURTHER INFORMATION CONTACT:** Lisa Billups at 1-888-912-1227 or (214) 413-6523.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, November 25, 2015, at 1:00 p.m. Eastern Time via teleconference. The public is invited to

make oral comments or submit written statements for consideration. For more information please contact Lisa Billups at 1-888-912-1227 or 214-413-6523, or write TAP Office 1114 Commerce Street, Dallas, TX 75242-1021, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: October 1, 2015.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2015-25667 Filed 10-7-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held November 3, 2015.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers at 1-888-912-1227 or (954) 423-7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday November 3, 2015 at 1:00 p.m.. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact: Donna Powers at 1-888-912-1227 or (954) 423-7977 or write: TAP Office, 1000 S. Pine Island Road,

Plantation, FL 33324 or contact us at the Web site: <http://www.improveirs.org>. The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2015-25666 Filed 10-7-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, November 18, 2015.

**FOR FURTHER INFORMATION CONTACT:** Linda Rivera at 1-888-912-1227 or (202) 317-3337.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, November 18, 2015 at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1-888-912-1227 or (202) 317-3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: <http://www.improveirs.org>.

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: October 1, 2015.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2015-25665 Filed 10-7-15; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, November 5, 2015.

**FOR FURTHER INFORMATION CONTACT:** Kim Vinci at 1-888-912-1227 or 916-974-5086.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Thursday, November 5, 2015, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Kim Vinci. For more information please contact: Kim Vinci at 1-888-912-1227 or 916-974-5086, TAP Office, 4330 Watt Ave, Sacramento, CA 95821, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include a discussion on various special topics with IRS processes.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2015-25670 Filed 10-7-15; 8:45 am]

**BILLING CODE 4830-01-P**



# FEDERAL REGISTER

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Part II

Department of the Interior

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species  
Status for Kentucky Arrow Darter With 4(d) Rule; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**[Docket No. FWS-R4-ES-2015-0132;  
4500030113]

RIN 1018-AZ09

**Endangered and Threatened Wildlife and Plants; Threatened Species Status for Kentucky Arrow Darter With 4(d) Rule****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the Kentucky arrow darter (*Etheostoma spilotum*), a fish species from the upper Kentucky River basin in Kentucky, as a threatened species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species.

**DATES:** We will accept comments received or postmarked on or before December 7, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 23, 2015.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2015-0132, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R4-ES-2015-0132; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see *Public Comments*, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Virgil Lee Andrews, Jr., Field

Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, 330 West Broadway, Suite 265, Frankfort, KY 40601; telephone 502-695-0468, x108; facsimile 502-695-1024. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

*Why we need to publish a rule.* Under the Endangered Species Act (Act), if we find that a species may be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposed rule to list the species in the **Federal Register** and make a final determination on our proposal within 1 year. Listing a species as an endangered or threatened species can only be completed by issuing a rule.

*This rule proposes the listing of the Kentucky arrow darter (*Etheostoma spilotum*) as a threatened species. The Kentucky arrow darter is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing rule has until now been precluded by other higher priority listing activities. This rule assesses all available information regarding the status of and threats to the Kentucky arrow darter. Elsewhere in today's **Federal Register**, we propose to designate critical habitat for the Kentucky arrow darter under the Act.*

*The basis for our action.* Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Kentucky arrow darter warrants listing based on three of the five factors (A, D, and E).

*We will seek peer review.* We will seek comments from independent specialists to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment on our listing proposal. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal.

**Information Requested***Public Comments*

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The Kentucky arrow darter's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(4) Whether measures outlined in the proposed species-specific rule under section 4(d) of the Act are necessary and advisable for the conservation and management of the Kentucky arrow darter.

(5) Additional provisions that may be appropriate to except incidental take as a result of other categories of activities beyond those covered by this proposed species-specific rule and, if so, under what conditions and with what conservation measures, in order to conserve, recover, and manage the Kentucky arrow darter.

(6) Comments and suggestions, particularly from Federal agencies and other interested stakeholders that may be affected by the 4(d), regarding additional guidance and methods that

the Service could provide or utilize, respectively, to streamline the implementation of this 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

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

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests for a public hearing must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

#### Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of five appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the Kentucky arrow darter's biology, habitat, threats, etc., which will inform our determination. We will invite comment from the peer reviewers during this public comment period.

#### Previous Federal Action

The Kentucky arrow darter was first identified as a candidate for protection under the Act in the November 10, 2010, **Federal Register** (75 FR 69222). Candidate species are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation is precluded by other higher priority listing activities. Candidates are assigned listing priority numbers (LPNs) based on immediacy and the magnitude of threats, as well as the species' taxonomic status. A lower LPN corresponds to a higher conservation priority, and we consider the LPN when prioritizing and funding conservation actions. In our 2010 candidate notice of review (CNOR) (75 FR 69222), we identified the species as having an LPN of 3, in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). An LPN of 3 reflects a subspecies with imminent, high magnitude threats. The Kentucky arrow darter was included in all of our subsequent annual CNORs (76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014). On November 22, 2013 (78 FR 70104), we changed the LPN for the Kentucky arrow darter from 3 to 2 based on a change in the species' taxonomic status (change from subspecies to species rank). In our 2014 CNOR (79 FR 72450), we retained an LPN of 2 for this species.

#### Background

##### Species Information

##### Species Description and Taxonomy

The Kentucky arrow darter, *Etheostoma spilotum* Gilbert, is a small and compressed fish, which reaches a maximum length of about 120 millimeters (mm) (4.7 inches (in)). It has

a slender body, elongated snout, relatively large mouth, and virtually scaleless head (Kuehne and Barbour 1983, p. 71; Etnier and Starnes 1993, p. 523). The Kentucky arrow darter's background color is straw yellow to pale greenish, and the body is also covered by a variety of stripes and blotches. The back is crossed by 5 to 7 weak dorsal saddles, some of which may fuse with the 8 to 11 vertical lateral blotches (Kuehne and Barbour 1983, p. 71; Etnier and Starnes 1993, p. 523). The blotches are generally oval with pale centers at the front of the body but extend downward and may resemble the letters N, W, U, or V toward the back of the body. A dark vertical bar occurs at the base of the caudal fin, sometimes separated by two distinct spots. The belly is pale (Kuehne and Barbour 1983, p. 71). During the spawning season, breeding males exhibit vibrant coloration. Most of the body is blue-green in color, with scattered scarlet spots and scarlet to orange vertical bars laterally; the vertical bars can be connected ventrally by an orange belly stripe (Etnier and Starnes 1993, p. 523). The spinous dorsal fin exhibits a blue-green central band and a scarlet marginal band. The soft dorsal and caudal fins are speckled with scarlet blotches or bands, and the anal and pelvic fins are blue-green to black. Females remain pale straw yellow with grayish markings (Etnier and Starnes 1993, p. 523). Morphological differences between the Kentucky arrow darter and other darters make misidentifications unlikely. The species can be easily differentiated by its elongated snout, its oval or diamond-shaped lateral blotches, and its large size (for individuals greater than 100 mm (3.9 in) total length (TL)).

The Kentucky arrow darter belongs to the Class Actinopterygii (ray-finned fishes), Order Perciformes, and Family Percidae (perches) (Etnier and Starnes 1993, pp. 18–25; Page and Burr 2011, p. 569). The species was described from the Kentucky River basin (Sturgeon Creek, Owsley County) as *Etheostoma nianguae spilotum* (Gilbert 1887, pp. 53–54), but was later recognized and accepted as one of two subspecies of the arrow darter, *E. sagitta* (Jordan and Swain) (Bailey 1948, pp. 80–84; Kuehne and Bailey 1961, pp. 1–5; Kuehne and Barbour 1983, p. 71; Burr and Warren 1986, p. 316). Thomas and Johansen (2008, p. 46) questioned the subspecies status of *E. sagitta* by arguing that (1) the two subspecies, *E. sagitta sagitta* and *E. sagitta spilotum*, were distinguishable based on scale size and development of the lateral line (see note below); (2) the

two subspecies existed in allopatry (separate ranges with no overlap); (3) the two subspecies lacked intergrades (intermediate forms); and (4) unpublished genetic data (mitochondrial DNA) suggested evolutionary independence of Kentucky and Cumberland basin populations (with no recent genetic exchange). Based on these analyses, the two arrow darter subspecies have been elevated to species rank (Page and Burr 2011, p. 569; Eschmeyer 2014, p. 1). The Cumberland arrow darter, *E. sagitta* (Jordan and Swain), is restricted to the upper Cumberland River basin in Kentucky and Tennessee, and the Kentucky arrow darter, *E. spilotum* Gilbert, is restricted to the upper Kentucky River basin in Kentucky.

#### Habitat and Life History

Kentucky arrow darters typically inhabit pools or transitional areas between riffles and pools (glides and runs) in moderate- to high-gradient, first- to third-order streams with rocky substrates (Thomas 2008, p. 6). The species is most often observed near some type of cover—boulders, rock ledges, large cobble, or woody debris piles. During spawning (April to June), the species will utilize riffle habitats with moderate flow (Kuehne and Barbour 1983, p. 71). Thomas (2008, p. 6) observed Kentucky arrow darters at depths ranging from 10 to 45 centimeters (cm) (4 to 18 in) and in streams ranging from 1.5 to 20 meters (m) (4.9 to 65.6 feet (ft)) wide. Kentucky arrow darters typically occupy streams with watersheds of 25.9 square kilometers (km<sup>2</sup>) (10 square miles (mi<sup>2</sup>)) or less, and many of these habitats, especially those in first-order reaches, can be intermittent in nature (Thomas 2008, pp. 6–9). During drier periods (late summer or fall), some Kentucky arrow darter streams may cease flowing, but the species appears to survive these conditions by retreating into shaded, isolated pools or by dispersing into larger tributaries (Lotrich 1973, p. 394; Lowe 1979, p. 26; Etnier and Starnes 1993, p. 523; Service unpublished data). Lotrich (1973, p. 394) observed riffle habitats in Clemons Fork (Breathitt County) that were completely dry by late summer, but shaded isolated pools in these habitats continued to support Kentucky arrow darters.

Male Kentucky arrow darters establish territories over riffles from March to May, when they are quite conspicuous in water 5 to 15 cm (2 to 6 in) deep (Kuehne and Barbour 1983, p. 71). Males fan out a depression in the substrate and defend these sites vigorously. Initial courtship behavior

involves rapid dashes, fin-flaring, nudging, and quivering motions by the male followed by similar quivering responses of the female, who then precedes the male to the nest. The female partially buries herself in the substrate, is mounted by the male, and spawning occurs (Etnier and Starnes 1993, p. 523). It is assumed that the male continues to defend the nest until the eggs have hatched. The spawning period extends from April to June, but peak activity occurs when water temperatures reach 13 degrees Celsius (°C) (55 degrees Fahrenheit (°F)), typically in mid-April (Bailey 1948, pp. 82–84; Lowe 1979, p. 44). Females produce between 200 and 600 eggs per season, with tremendous variation resulting from size, age, condition of females, and stream temperature (Rakes 2014, pers. comm.).

Young Kentucky arrow darters can exceed 25 mm (1 in) TL by mid-June and can reach 50 mm (2 in) in length by the end of the first year (Lotrich 1973, pp. 384–385; Lowe 1979, pp. 44–48; Kuehne and Barbour 1983, p. 71). One-year olds are generally sexually mature and participate in spawning with older age classes (Etnier and Starnes 1993, p. 523). Lotrich (1973, p. 384) reported a mean length at age 2 of about 65 mm (2.6 in) but was unable to differentiate between older age classes (age 3+). Lowe (1979, p. 38) reported four age classes for the closely related Cumberland arrow darter, but growth was variable after age 1. Juvenile Kentucky arrow darters can be found throughout the channel but are often observed in shallow water along stream margins near root mats, rock ledges, or some other cover. As stream flow lessens and riffles begin to shrink, most Kentucky arrow darters move into pools and tend to remain there even when summer and autumn rains restore stream flow (Kuehne and Barbour 1983, p. 71).

Limited information exists with regard to upstream or downstream movements of Kentucky arrow darters; however, preliminary findings from a movement study at Eastern Kentucky University (EKU) and a reintroduction project on the Daniel Boone National Forest (DBNF) suggest that Kentucky arrow darters can move considerable distances (Baxter 2014, pers. comm.; Thomas 2015a, pers. comm.).

The EKU study is using PIT-tags (electronic tags placed under the skin) and placed antenna systems (installed in the stream bottom) to monitor intra- and inter-tributary movement of Kentucky arrow darters in Gilberts Big Creek and Elisha Creek, two second-order tributaries of Red Bird River in Clay and Leslie Counties (Baxter 2014,

pers. comm.). PIT-tags have been placed in a total of 126 individuals, and Kentucky arrow darter movements have been tracked since December 2013. Recorded movements have ranged from 134 m (439 ft) (upstream movement) to 4,078 m (13,379 ft or 2.5 mi) (downstream movement by a female in Elisha Creek). Intermediate recorded movements have included 328 m (1,076 ft) (downstream), 351 m (1,151 ft) (upstream), 900 m (2,952 ft) (upstream/downstream), 950 m (3,116 ft) (downstream), 1,282 m (4,028 ft) (downstream), and 1,708 m (5,603 ft) (downstream).

Since 2012, the Kentucky Department of Fish and Wildlife Resources (KDFWR) has been releasing captive-bred Kentucky arrow darters into Long Fork, a DBNF stream and first-order tributary to Hector Branch in eastern Clay County, Kentucky, where the species had been extirpated. A total of 1,447 captive-spawned KADs (about 50–55 mm TL) have been tagged and reintroduced within a 1.5-km (0.9 mi) reach of Long Fork. Monitoring has been conducted on multiple occasions since the initial release using visual searches and seining methods. Tagged darters have been observed during each monitoring event, with numbers increasing since the reintroduction began in 2012. Untagged individuals began to appear in Long Fork in 2013, indicating natural reproduction in Long Fork. In 2015, KDFWR observed five untagged individuals (47–58 mm TL) and one tagged individual (90 mm TL) in Hector Branch, approximately 0.6 km (0.4 mi) upstream of its confluence with Long Fork, and they also observed four untagged individuals (44–52 mm TL) in Deerlick Branch, a first-order tributary of Hector Branch, approximately 1.0 km (0.6 mi) downstream of the confluence of Long Fork and Hector Branch (Thomas 2015a, pers. comm.). Based on these results, it is evident that at least some Kentucky arrow darters have moved out of Long Fork into other parts of the Hector Creek drainage. It is impossible to determine if the untagged fish were spawned in Long Fork or Hector Branch; however, the former scenario is most likely given the poor water quality and habitat conditions in Hector Branch and the lack of collection records in Hector Branch prior to reintroduction efforts. Considering the water quality and habitat conditions in Hector Branch, it is also plausible that the individuals captured in Hector Branch were in transit seeking higher quality habitat (e.g., small tributaries). Based on these results, it is clear that young Kentucky arrow darters can



disperse both upstream and downstream from their place of origin and can move considerable distances.

Additional insight into possibility of interstream dispersal can be gained from the closely related Cumberland arrow darter. Lowe (1979, pp. 26–27) observed potential movement behavior for the Cumberland arrow darter in Tennessee. During field observations in January and February 1975, no Cumberland arrow darters were observed near the mouth of No Business Creek, a tributary of Hickory Creek in Campbell County, Tennessee, and downstream of a perched culvert. During a subsequent survey at this location, Lowe observed a total of 34 Cumberland arrow darters, a dramatic increase compared to previous surveys. Lowe (1979, pp. 26–27) considered it unlikely that the Cumberland arrow darters originated from upstream reaches of No Business Creek because no individuals were observed upstream of the culvert during the length of the study and no individuals had been observed at the site during the previous week. The only plausible explanation for the sudden increase was that the Cumberland arrow darters had migrated from Hickory Creek or a nearby tributary of Hickory Creek (e.g., Laurel Fork).

Kentucky arrow darters feed primarily on mayflies (Order Ephemeroptera), which comprised 77 percent of identifiable food items (420 of 542 items) in 57 Kentucky arrow darter stomachs from Clemons Fork, Breathitt County (Lotrich 1973, p. 381). The families Heptageniidae (genera

*Maccaffertium* and *Stenonema*) and Baetidae were the dominant mayflies in examined stomachs of Cumberland arrow darters in Tennessee (Lowe 1979, pp. 35–36). Kentucky arrow darters greater than 70 mm (2.8 in) TL often feed on small crayfish, as 7 of 8 stomachs examined by Lotrich (1973, p. 381) from Clemons Fork contained crayfishes ranging in size from 11 to 24 mm (0.4 to 0.9 in). Lotrich (1973, p. 381) considered this to be noteworthy because stomachs of small Kentucky arrow darters (less than 70 mm (2.8 in) TL) and stomachs of other darter species did not contain crayfishes. He suggested that larger individuals were utilizing a different energy source, thus removing themselves from direct competition for food with other fishes in first- and second-order streams. Lotrich (1973, p. 381) speculated that this would allow these larger individuals to exploit an abundant food source and survive in extreme headwater habitats. Other food items reported by Lotrich (1973, p. 381) and Etnier and Starnes (1993, p. 523) included larval blackflies (family Simuliidae) and midges (Chironomidae), with lesser amounts of caddisfly larvae, stonefly nymphs, and beetle larvae. Etnier and Starnes (1993, p. 523) reported that juvenile arrow darters feed on microcrustaceans and dipteran larvae.

Common associates of the Kentucky arrow darter include creek chub (*Semotilus atromaculatus*), central stoneroller (*Campostoma anomalum*), white sucker (*Catostomus commersonii*), emerald darter

(*Etheostoma baileyi*), rainbow darter (*E. caeruleum*), fantail darter (*E. flabellare*), and Johnny darter (*E. nigrum*) (Kuehne 1962, p. 609; Lotrich 1973, p. 380; Thomas 2008, p. 7). Within first-order streams or headwater reaches, the species is most commonly associated with creek chub, central stoneroller, and fantail darter.

#### Historical Range and Distribution

The Kentucky arrow darter occurred historically in at least 74 streams in the upper Kentucky River basin of eastern Kentucky (Gilbert 1887, pp. 53–54; Woolman 1892, pp. 275–281; Kuehne and Bailey 1961, pp. 3–4; Kuehne 1962, pp. 608–609; Branson and Batch 1972, pp. 507–514; Lotrich 1973, p. 380; Branson and Batch 1974, pp. 81–83; Harker *et al.* 1979, pp. 523–761; Greenberg and Steigerwald 1981, p. 37; Branson and Batch 1983, pp. 2–13; Branson and Batch 1984, pp. 4–8; Kornman 1985, p. 28; Burr and Warren 1986, p. 316; Measel 1997, pp. 1–105; Kornman 1999, pp. 118–133; Stephens 1999, pp. 159–174; Ray and Ceas 2003, p. 8; Kentucky State Nature Preserves Commission (KSNPC) unpublished data). Its distribution spanned portions of 6 smaller sub-basins or watersheds (North Fork Kentucky River, Middle Fork Kentucky River, South Fork Kentucky River, Silver Creek, Sturgeon Creek, and Red River) in 10 Kentucky counties (Breathitt, Clay, Harlan, Jackson, Knott, Lee, Leslie, Owsley, Perry, and Wolfe) (Thomas 2008, p. 3) (Figure 1).

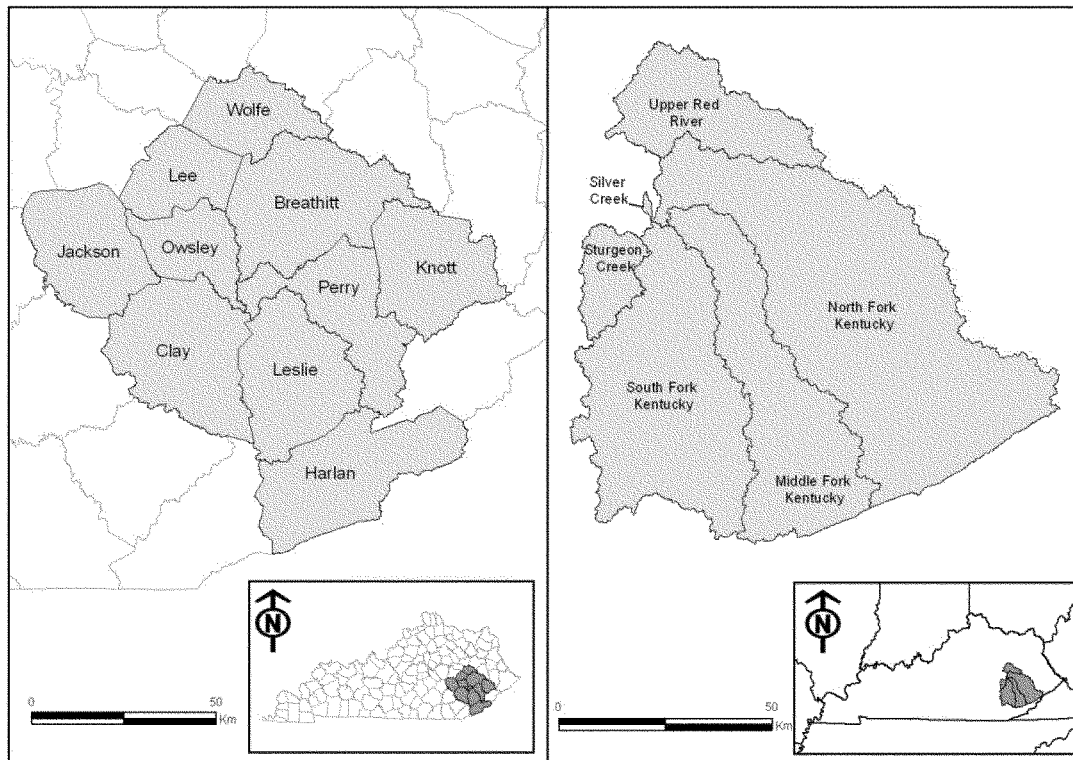


Figure 1. Kentucky counties within the Kentucky arrow darter's historical range (left) and upper Kentucky River sub-basins with historical records of the species (right).

The Kentucky arrow darter was first reported from the upper Kentucky River basin by Gilbert (1887, pp. 53–54), who collected 12 specimens from Sturgeon Creek near Travelers Rest, Owsley County. Woolman (1892, pp. 275–281) conducted more extensive surveys throughout the basin in the summer of 1890, reporting the species from seven additional streams: Big Creek, Cutshin Creek, Hector Branch, Lotts Creek, Middle Fork Kentucky River, Red Bird River, and Troublesome Creek. Kuehne and Bailey (1961, pp. 3–4) and Kuehne (1962, pp. 608–614) surveyed additional portions of the basin from 1954–1959, observing the species in Sexton Creek, Troublesome Creek (mainstem), and nine smaller streams in the Troublesome Creek watershed: Bear Branch, Buckhorn Creek, Clemons Fork, Coles Fork, Laurel Fork, Lewis Fork, Long Fork, Millseat Branch, and Snag Ridge Fork. From 1969–1978, biologists from EKU and KSNPC documented the species from an additional eight streams: Buck Creek, Buffalo Creek, Greasy Creek, Horse Creek, Jacks Creek, Laurel Creek, Leatherwood Creek, and Raccoon Creek (Branson and Batch 1972, pp. 507–514; Branson and Batch

1974, pp. 81–83; Harker *et al.* 1979, pp. 523–761; Branson and Batch 1983, pp. 2–13; Branson and Batch 1984, pp. 4–8; Burr and Warren 1986, p. 316). The number of known occurrences for the Kentucky arrow darter increased considerably during the 1990s (1990–1999), when EKU, KDFWR, the Kentucky Division of Water (KDOW), and KSNPC completed surveys throughout the basin, documenting the species' presence in a total of 46 streams (Kornman 1999, pp. 118–133; Stephens 1999, pp. 159–174; Ray and Geas 2003, p. 8; KSNPC unpublished data).

#### Current Range and Distribution

Based on surveys completed since 2006, extant populations of the Kentucky arrow darter are known from 47 streams in the upper Kentucky River basin in eastern Kentucky. These populations are scattered across 6 sub-basins (North Fork Kentucky River, Middle Fork Kentucky River, South Fork Kentucky River, Silver Creek, Sturgeon Creek, and Red River) in 10 Kentucky counties: Breathitt, Clay, Harlan, Jackson, Knott, Lee, Leslie, Owsley, Perry, and Wolfe Counties (Thomas 2008, pp. 3–6; Service unpublished data). Populations in nine

of these streams have been discovered or established since 2006. Current populations occur in the following Kentucky River sub-basins (and smaller watersheds):

- North Fork Kentucky River (Troublesome, Quicksand, Frozen, Holly, Lower Devil, Walker, and Hell Creek watersheds);
- Middle Fork Kentucky River (Big Laurel, Rockhouse, Hell For Certain Creek, and Squabble Creek watersheds);
- South Fork Kentucky River (Red Bird River, Hector Branch, and Goose, Bullskin, Buffalo, and Lower Buffalo Creek watersheds);
- Silver Creek;
- Sturgeon Creek (Travis, Wild Dog, and Granny Dismal Creek watersheds); and
- Red River (Rock Bridge Fork of Swift Camp Creek).

#### Population Estimates and Status

The species' status in all streams of historical or recent occurrence is summarized in Table 1, below, which is organized by sub-basin, beginning at the southeastern border (upstream end) of the basin (North Fork Kentucky River) and moving downstream. In this proposed rule, the term “population” is

used in a geographical context and not in a genetic context, and is defined as all individuals of the species living in one stream. Using the term in this way allows the status, trends, and threats to be discussed comparatively across streams where the species occurs. In using this term, we do not imply that the populations are currently reproducing and recruiting or that they are distinct genetic units. We considered populations of the Kentucky arrow darter as extant if live specimens have been observed or collected since 2006, and suitable habitat is present.

We are using the following generalized sets of criteria to categorize

the relative status of populations of 83 streams (74 historical and 9 non-historical discovered or established since 2006) included in Table 1. The status of a population is considered “stable” if: (1) There is little evidence of significant habitat loss or degradation, (2) darter abundance has remained relatively constant or increased during recent surveys, or (3) evidence of relatively recent recruitment has been documented since 2006. The status of a population is considered “vulnerable” if: (1) There is ample evidence of significant habitat loss or degradation since the species’ original capture, (2) there is an obvious decreasing trend in

abundance since the historical collection, or (3) no evidence of relatively recent recruitment (since 2006) has been documented. The status of a population is considered “extirpated” if: (1) All known suitable habitat has been destroyed or severely degraded; (2) no live individuals have been observed since 2006; or (3) live individuals have been observed since 2006, but habitat conditions do not appear to be suitable for reproduction to occur (e.g., elevated conductivity, siltation) and there is supporting evidence that the observed individuals are transients from another stream.

TABLE 1—KENTUCKY ARROW DARTER STATUS IN ALL STREAMS OF HISTORICAL (74) OR RECENT OCCURRENCE <sup>1</sup> (9; NOTED IN BOLD) IN THE UPPER KENTUCKY RIVER BASIN

Sub-basin	Sub-basin tributaries	Stream <sup>1</sup>	County	Current status	Date of last observation	
North Fork	Lotts Creek	Lotts Creek	Perry	Extirpated	1890	
		Left Fork	Knott	Extirpated	1890	
		Troublesome Creek	Perry	Extirpated	1890	
		Mill Creek	Knott	Extirpated	1995	
		Laurel Fork (of Balls Fork)	Knott	Extirpated	1995	
		Buckhorn Creek (Prince Fork)	Knott	Vulnerable	2011	
		<b>Eli Fork</b> <sup>1</sup>	Knott	Vulnerable	2011	
		Boughcamp Branch	Knott	Extirpated	2011	
		Coles Fork	Breathitt, Knott	Stable	2011	
		Snag Ridge Fork	Knott	Stable	2008	
		Clemons Fork	Breathitt	Stable	2013	
		Millseat Branch	Breathitt	Extirpated	1976	
		Lewis Fork	Breathitt	Extirpated	1959	
		Long Fork	Breathitt	Extirpated	1959	
		Bear Branch	Breathitt	Extirpated	2015	
		Laurel Fork (of Buckhorn)	Breathitt	Extirpated	1976	
		Lost Creek	Breathitt	Extirpated	1997	
		Quicksand Creek	Laurel Fork	Knott	Stable	2014
			Baker Branch	Knott	Extirpated	1994
	Middle Fork		Knott	Stable	2013	
	<b>Spring Fork</b> <sup>1</sup>		Breathitt	Vulnerable	2013	
	Wolf Creek		Breathitt	Extirpated	1995	
	Hunting Creek		Breathitt	Vulnerable	2013	
	Leatherwood Creek		Breathitt	Extirpated	1982	
	Bear Creek		Breathitt	Extirpated	1969	
	Smith Branch		Breathitt	Extirpated	1995	
	Frozen Creek		Frozen Creek	Breathitt	Stable	2013
			Clear Fork	Breathitt	Vulnerable	2008
			Negro Branch	Breathitt	Vulnerable	2008
			Davis Creek	Breathitt	Vulnerable	2008
		Cope Fork	Breathitt	Extirpated	1995	
		Boone Fork	Breathitt	Extirpated	1998	
		Holly Creek	Wolfe	Vulnerable	2007	
	Lower Devil Creek	Lower Devil Creek	Lee, Wolfe	Extirpated	1998	
		<b>Little Fork</b> <sup>1</sup>	Lee, Wolfe	Vulnerable	2011	
	Walker Creek	Walker Creek	Lee, Wolfe	Stable	2013	
	Hell Creek	Hell Creek	Lee	Vulnerable	2013	
	Middle Fork	Greasy Creek	Big Laurel Creek	Harlan	Vulnerable	2009
			Greasy Creek	Leslie	Extirpated	1970
		Cutshin Creek	Cutshin Creek	Leslie	Extirpated	1890
		Middle Fork	Middle Fork	Leslie	Extirpated	1890
		Rockhouse Creek	<b>Laurel Creek</b> <sup>1</sup>	Leslie	Vulnerable	2013
Hell For Certain Creek		Hell For Certain Creek	Leslie	Stable	2013	
Squabble Creek		Squabble Creek	Perry	Vulnerable	2015	
South Fork		Red Bird River	Blue Hole Creek	Clay	Stable	2008
			Upper Bear Creek	Clay	Stable	2013
			Katies Creek	Clay	Stable	2007
	Spring Creek		Clay	Stable	2007	
	Bowen Creek		Leslie	Stable	2009	

TABLE 1—KENTUCKY ARROW DARTER STATUS IN ALL STREAMS OF HISTORICAL (74) OR RECENT OCCURRENCE <sup>1</sup> (9; NOTED IN BOLD) IN THE UPPER KENTUCKY RIVER BASIN—Continued

Sub-basin	Sub-basin tributaries	Stream <sup>1</sup>	County	Current status	Date of last observation
		Elisha Creek .....	Leslie .....	Stable .....	2014
		Gilberts Big Creek .....	Clay, Leslie .....	Stable .....	2013
		<b>Sugar Creek</b> <sup>1</sup> .....	Clay, Leslie .....	Stable .....	2008
		Big Double Creek .....	Clay .....	Stable .....	2014
		Little Double Creek .....	Clay .....	Stable .....	2008
		Big Creek .....	Clay .....	Extirpated .....	1890
		Jacks Creek .....	Clay .....	Vulnerable .....	2009
		Hector Branch .....	Clay .....	Extirpated .....	2015
		<b>Long Fork (of Hector Br.)</b> <sup>1</sup> .....	Clay .....	Stable .....	2014
	Goose Creek .....	Horse Creek .....	Clay .....	Vulnerable .....	2013
		Laurel Creek .....	Clay .....	Extirpated .....	1970
	Bullskin Creek .....	Bullskin Creek .....	Clay, Leslie .....	Vulnerable .....	2014
	Buffalo Creek .....	Laurel Fork .....	Owsley .....	Stable .....	2014
		<b>Cortland Fork</b> <sup>1</sup> .....	Owsley .....	Vulnerable .....	2014
		Lucky Fork .....	Owsley .....	Stable .....	2014
		Left Fork .....	Owsley .....	Stable .....	2014
		Right Fork .....	Owsley .....	Vulnerable .....	2009
		Buffalo Creek .....	Owsley .....	Vulnerable .....	1969
	Sexton Creek .....	Bray Creek .....	Clay .....	Extirpated .....	1997
		Robinsons Creek .....	Clay .....	Extirpated .....	1997
		Sexton Creek .....	Owsley .....	Extirpated .....	1978
	Lower Island Creek ..	Lower Island Creek .....	Owsley .....	Extirpated .....	1997
	Cow Creek .....	Right Fork Cow Creek .....	Owsley .....	Extirpated .....	1997
	Buck Creek .....	Buck Creek .....	Owsley .....	Extirpated .....	1978
	Lower Buffalo Creek	Lower Buffalo Creek .....	Lee, Owsley .....	Vulnerable .....	2007
Silver Creek .....			Lee .....	Vulnerable .....	2008
Sturgeon Creek .....		<b>Travis Creek</b> <sup>1</sup> .....	Jackson .....	Vulnerable .....	2008
		Brushy Creek .....	Jackson, Owsley .....	Extirpated .....	1996
		Little Sturgeon Creek .....	Owsley .....	Extirpated .....	1996
		Wild Dog Creek .....	Jackson, Owsley .....	Stable .....	2007
		<b>Granny Dismal Creek</b> <sup>1</sup> .....	Lee, Owsley .....	Vulnerable .....	2013
		Cooperas Cave Branch .....	Lee .....	Extirpated .....	1996
		Sturgeon Creek .....	Lee .....	Extirpated .....	1998
Red River .....	Swift Camp Creek ....	Rockbridge Fork .....	Wolfe .....	Vulnerable .....	2013

<sup>1</sup> Non-historical occurrence discovered or established since 2006.

From 2007–2012, the Service, KSNPC, and KDFWR conducted a status review for the Kentucky arrow darter (Thomas 2008, pp. 1–33; Service 2012, pp. 1–4). Surveys were conducted qualitatively using single-pass electrofishing techniques (Smith-Root backpack electrofishing unit) within an approximate 100-m (328-ft) reach. During these efforts, fish surveys were conducted at 69 of 74 historical streams, 103 of 119 historical sites, and 40 new (non-historical) sites (sites correspond to individual sampling reaches and more than one may be present on a given stream). Kentucky arrow darters were observed at 36 of 69 historical streams (52 percent), 53 of 103 historical sites (52 percent), and 4 of 40 new sites (10 percent). New sites were specifically selected based on habitat suitability and the availability of previous collection records (sites lacking previous collections were chosen).

From June to September 2013, KSNPC and the Service initiated a study that included quantitative surveys at 80

randomly chosen sites within the species’ historical range (Service unpublished data). Kentucky arrow darters were observed at only seven sites, including two new localities (Granny Dismal Creek in Owsley County and Spring Fork Quicksand Creek in Breathitt County) and one historical stream (Hunting Creek, Breathitt County) where the species was not observed during status surveys by Thomas (2008, pp. 1–33) and Service (2012, pp. 1–4).

During 2014–2015, additional qualitative surveys (single-pass electrofishing) were completed at over 20 sites within the basin. Kentucky arrow darters were observed in Bear Branch, Big Double Creek, Big Laurel Creek, Bullskin Creek, Clemons Fork, Coles Fork, Cortland Fork, Laurel Fork Buffalo Creek, and Squabble Creek. Based on the poor habitat conditions observed in Bear Branch (e.g., elevated conductivity, siltation, and embedded substrates) and its close proximity to Robinson Forest, we suspect that the

few individuals observed in Bear Branch were transients originating from Clemons Fork.

Based on historical records and survey data collected at over 200 sites since 2006, the Kentucky arrow darter has declined significantly rangewide and has been eliminated from large portions of its former range, including 36 of 74 historical streams (Figure 2) and large portions of the basin that would have been occupied historically by the species (Figure 3). Forty-four percent of the species’ extirpations (16 streams) have occurred since the mid-1990s, and the species has disappeared completely from several watersheds (e.g., Sexton Creek, South Fork Quicksand Creek, Troublesome Creek headwaters). Of the species’ 47 extant streams, we consider half of these populations (23) to be “vulnerable” (Table 1), and most remaining populations are isolated and restricted to short stream reaches.

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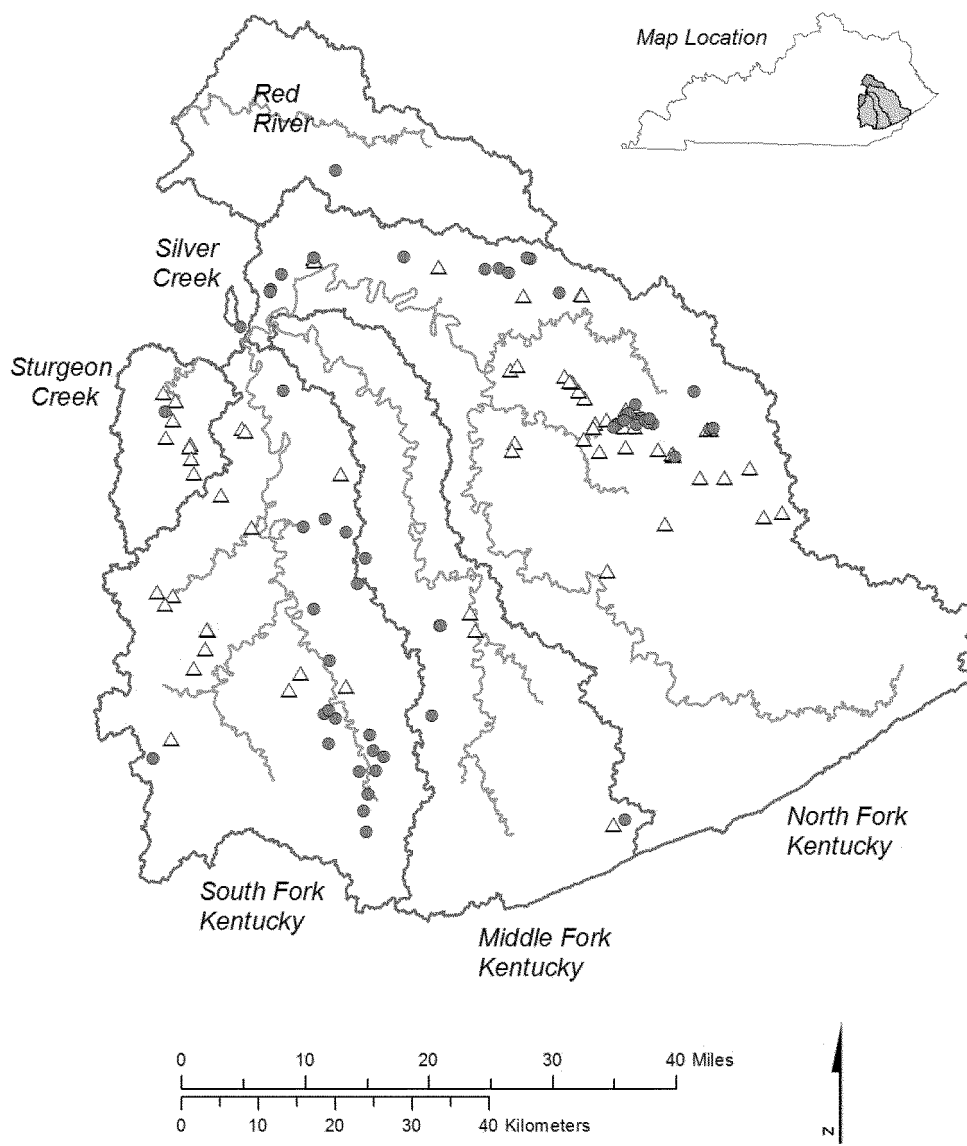


Figure 2. A summary of Kentucky arrow darter survey results at all historical sites visited between 2007 and 2015. Circles indicate survey sites (reaches) where the species was observed. Triangles indicate survey sites (reaches) where the species was not observed. Black lines indicate sub-basin boundaries; grey lines indicate 4th to 6th order streams.

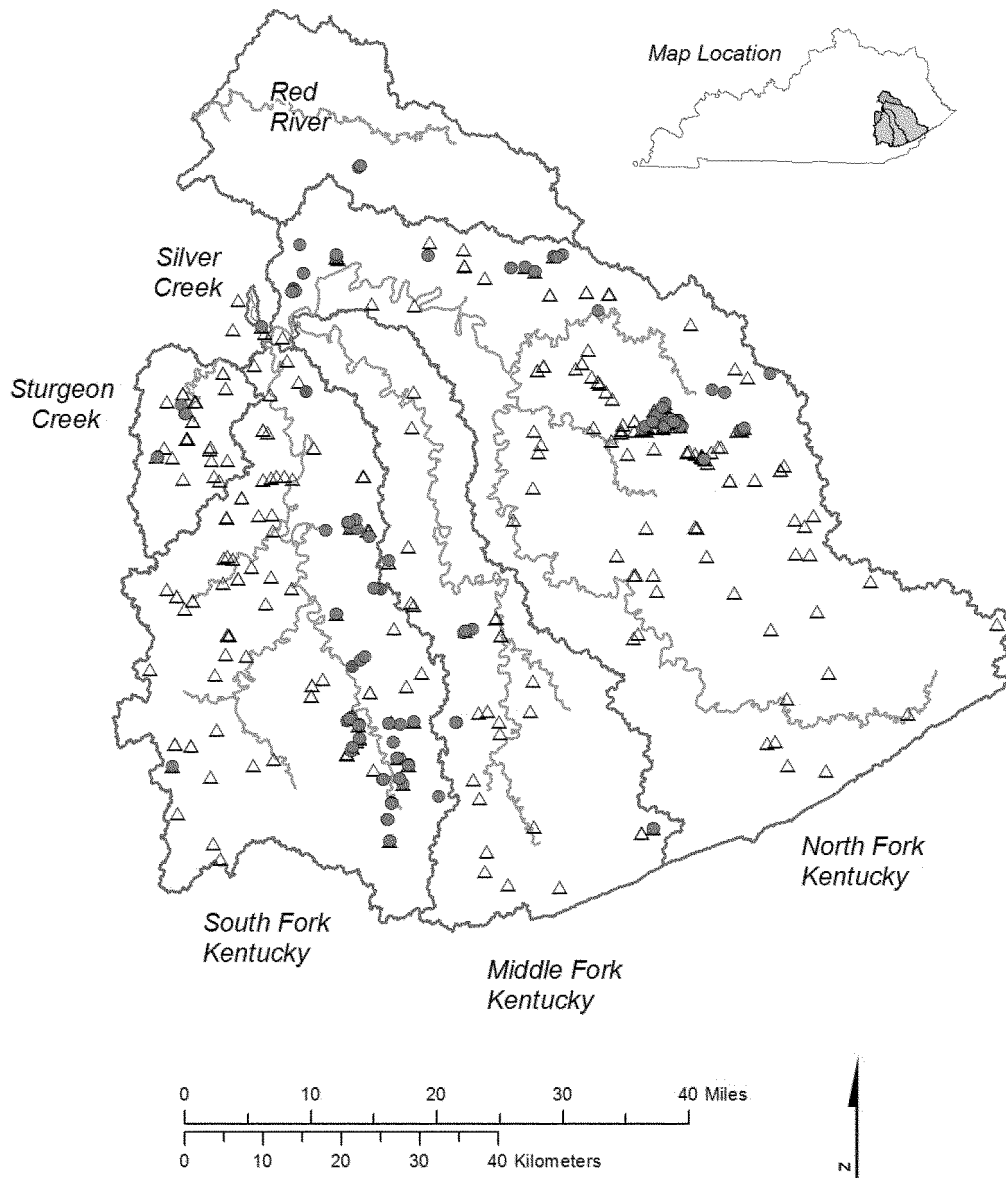


Figure 3. A summary of Kentucky arrow darter survey results at all sites visited between 2007 and 2014. Circles indicate survey sites (reaches) where the species was observed. Triangles indicate survey sites (reaches) where the species was not observed. Black lines indicate sub-basin boundaries; grey lines indicate 4th to 6th order streams.

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A synopsis of the Kentucky arrow darter's current range and status is provided below and is arranged by sub-basin, starting at the southeastern border (upstream end) of the basin and moving downstream. Within each sub-basin,

smaller watersheds and streams are addressed in a hierarchical fashion (follows the order used in Table 1).

*North Fork Kentucky River Sub-Basin*

The North Fork Kentucky River arises in eastern Letcher County, Kentucky,

near Pine Mountain and flows generally northwest for approximately 270 km (168 mi) to its confluence with the South Fork Kentucky River. Its watershed encompasses approximately 4,877 km<sup>2</sup> (1,883 mi<sup>2</sup>) in portions of Breathitt, Knott, Lee, Letcher, Perry, and

Wolfe counties. The Kentucky arrow darter was known historically from 33 streams in this sub-basin; we now consider the species to be extant in 17 streams (Thomas 2008, pp. 5–6; KSNPC unpublished data; Service unpublished data).

*Lotts Creek*—Lotts Creek is a tributary of the North Fork Kentucky River that flows westerly through east-central Perry County and southwestern Knott County. The Kentucky arrow darter was first reported from Lotts Creek by Woolman (1892, pp. 275–281), who described it as uncommon in the stream. No additional records are available from the Lotts Creek watershed, and our most recent survey (2009) was also unsuccessful (Service 2012, pp. 1–4). Based on the stream's poor habitat conditions (e.g., conductivity greater than 1,000 micro Siemens ( $\mu\text{S}$ )/cm, embedded substrates) and the lack of species records over the last 125 years (Service 2012, pp. 1–4), we do not consider the species to be extant within the Lotts Creek watershed.

*Troublesome Creek*—Troublesome Creek is a tributary of the North Fork Kentucky River draining portions of Breathitt, Knott, and Perry Counties. Historically, the Kentucky arrow darter was known from 16 streams in the Troublesome Creek watershed (Table 1) (Woolman 1892, pp. 275–281; Kuehne and Bailey 1961, pp. 3–4; Kuehne 1962, pp. 608–614; Harker *et al.* 1979, pp. 523–761; Measel 1997, pp. 8–11, 59; KSNPC unpublished data). The species has been eliminated from the upper reaches of Troublesome Creek, portions of the Buckhorn Creek watershed, and Lost Creek, but populations continue to occur in the upper Buckhorn Creek watershed, specifically Clemons Fork, Coles Fork, Snag Ridge Fork, Buckhorn Creek (headwaters, including Prince Fork), and Eli Fork (of Boughcamp Branch). The best remaining populations occur in Clemons Fork and Coles Fork, both tributaries of Buckhorn Creek that are located on Robinson Forest, a 59.9-km<sup>2</sup> (14,800-acre (ac)) experimental forest owned and managed by the University of Kentucky (UK). These watersheds are intact and densely forested, with only minor interruption by logging roads. Both streams are moderate- to high-gradient, cool, and dominated by cobble, boulder, and bedrock substrates. The species has been extirpated from most downstream tributaries of Buckhorn Creek (e.g., Long Fork) and most of the Buckhorn Creek mainstem; however, individuals are sometimes observed in these tributaries (e.g., Bear Branch, Boughcamp Branch) or the Buckhorn Creek mainstem where these habitats are located close to

occupied reaches. A small population continues to persist (and reproduce) within the Buckhorn Creek headwaters (Prince Fork and Eli Fork), but these watersheds are isolated from downstream populations due to severely degraded habitat and water quality conditions in the Buckhorn Creek mainstem and adjacent tributaries (Appalachian Technical Services (ATS) 2011, pp. 1–17). Surface coal mining has been practiced extensively within the Troublesome Creek watershed, and these activities continue to occur. A 10.9-km (6.8-mi) reach of Buckhorn Creek has been placed on Kentucky's 303(d) list of impaired waters due to siltation and elevated levels of total dissolved solids (KDOW 2013a, p. 341) and reported to the Environmental Protection Agency pursuant to section 303 of the 1972 Clean Water Act (33 U.S.C. 1251 *et seq.*)

*Quicksand Creek*—Quicksand Creek is a tributary of the North Fork Kentucky River that drains portions of Breathitt and Knott Counties. The Kentucky arrow darter was known from nine historical streams in the watershed (Table 1) (Harker *et al.* 1979, pp. 576–590; KSNPC unpublished data). The species has been extirpated from five of these streams (e.g., Leatherwood Creek), but extant populations remain in Laurel Fork, Middle Fork, Spring Fork, and Hunting Creek. Laurel Fork and Middle Fork support the best remaining populations. Both of these watersheds are sparsely populated and forested, with favorable water quality and habitat conditions for the species. The small Spring Fork population was discovered in 2013, and appears to be limited to an approximate 1.6-km (1-mi) headwater reach. Habitat conditions in Spring Fork are marginal for the species (e.g., heavy siltation, bank erosion), and instream conductivity is elevated (334  $\mu\text{S}/\text{cm}$ ). The species was first observed in Hunting Creek in July 1995 (six individuals observed), but the species was not observed during surveys by KDFWR in May 2007 (Thomas 2008, p. 5). Surveys by the Service in September 2013 produced four individuals, but habitat conditions continue to be marginal for the species. Based on these factors, we consider the Hunting Creek population to be vulnerable to extirpation.

*Frozen Creek*—Frozen Creek is a tributary of the North Fork Kentucky River in northern Breathitt County. The Kentucky arrow darter was known historically from six streams in the Frozen Creek watershed: Frozen Creek (headwaters), Clear Fork, Negro Branch, Davis Creek, Cope Fork, and Boone Fork (Kornman 1999, pp. 118–133; KSNPC

unpublished data). Thomas (2008, p. 5) revisited these sites in 2007 and 2008, and determined that the species was extant in four streams: Frozen Creek, Clear Fork, Negro Branch, and Davis Creek. The most individuals were observed in Frozen Creek, which also contained the most favorable habitat conditions for the species. The species was less abundant in Clear Fork, Negro Branch, and Davis Creek, and habitat conditions were marginal (e.g., extensive bedrock areas, substrates covered by thick layer of algae). Thomas (2008, pp. 5, 31–32) did not observe the species in Cope Fork or Boone Fork, both of which exhibited poor habitat and water quality conditions (e.g., siltation, elevated conductivity). Sedimentation continues to be a problem in the Frozen Creek watershed (KDOW 2013a, p. 329), and a 3.1-km (1.9-mi) reach of Cope Fork has been placed on Kentucky's 303(d) list of impaired waters due to elevated levels of total dissolved solids (e.g., elevated conductivity) (KDOW 2013a, p. 345).

*Holly Creek*—Holly Creek is a tributary of the North Fork Kentucky River in southern Wolfe County. Kentucky arrow darters were first observed in Holly Creek (one individual) in 1998 (Kornman 1999, pp. 118–133). Thomas (2008, p. 5) revisited the historical site in 2007, and observed two individuals. Despite the species' presence, habitat conditions in portions of the watershed continue to be poor, and a 10-km (6.2-mi) reach (RM 0–6.2) of Holly Creek has been placed on Kentucky's 303(d) list of impaired streams due to sedimentation from agriculture, stream bank modification, and riparian habitat loss (KDOW 2013a, p. 351). Based on these factors and the population's apparent small size, we consider the Holly Creek population to be vulnerable to extirpation.

*Lower Devil Creek*—Lower Devil Creek is a direct tributary of the North Fork Kentucky River in southern Wolfe County. The Kentucky arrow darter was first reported from Lower Devil Creek by Kornman (1999, pp. 118–133), who collected one individual in 1998. The species was not observed during subsequent surveys in 2007 and 2011 (Thomas 2008, pp. 5; Service unpublished data). Thomas (2008, p. 5) reported a new record for the watershed based on the collection of one specimen from Little Fork, a tributary to Lower Devil Creek. We observed an additional specimen during surveys in 2011. We consider the Little Fork population to be vulnerable to extirpation due to its apparent small population size and the stream's elevated conductivity (approximately 400  $\mu\text{S}/\text{cm}$ ).

*Walker Creek*—Walker Creek is a direct tributary of the North Fork Kentucky River in eastern Lee County. First discovered in 1996 (KSNPC unpublished data), this population continues to be relatively robust. The species was observed at all historical sites and one new site during surveys completed in 2008 and 2013 (KSNPC and Service unpublished data). Conductivity values continue to be high in downstream reaches (approximately 400  $\mu\text{S}/\text{cm}$ ), but these conditions do not appear to have reduced Kentucky arrow darter numbers. Historical land use within the Walker Creek watershed was dominated by oil and gas development/drilling, which may explain the elevated conductivity values observed during recent surveys.

*Hell Creek*—Hell Creek is a direct tributary of the North Fork Kentucky River in eastern Lee County. The species was first observed in Hell Creek (two individuals) in August 1995 (KSNPC unpublished data), followed by observations by Kornman (1999, pp. 118–133) in 1998 (two individuals) and Thomas (2008, p. 5) in 2007 (seven individuals). Surveys by KDFWR in July 2014 suggest a possible decline of the population in Hell Creek (Thomas 2014, pers. comm.). Kentucky arrow darters appeared to be less abundant (only two individuals observed despite exhaustive searches), and habitat conditions within Hell Creek had deteriorated (siltation was prominent) compared to previous surveys (Thomas 2014, pers. comm.).

#### *Middle Fork Kentucky River Sub-Basin*

The Middle Fork Kentucky River arises in southern Leslie County, Kentucky, near Pine Mountain and flows generally north for approximately 169 km (105 mi) to its confluence with the North Fork Kentucky River. Its watershed encompasses approximately 1,448 km<sup>2</sup> (559 mi<sup>2</sup>) in portions of Breathitt, Harlan, Lee, Leslie, and Perry counties. The Kentucky arrow darter was formerly known from seven widely scattered stream segments in the sub-basin. We now consider the species to be extant in four of these streams (Thomas 2008, pp. 4–5; Service unpublished data).

*Greasy Creek*—Greasy Creek is a tributary of the Middle Fork Kentucky River that drains southern Leslie county and a small portion of northern Harlan County. The Kentucky arrow darter is known from two historical streams within the watershed—Greasy Creek and Big Laurel Creek, a direct tributary of Greasy Creek (Branson and Batch 1984, pp. 4–8; KSNPC unpublished data). The species is presumed extirpated from the Greasy Creek

mainstem, but a small population remains in Big Laurel Creek based on collections completed in 2009 (Service 2012, pp. 1–4). We consider the Big Laurel Creek population to be vulnerable to extirpation due to sedimentation, channel instability, and elevated conductivity.

*Cutshin Creek*—Cutshin Creek is a tributary of the Middle Fork Kentucky River draining southeastern Leslie County. The species was first reported from Cutshin Creek by Woolman (1892, pp. 275–281), who observed the species 4.8 km (3 mi) upstream of the Cutshin Creek and Middle Fork confluence. Branson and Batch (1984, pp. 4–8) made the only other observation of the species in Cutshin Creek. They collected one specimen at the KY 80 crossing in June 1973. The species has not been observed in Cutshin Creek since that time.

*Middle Fork*—Woolman (1892, pp. 275–281) observed the species in the Middle Fork mainstem during surveys completed 6.4 km (4 mi) north of Hyden in August 1890. The species has not been observed in the Middle Fork since that time. Based on the size of the Middle Fork at this location (fourth- or fifth-order), it is likely that the specimen(s) observed by Woolman originated from a nearby tributary such as Hell For Certain Creek.

*Rockhouse Creek*—Rockhouse Creek is a tributary of Middle Fork Kentucky River in central Leslie County. In March 2013, biologists with KDFWR and DBNF discovered an unknown population of Kentucky arrow darter in Laurel Creek, a second-order tributary of Rockhouse Creek (Thomas 2013, pers. comm.). One individual was found in Laurel Creek after surveys in three separate reaches (over 4,000 shocking seconds). Laurel Fork is situated at the western edge of the Middle Fork sub-basin, and about 90 percent of its watershed is located within the DBNF (Redbird Ranger District).

*Hell For Certain Creek*—Hell For Certain Creek is a direct, second-order tributary to the Middle Fork Kentucky River in northern Leslie County (upstream of Buckhorn Lake). Kentucky arrow darters were first recorded from Hell For Certain Creek in 1994 (KSNPC unpublished data), and subsequent surveys in 2011 and 2013 produced additional specimens (Service unpublished data). The Hell For Certain Creek population appears to be at least moderately robust, and water quality and habitat conditions are favorable for the species. About 50 percent of the Hell For Certain Creek watershed is in public ownership (DBNF).

*Squabble Creek*—Squabble Creek is a tributary to Middle Fork Kentucky River

in northwestern Perry County. Squabble Creek enters the Middle Fork just downstream of Buckhorn Lake Dam in the community of Buckhorn. Kentucky arrow darters were first reported from Squabble Creek in 1996, when KSNPC biologists observed one individual from a small bedrock pool in the headwaters (KSNPC unpublished data). Thomas (2008, p. 25) resurveyed the historical collection site in 2008 but did not observe the species. Thomas (2008, p. 25) noted that sedimentation was “heavy” in the stream. We observed similar habitat conditions during recent surveys of Squabble Creek in February 2015, but two juvenile Kentucky arrow darters were observed near the historical collection site. Conductivity levels continue to be relatively low in the headwaters (130  $\mu\text{S}/\text{cm}$ ), but siltation/sedimentation remains a concern and residential land use continues to be extensive in the downstream half of the watershed. About 10 percent of the watershed is in Federal ownership (DBNF). Sedimentation and total dissolved solids have been identified as problems within Squabble Creek, as evidenced by the stream’s placement on Kentucky’s 303(d) list of impaired waters (KDOW 2013a, p. 368).

#### *South Fork Kentucky River Sub-Basin*

The South Fork Kentucky River is formed by the confluence of Goose Creek and the Red Bird River in northern Clay County, Kentucky, and flows north for approximately 72 km (45 mi) to its confluence with the North Fork Kentucky River. Its watershed encompasses approximately 1,937 km<sup>2</sup> (748 mi<sup>2</sup>) in portions of Bell, Clay, Jackson, Knox, Lee, Leslie, and Owsley counties. Historically, the Kentucky arrow darter was known from 28 streams in this sub-basin. The species has been extirpated from several watersheds (total of 9 streams) and is now considered to be extant in 20 streams (Thomas 2008, p. 4; KSNPC and Service unpublished data).

*Red Bird River*—The Red Bird River is a tributary of the South Fork Kentucky River that flows northerly through portions of Bell, Clay, and Leslie Counties. Historically, Kentucky arrow darters were known from 12 streams within the watershed (Woolman 1892, pp. 275–281; Branson and Batch 1983, pp. 2–13; KSNPC and Service unpublished data). The species has been extirpated from two streams, Big Creek and Hector Branch, but the Red Bird River watershed continues to support the largest concentration of occupied streams and some of the species’ best remaining populations. We have recent records from Blue Hole Creek, Upper



Bear Creek, Katies Creek, Spring Creek, Bowen Creek, Elisha Creek, Gilberts Big Creek, Sugar Creek, Big Double Creek, Little Double Creek, Jacks Creek, and Long Fork (of Hector Branch). Public ownership in these watersheds is extensive (Redbird Ranger District of DBNF), and the streams generally have intact riparian zones with little or no anthropogenic disturbance, cool temperatures, low conductivity (near baseline conditions of less than 100  $\mu\text{S}/\text{cm}$ ), and stable channels with clean cobble/boulder substrates. The presence of the species in Long Fork (of Hector Branch) is the result of a reintroduction effort by KDFWR and Conservation Fisheries, Inc. (CFI), of Knoxville, Tennessee (Thomas *et al.* 2014, p. 23).

*Goose Creek*—Goose Creek is a tributary of the South Fork Kentucky River that drains portions of southern and western Clay County and northeastern Knox County. Goose Creek flows northerly through these counties, joining with the Red Bird River at Oneida to create the South Fork Kentucky River. The Kentucky arrow darter was known historically from two Goose Creek tributaries: Horse Creek and Laurel Creek (Branson and Batch 1983, pp. 1–15). A small population continues to exist in Horse Creek, but the species has not been observed in Laurel Creek since 1970 (Service unpublished data). Habitat conditions in both streams are marginal to poor (Thomas 2008, p. 4), and both streams have been placed on Kentucky's 303(d) list of impaired waters (KDOW 2013a, pp. 352–353).

*Bullskin Creek*—Bullskin Creek is a tributary to the South Fork Kentucky River that drains eastern Clay County. The Kentucky arrow darter was first reported from Bullskin Creek in August 1998, when Stephens (1999, pp. 159–174) collected one individual. Additional specimens were observed by KDFWR and the Service in 2007 and 2014, respectively (Thomas 2008, p. 27; Service unpublished data).

*Buffalo Creek*—Buffalo Creek is a tributary to the South Fork Kentucky River that drains southeastern Owsley County. Since 1969, the Kentucky arrow darter has been reported from multiple stream reaches in both the Left and Right Forks (Branson and Batch 1983, pp. 1–15; KSNPC and Service unpublished data). The species continues to be extant in both forks, and the upstream reaches of the Left Fork (Laurel Fork, Cortland Fork, and Lucky Fork) appear to be the species' stronghold within the watershed. Public ownership (DBNF) is extensive within the drainage.

*Sexton Creek*—Sexton Creek is a tributary to the South Fork Kentucky River that drains portions of Clay, Jackson, and Owsley Counties. Historically, the Kentucky arrow darter was reported from Bray Creek, Robinsons Creek, and the Sexton Creek mainstem (Branson and Batch 1983, pp. 1–15; KSNPC unpublished data). The species has not been observed in the Sexton Creek watershed since 1997, and now appears to be extirpated.

*Lower Island Creek*—Lower Island Creek is a tributary to the South Fork Kentucky River that drains southwestern Owsley County. The Kentucky arrow darter was first reported from Lower Island Creek in 1997 (KSNPC unpublished data), but repeated surveys in the watershed have failed to produce additional specimens (Thomas 2008, p. 27; Service unpublished data). The species is now considered to be extirpated from the Lower Island Creek watershed.

*Cow Creek*—Cow Creek is a tributary to the South Fork Kentucky River that drains eastern Owsley County. The Kentucky arrow darter was first reported from the watershed in June 1993, when Burr and Cook (1993, pp. 55–56) observed two specimens in the headwaters of Right Fork Cow Creek near the community of Arnett. KSNPC surveyed the historical site again in 1997, and observed one individual (KSNPC unpublished data). Surveys by the Service in 2009 and 2011 did not produce additional specimens (Service 2012, pp. 1–4). The species is now considered to be extirpated from the Cow Creek watershed.

*Buck Creek*—Buck Creek is a tributary to the South Fork Kentucky River in northern Owsley County. The species was first reported from the Buck Creek watershed by Harker *et al.* (1979, pp. 656–671), who observed one individual in October 1978. Additional surveys were completed in May 2008 and June 2011, but the species was not observed (Service 2012, pp. 1–4). Based on our recent surveys, habitat conditions appear to be unfavorable for the species (*e.g.*, conductivity greater than 400  $\mu\text{S}/\text{cm}$ ).

*Lower Buffalo Creek*—Lower Buffalo Creek is a tributary to the South Fork Kentucky River in Lee and Owsley Counties. The Kentucky arrow darter was first reported from Lower Buffalo Creek by Stephens (1999, pp. 159–174), who observed one individual in August 1998. Thomas (2008, p. 4) observed three individuals in May 2007, but described the habitat conditions as poor, with heavy siltation and eutrophication. Based on observations made by Thomas (2008, p. 4), we consider the Lower

Buffalo Creek population to be vulnerable to extirpation.

#### *Silver Creek Sub-Basin*

Silver Creek is a tributary to the Kentucky River that drains approximately 8.5 km<sup>2</sup> (3.3 mi<sup>2</sup>) in central Lee County, Kentucky. The Kentucky arrow darter was first recorded from Silver Creek in 1996, when KSNPC observed 10 individuals (2 age classes) near the city limits of Beattyville (KSNPC unpublished data). Thomas (2008, p. 31) surveyed the historical site again in May 2008, and observed one specimen. A small population appears to be extant in Silver Creek, but we consider this population to be vulnerable to extirpation.

#### *Sturgeon Creek Sub-Basin*

Sturgeon Creek is a tributary to the Kentucky River that flows northerly through Jackson, Lee, and Owsley Counties, draining approximately 287 km<sup>2</sup> (111 mi<sup>2</sup>). The Kentucky arrow darter was known historically from five streams within this sub-basin: Brushy Creek, Cooperas Cave Branch, Little Sturgeon Creek, Sturgeon Creek (mainstem), and Wild Dog Creek (Harker *et al.* 1979, pp. 607–623; Ray and Ceas 2003, pp. 12–13; KSNPC unpublished data). We now consider the species to be extant in one historical stream, Wild Dog Creek, and two recently documented streams, Granny Dismal Creek and Travis Creek (KSNPC and Service unpublished data). Wild Dog Creek appears to support the most robust population within this sub-basin.

#### *Red River Sub-Basin*

The Red River is a tributary of the Kentucky River that arises in eastern Wolfe County, Kentucky, and flows generally west for approximately 156 km (97 mi) through portions of Clark, Estill, Menifee, Powell, and Wolfe Counties. The Red River watershed encompasses approximately 1,261 km<sup>2</sup> (487 mi<sup>2</sup>). The Kentucky arrow darter was not observed within the sub-basin until 1980, when one individual was collected from the Swift Camp Creek watershed in Wolfe County (Greenberg and Steigerwald 1981, p. 37).

*Swift Camp Creek*—Swift Camp Creek is a tributary to the Red River that flows northerly through northwestern Wolfe County. The Kentucky arrow darter was known historically from only one Swift Camp Creek tributary: Rockbridge Fork (Greenberg and Steigerwald 1981, p. 37). Additional surveys by KDFWR and the Service in 1998, 2007, 2011, and 2013 demonstrate that the species continues to occur in Rockbridge Fork (Kornman

1985, p. 28; Thomas 2008, p. 4; Service unpublished data). Despite its location in the DBNF, bank erosion and siltation continue to be problematic in the watershed (Thomas 2008, p. 4).

Our recent survey data (Thomas 2008, pp. 25–27; Service 2012, pp. 1–4) indicate that Kentucky arrow darters occur in low densities. Sampling reaches where arrow darters were observed had an average of only 3 individuals per 100-m (328-ft) reach and a median of 2 individuals per reach (range of 1 to 10 individuals). Surveys in 2011 by the DBNF from Laurel Fork and Cortland Branch of Left Fork Buffalo Creek (South Fork Kentucky River sub-basin) produced slightly higher capture rates (an average of 5 darters per 100-m (328-ft) sampling reach) (Mulhall 2014, pers. comm.). The low abundance values (compared to other darters) are not surprising since Kentucky arrow darters generally occur in low densities, even in those streams where disturbance has been minimal (Thomas 2015b, pers. comm.).

Detailed information on population size is generally lacking for the species, but estimates have been completed for three streams: Clemons Fork (Breathitt County), Elisha Creek (Clay and Leslie Counties), and Gilberts Big Creek (Clay and Leslie Counties) (Service unpublished data). Based on field surveys completed in 2013 by EKU, KSNPC, and the Service, population estimates included 986–2,113 individuals (Clemons Fork), 592–1,429 individuals (Elisha Creek), and 175–358 individuals (Gilberts Big Creek) (ranges reflect 95 percent confidence intervals).

Based on observed catch rates and habitat conditions throughout the upper Kentucky River basin, the most stable and largest populations of the Kentucky

arrow darter appear to be located in the following streams:

- Hell For Certain Creek, Leslie County;
- Laurel and Middle Forks of Quicksand Creek, Knott County;
- Frozen and Walker Creeks, Breathitt and Lee Counties;
- Clemons Fork and Coles Fork, Breathitt and Knott Counties;
- Several direct tributaries (e.g., Bowen Creek, Elisha Creek, and Big Double Creek) of the Red Bird River, Clay and Leslie Counties; and
- Wild Dog Creek, Jackson and Owsley Counties.

The Kentucky arrow darter is considered “threatened” by the State of Kentucky and has been ranked by KSNPC as a G2G3/S2S3 species (imperiled or vulnerable globally and imperiled or vulnerable within the State) (KSNPC 2014, p. 40). Kentucky’s Comprehensive Wildlife Conservation Strategy (KDFWR 2013, pp. 9–11) identified the Kentucky arrow darter as a Species of Greatest Conservation Need (rare or declining species that requires conservation actions to improve its status).

**Summary of Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors

affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

*Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The Kentucky arrow darter’s habitat and range have been destroyed, modified, and curtailed due to a variety of anthropogenic activities in the upper Kentucky River drainage. Resource extraction (e.g., coal mining, logging, oil/gas well development), land development, agricultural activities, and inadequate sewage treatment have all contributed to the degradation of streams within the range of the species (Branson and Batch 1972, pp. 513–516; Branson and Batch 1974, pp. 82–83; Thomas 2008, pp. 6–7; KDOW 2010, pp. 70–84; KDOW 2013a, pp. 189–214, 337–376; KDOW 2013b, pp. 88–94). These land use activities have led to chemical and physical changes to stream habitats that have adversely affected the species. Specific stressors have included inputs of dissolved solids and elevation of instream conductivity, sedimentation/siltation of stream substrates (excess sediments deposited in a stream), turbidity, inputs of nutrients and organic enrichment, and elevation of stream temperatures (KDOW 2010, p. 84; KDOW 2013a, pp. 189–214, 337–376). KDOW (2013a, pp. 337–376) provided a summary of specific threats within the upper Kentucky River drainage, identifying impaired reaches in 21 streams within the Kentucky arrow darter’s historical range (Table 2). Six of these streams continue to support populations of the species, but only one of these populations (Frozen Creek) is considered to be stable (see Table 1, above).

TABLE 2—SUMMARY OF 303(D) LISTED STREAM SEGMENTS WITHIN THE HISTORICAL RANGE OF THE KENTUCKY ARROW DARTER  
[KDOW 2013a, pp. 337–376]

Stream	County	Impacted stream segment (km (mi))	Pollutant source	Pollutant
Buckhorn Creek .....	Breathitt .....	0–6.8	Abandoned Mine Lands, Unknown Sources.	Fecal Coliform (FC), Sediment/Siltation, Total Dissolved Solids (TDS).
Cope Fork (of Frozen Creek)	Breathitt .....	0–1.9	Channelization, Riparian Habitat Loss, Logging, Agriculture, Stream Bank Modification, Surface Coal Mining.	Sediment/Siltation, TDS.
Cutshin Creek .....	Leslie .....	9.7–10.7	Riparian Habitat Loss, Stream Bank Modification, Surface Coal Mining.	Sediment/Siltation.
Frozen Creek * .....	Breathitt .....	0–13.9	Riparian Habitat Loss, Post-Development Erosion and Sedimentation.	Sediment/Siltation.
Goose Creek .....	Clay .....	0–8.3	Septic Systems .....	FC.

TABLE 2—SUMMARY OF 303(D) LISTED STREAM SEGMENTS WITHIN THE HISTORICAL RANGE OF THE KENTUCKY ARROW DARTER—Continued

[KDOW 2013a, pp. 337–376]

Stream	County	Impacted stream segment (km (mi))	Pollutant source	Pollutant
Hector Branch .....	Clay .....	0–5.5	Unknown .....	Unknown.
Holly Creek * .....	Wolfe .....	0–6.2	Agriculture, Riparian Habitat Loss, Stream Bank Modification, Surface Coal Mining.	Sediment/Siltation, Unknown.
Horse Creek * .....	Clay .....	0–8.3	Riparian Habitat Loss, Managed Pasture Grazing, Surface Coal Mining.	Sediment/Siltation.
Laurel Creek .....	Clay .....	3.8–4.8	Managed Pasture Grazing, Crop Production.	Nutrients/Eutrophication.
Left Fork Island Creek .....	Owsley .....	0–5.0	Crop Production .....	Sediment/Siltation.
Long Fork .....	Breathitt .....	0–4.6	Surface Coal Mining .....	Sediment/Siltation, TDS.
Lost Creek .....	Breathitt .....	0–8.9	Coal Mining, Riparian Habitat Loss, Logging, Stream Bank Modification.	Fecal Coliform, Sedimentation, Total Dissolved Solids, Turbidity.
Lotts Creek .....	Perry .....	0.4–1.0, 1.2–6	Riparian Habitat Loss, Land Development, Surface Coal Mining, Logging, Stream Bank Modification.	Sediment/Siltation, TDS, Turbidity.
Quicksand Creek .....	Breathitt .....	0–17.0, 21.7–30.8	Surface Coal Mining, Riparian Habitat Loss, Logging, Stream Bank Modification.	FC, Turbidity, Sediment/Siltation, TDS.
Sexton Creek .....	Clay, Owsley ...	0–17.2	Crop Production, Highway/Road/Bridge Runoff.	Sediment/Siltation, TDS.
South Fork Quicksand Creek	Breathitt .....	0–16.9	Riparian Habitat Loss, Petroleum/Natural Gas Production Activities, Surface Coal Mining.	Sediment/Siltation, TDS.
Spring Fork (Quicksand Creek) *.	Breathitt .....	3.1–6.9	Abandoned Mine Lands (Inactive), Riparian Habitat Loss, Logging, Stream Bank Modification.	Sediment/Siltation, TDS, Turbidity.
Squabble Creek * .....	Perry .....	0–4.7	Land Development, Surface Coal Mining.	Sediment/Siltation, TDS.
Sturgeon Creek .....	Lee .....	8.0–12.2	Riparian Habitat Loss, Crop Production, Surface Coal Mining.	Sediment/Siltation.
Swift Camp Creek .....	Wolfe .....	0–13.9	Unknown .....	Unknown.
Troublesome Creek .....	Breathitt .....	0–45.1	Surface Coal Mining, Municipal Point Source Discharges, Petroleum/Natural Gas Activities.	Sediment/Siltation, Specific Conductance, TDS, Turbidity.

\* Stream segment still occupied by Kentucky arrow darters.

### Water Quality Degradation

A threat to the Kentucky arrow darter is water quality degradation caused by a variety of nonpoint-source pollutants (contaminants from many diffuse and unquantifiable sources). Within the upper Kentucky River drainage, coal mining has been the most significant historical source of these pollutants, and it continues to be practiced throughout the drainage. As of January 2015, 318 mining permits were associated with coal removal and production activities within the upper Kentucky River drainage (Laird 2015, pers. comm.). Of these, 136 permits were associated with active coal removal, encompassing a combined area of 777 km<sup>2</sup> (191,968 ac). The remaining 196 permits were classified as temporarily inactive or were associated with some type of reclamation activity. Permits associated with active coal removal consisted of six

primary types: access road, loadout (areas of coal storage, often located away from the mine site), prep plant (facility that washes coal prior to transport by rail or truck), refuse facility (stores non-coal rock, water, and slurry originating from an underground mine), surface, and underground. With respect to permit type, the greatest number of permits was associated with surface mines (64 permits), followed by underground (32), prep plant (20), access road (13), refuse facility (5), and loadout (2). With respect to county distribution, Perry County had the most permits (59), followed by Leslie (28), Breathitt (16), Knott (16), Clay (12), Harlan (2), Owsley (2), and Jackson (1). No activity was reported for Lee or Wolfe Counties. Six permits were located in Kentucky arrow darter watersheds: Buckhorn Creek (Breathitt and Knott Counties), Bullskin Creek

(Clay County), and Left Fork Buffalo Creek (Owsley County).

Annual coal production in eastern Kentucky (including counties in the upper Kentucky River drainage) has declined over the past 2 decades, but annual production in eastern Kentucky continues to be relatively high (over 37 million tons produced in 2014) (KEEC 2014, pp. 1–5), recoverable reserves for the eastern Kentucky portion of the Appalachian Basin are estimated at 5.8 billion tons (Milici and Dennen 2009, pp. 8–11), and the species' distribution continues to be fragmented and reduced as a result of previous (legacy) mining activities within the drainage. Consequently, the potential remains for Kentucky arrow darters to continue to be adversely affected by water quality degradation associated with surface coal mining activities.

With regard to specific pollutants, activities associated with coal mining

have the potential to contribute high concentrations of dissolved salts, metals, and other solids that (1) elevate stream conductivity (a measure of electrical conductance in the water column that increases as the concentration of dissolved solids increases), (2) increase sulfates (a common dissolved ion with empirical formula of  $\text{SO}_4^{-2}$ ), and (3) cause wide fluctuations in stream pH (a measure of the acidity or alkalinity of water) (Curtis 1973, pp. 153–155; Dyer and Curtis 1977, pp. 10–13; Dyer 1982, pp. 1–16; Hren *et al.* 1984, pp. 5–34; USEPA 2003, pp. 77–84; Hartman *et al.* 2005, p. 95; Pond *et al.* 2008, pp. 721–723; Palmer *et al.* 2010, pp. 148–149; USEPA 2011, pp. 27–44). As rock strata and excess rock material (overburden) are exposed to the atmosphere during the mining process, precipitation leaches metals and other solids (e.g., calcium, magnesium, sulfates, iron, manganese) from these materials and carries them in solution to receiving streams (Pond 2004, p. 7; KDOW 2010, p. 85). Dissolved ions can enter streams through surface runoff or as groundwater flowing through fractured geologic layers. If valley fills (hollow-fills) are used as part of the mining activity, precipitation and groundwater seep through the fill and dissolve minerals until they discharge at the toe of the fill as surface water (Pond *et al.* 2008, p. 718). All of these scenarios can result in elevated conductivity, sulfates, and hardness in the receiving stream. Stream conductivity in mined watersheds can be significantly higher compared to unmined watersheds, and conductivity values can remain high for decades (Merricks *et al.* 2007, pp. 365–373; Johnson *et al.* 2010, pp. 1–2).

Elevated levels of metals and other dissolved solids (*i.e.*, elevated conductivity) in Appalachian streams have been shown to negatively impact biological communities, including losses of mayfly and caddisfly taxa (Chambers and Messinger 2001, pp. 34–51; Pond 2004, p. 7; Hartman *et al.* 2005, p. 95; Pond *et al.* 2008, pp. 721–723; Pond 2010, pp. 189–198) and decreases in fish diversity (Kuehne 1962, pp. 608–614; Branson and Batch 1972, pp. 507–512; Branson and Batch 1974, pp. 81–83; Stauffer and Ferreri 2002, pp. 11–21; Fulk *et al.* 2003, pp. 55–64; Mattingly *et al.* 2005, pp. 59–62; Thomas 2008, pp. 1–9; Service 2012, pp. 1–4; Black *et al.* 2013, pp. 34–45; Hitt 2014, pp. 5–7, 11–13; Hitt and Chambers 2014, pp. 919–924; Daniel *et al.* 2015, pp. 50–61). Stauffer and Ferreri (2002, pp. 11–21) investigated fish assemblages in eastern Kentucky and West Virginia streams

and determined that fish assemblages downstream of valley fills supported about half the number of species found at reference sites. Fulk *et al.* (2003, pp. 55–64) used the Stauffer and Ferreri (2002, pp. 11–21) data set to calculate bioassessment scores and reported decreased richness of cyprinids (minnows), decreased richness of invertivores (species that feed on invertebrates), and increased proportions of tolerant individuals in small watersheds (2–10  $\text{km}^2$  (0.77–3.86  $\text{mi}^2$ )) below valley fills. Hitt and Chambers (2014, pp. 919–924) observed lower fish taxonomic and functional diversity in streams downstream of valley fills in West Virginia. Exposure assemblages (those downstream of valley fills) had fewer species, lower abundances, and less biomass than reference assemblages across years and seasons. Taxonomic differences between reference and exposure (mined) assemblages were associated with conductivity and aqueous selenium concentrations (Hitt and Chambers 2014, pp. 919–924). Daniel *et al.* (2015, pp. 50–61) examined the effects of mining (coal and mineral) at larger spatial scales and determined that mining can be a regional source of disturbance that negatively impacts fish communities far downstream. Even in watersheds with low mine densities (less than 0.01 mines/ $\text{km}^2$  (0.004 mines/ $\text{mi}^2$ )), Daniel *et al.* (2015, pp. 56–57) detected significant negative responses in multiple fish metrics (*e.g.*, diversity, evenness, percent invertivores). Compared to other anthropogenic impacts assessed over large areas (agriculture, urban land use), mining had a more pronounced and consistent impact on fish assemblages (Daniel *et al.* 2015, p. 58).

Studies in the upper Kentucky River basin by Branson and Batch (1974, pp. 81–83), Dyer and Curtis (1977, pp. 1–13), Kuehne (1962, pp. 608–609), Thomas (2008, pp. 3–6), Pond (2010, pp. 189–198), and the Service (2012, pp. 1–4) have clearly demonstrated that surface coal mining activities have contributed to water quality degradation (*e.g.*, elevated conductivity) and the extirpation of Kentucky arrow darter populations from numerous tributaries in the Quicksand Creek and Buckhorn Creek drainages of Breathitt and Knott Counties. From late 1967 to 1975, Branson and Batch (1972, pp. 507–518; 1974, pp. 81–83), and Dyer and Curtis (1977, pp. 1–13) studied the effects of strip mining activities on water quality and stream fishes in the Quicksand Creek (Leatherwood Creek) and Buckhorn Creek (Bear Branch)

watersheds, Breathitt County. Six first-order watersheds, three in the Leatherwood Creek watershed and three in the Bear Branch watershed, were investigated during the study, beginning in late summer 1967, prior to the onset of mining, and continuing until 1975. One of the six small watersheds, Jenny Fork, was not mined and served as a control watershed. Water quality data from mined watersheds showed increases in conductivity, sulfate, magnesium, bicarbonate, and silt deposition (Dyer and Curtis 1977, pp. 3–7, 13). Water quality data from the reference site, Jenny Branch, showed little variation and remained at baseline levels. Fish community data from the Bear Branch and Leatherwood Creek watersheds showed that fishes were pushed downstream or eliminated from the fauna altogether in mined watersheds (Branson and Batch 1972, pp. 514–515; Branson and Batch 1974, pp. 82–83). The only exception to this was the creek chub, which appeared to be tolerant of mining impacts. Several species—silver shiner (*Notropis photogenis*), Kentucky arrow darter, Johnny darter, variegated darter (*Etheostoma variatum*), greenside darter (*E. blenniodes*), and emerald darter—were eliminated from Leatherwood Creek. Two species, northern hogsucker (*Hypentelium nigricans*) and blackside darter (*Percina maculata*), were eliminated from both streams. During the last fish sampling event in September 1972, Kentucky arrow darters were observed at the mouth of Bear Branch (Branson and Batch 1974, p. 82), but instream conductivity levels had not peaked. Branson and Batch (1972, p. 514) also did not observe young darters and minnows during later visits (early 1970s), suggesting that reproduction had been curtailed by the mining activity. Thomas (2008, p. 5) and Service (2012, pp. 1–4) resurveyed these streams in 2008–2009, and found that conductivity levels had increased since the 1970s, reaching 845  $\mu\text{S}/\text{cm}$  in Bear Branch and 1008  $\mu\text{S}/\text{cm}$  in Leatherwood Creek. Kentucky arrow darters were not observed at these sites.

There is a pattern of increasing conductivity and loss of arrow darter populations that is evident in the fish and water quality data from the Buckhorn Creek basin (1962 to present) in Breathitt and Knott Counties. Kentucky arrow darters and other fish species were first reported from the basin in 1962 by Kuehne (1962, pp. 608–609), who surveyed sites on the Buckhorn Creek mainstem and numerous tributaries: Bear Branch, Clemons Fork, Coles Fork, Laurel Fork,

Lewis Fork, and Long Fork. Kuehne (1962, pp. 608–609) documented Kentucky arrow darters at 16 of 22 sites within the drainage. Since that time, the majority of these watersheds have been mined extensively and conductivity levels have increased. The only exceptions are two unmined watersheds on UK's Robinson Forest (Clemons Fork and Coles Fork) and two first-order tributaries in the Buckhorn Creek headwaters (Eli Branch and Prince Fork). Thomas (2008, p. 5) and the Service (2012, pp. 1–4) resurveyed sites on all historical streams (and most historical sites) in the Buckhorn Creek watershed from 2007 to 2010, observing Kentucky arrow darters in only Clemons Fork, Coles Fork, and Buckhorn Creek, upstream of Emory Branch. Conductivity levels of Clemons Fork, Coles Fork, and Buckhorn Creek (upstream of Emory Branch) remained at or near background levels (50 to 110  $\mu\text{S}/\text{cm}$ ), but conductivity levels at other streams were elevated, with some of these being exceptionally high (greater than 2000  $\mu\text{S}/\text{cm}$ ).

ATS (2011, pp. 1–17) surveyed 27 sites in the Buckhorn Creek headwaters in 2008, observing similar patterns with respect to conductivity and Kentucky arrow darter distributions. ATS (2011, pp. 1–17) observed a few Kentucky arrow darters in high conductivity reaches (e.g., Buckhorn Creek mainstem); however, all of these fishes were adults and were observed near low conductivity reaches (e.g., Prince Fork). Due to increased levels of dissolved solids (and elevated conductivity), portions of two streams in the Buckhorn Creek watershed, Buckhorn Creek (mile 0–6.8) and Long Fork (mile 0–8.95), have been placed on Kentucky's 303(d) list of impaired waters (KDOW 2013a, pp. 337–376).

As demonstrated above, Kentucky arrow darters tend to be less abundant in streams with elevated conductivity levels (Service 2012, pp. 1–4; Service 2013, p. 9), and are typically excluded from these streams as conductivity increases (Branson and Batch 1972, pp. 507–512; Branson and Batch 1974, pp. 81–83; Thomas 2008, p. 3–6). Recent range-wide surveys of historical sites by Thomas (2008, pp. 3–6) and the Service (2012, pp. 1–4) demonstrated that Kentucky arrow darters are excluded from watersheds when conductivity levels exceed about 250  $\mu\text{S}/\text{cm}$ . The species was observed at only two historical sites where conductivity values exceeded 250  $\mu\text{S}/\text{cm}$ , and average conductivity values were much lower at sites where Kentucky arrow darters were observed (115  $\mu\text{S}/\text{cm}$ ) than at sites where the species was not observed (689

$\mu\text{S}/\text{cm}$ ). A similar phenomenon was reported by Black *et al.* (2013, pp. 34–35), who developed and validated a habitat model for the federally threatened blackside dace (*Chrosomus cumberlandensis*) in the upper Cumberland River drainage. Hitt (2014, pp. 5–7, 11–13) used a large presence-absence data set (511 sites) from the Service, KDFWR, KSNPC, and KDOW to evaluate the relationship between Kentucky arrow darter abundance and stream conductivity. Hitt (2014, pp. 5–7, 11–13) reported that conductivity was a strong predictor of Kentucky arrow darter abundance, and sharp declines in abundance were observed at 258  $\mu\text{S}/\text{cm}$  (95 percent confidence intervals of 155–590  $\mu\text{S}/\text{cm}$ ). Conductivity was the most important variable for the species and was more than twice as important as the two next-most important variables (upstream percent of forest and percent of agricultural land uses). Based on all the research discussed above, we believe it is clear that the overall conductivity level is important in determining the Kentucky arrow darter's presence and vulnerability, but the species' presence is more likely tied to what individual metals or dissolved solids (e.g., sulfate) are present. Determination of discrete conductivity thresholds or the mechanisms through which fishes are influenced will require additional study (KSNPC 2010, p. 3).

Mine drainage can also cause chemical (and some physical) impacts to streams as a result of the precipitation of entrained metals and sulfate, which become unstable in solution (USEPA 2003, pp. 24–65; Pond 2004, p. 7). Hydroxide precipitants are formed from iron and aluminum, creating orange or white sludge ("yellow boy") that forms a thick coating on stream substrates (Pond 2004, p. 7). Most affected streams have elevated levels of calcium in solution, and if pH is elevated, calcium sulfate ( $\text{CaSO}_4$ ) or calcium carbonate ( $\text{CaCO}_3$ ) will precipitate (Pond 2004, p. 7; USEPA 2005, pp. 24–65). These precipitants accumulate on substrates, encrusting and cementing stream sediments, making them unsuitable for colonization by invertebrates and rendering them unsuitable as foraging or spawning habitat for the Kentucky arrow darter. Acid mine drainage (AMD) tends to be more of a legacy problem, as enforcement, newer technology, and mining methods have mostly eliminated it in the coal fields of Kentucky and Tennessee (Pond 2004, p. 6). In the few streams where the problem persists, AMD can be highly detrimental to fish and aquatic insect populations (Henry *et al.* 1999, pp. 919–920; Pond 2004, pp.

7–8). Streams affected by AMD tend to have low pH, high conductivity, and high metal and sulfate concentrations (Herlihy *et al.* 1990, pp. 101–105; Pond 2004, pp. 7–8).

Oil and gas exploration and drilling activities represent another significant source of harmful pollutants in the upper Kentucky River basin (KDOW 2013a, 189–214). Since January 2010, over 500 oil and gas wells have been permitted in counties where the species was known historically (KGS 2015, pp. 1–2), and demand for natural gas production in Kentucky is expected to increase in future years (KGS 2002, p. 4; KGS 2015, pp. 1–2; Weisenfluh 2014, pp. 1–2). Alternative methods (*i.e.*, hydraulic fracturing ("fracking") and horizontal drilling) have allowed for the expansion of oil and gas drilling into deposits that were previously inaccessible (KGS 2015, pp. 1–2; Papoulias and Velasco 2013, p. 92). This has led to increased activity within eastern Kentucky, including portions of the upper Kentucky River basin. Recent observations by the Service indicate that new well sites have been developed near several Kentucky arrow darter streams in Breathitt, Clay, Knott, Lee, and Wolfe Counties (e.g., Hell Creek, Laurel Fork Quicksand Creek, Little Fork Lower Devil Creek, Spring Creek, and Walker Creek).

A variety of chemicals (e.g., hydrochloric acid, surfactants, potassium chloride) are used during the drilling and fracking process (Colborn *et al.* 2011, pp. 1040–1042). Once used, fluid wastes containing these chemicals are stored in open pits (retention basins) or trucked away to treatment plants or some other storage facility. If spills occur during transport or releases occur due to retention basin failure or overflow, there is a risk for surface and groundwater contamination. Any such release can cause significant adverse effects to water quality and aquatic organisms that inhabit these watersheds (Wiseman 2009, pp. 127–142; Kargbo *et al.* 2010, pp. 5680–5681; Osborn *et al.* 2011, pp. 8172–8176; Papoulias and Velasco 2013, pp. 92–111). In 2007, this type of event occurred during the development of four wells along Acorn Fork in Knox County, Kentucky (Papoulias and Velasco 2013, pp. 92–111). Fracking effluent overflowed the retention pits directly into Acorn Fork, a known habitat for the federally threatened blackside dace. The release affected the entire length of Acorn Fork downstream of the release points (an approximate 3.2-km (2-mi) reach), decimating the fish and macroinvertebrate communities and resulting in instream conductivity

readings above 30,000  $\mu\text{S}/\text{cm}$  (Papoulias and Velasco 2013, pp. 92–111). Fishes exposed to the affected portions of Acorn fork showed general signs of stress and had a higher incidence of gill lesions than unexposed reference fishes. Gill lesions were consistent with exposure to low pH and toxic concentrations of heavy metals (Papoulias and Velasco 2013, pp. 104–105). It is unclear how many blackside dace were killed during the event because peak mortality was likely missed before researchers arrived to document the incident. However, one dead, one moribund, and several living but distressed blackside dace were observed. Because oil and gas exploration activities are increasing within eastern Kentucky, events similar to the Acorn Fork spill have the potential to occur within the upper Kentucky River drainage. It is also likely that these types of incidents would go unreported given the lack of Federal oversight and the number and distribution of oil and gas wells that are being developed within the range of the species.

Other nonpoint-source pollutants that are common within the upper Kentucky River drainage and have the potential to affect the Kentucky arrow darter include domestic sewage (through septic tank leakage or straight pipe discharges) and agricultural pollutants such as animal waste, fertilizers, pesticides, and herbicides (KDOW 2013a, pp. 189–214). Nonpoint-source pollutants can cause increased levels of nitrogen and phosphorus, excessive algal growths, oxygen deficiencies, and other changes in water chemistry that can seriously impact aquatic species (KDOW 2010, pp. 70–84; KDOW 2013a, pp. 189–214; KDOW 2013b, pp. 88–94). Nonpoint-source pollution from land surface runoff can originate from virtually any land use activity and may be correlated with impervious surfaces and storm water runoff (Allan 2004, pp. 266–267). Pollutants may include sediments, fertilizers, herbicides, pesticides, animal wastes, septic tank and gray water leakage, pharmaceuticals, and petroleum products. These pollutants tend to increase concentrations of nutrients and toxins in the water and alter the chemistry of affected streams such that the habitat and food sources for species like the Kentucky arrow darter are negatively impacted.

#### Physical Habitat Disturbance

Sedimentation (siltation) has been listed repeatedly by KDOW as the most common stressor of aquatic communities in the upper Kentucky River basin (KDOW 2010, pp. 70–84;

KDOW 2013a, pp. 189–214; KDOW 2013b, pp. 88–94). Sedimentation comes from a variety of sources, but KDOW identified the primary sources of sediment as loss of riparian habitat, surface coal mining, legacy coal extraction, logging, and land development (KDOW 2010, pp. 70–84; KDOW 2013b, pp. 88–94). All of these activities can result in canopy removal, channel disturbance, and increased siltation, thereby degrading habitats used by Kentucky arrow darters for both feeding and reproduction. The reduction or loss of riparian vegetation results in the elevation of stream temperatures, destabilization of stream banks and siltation, and removal of submerged root systems that provide habitat for fishes and macroinvertebrates (the food source for Kentucky arrow darters) (Minshall and Rugenski 2006, pp. 721–723). Channelization of streams associated with residential development and agriculture has been widespread within the upper Kentucky River drainage. Generally, streams are relocated to one side of the stream valley to provide space for home sites, livestock, hay production, or row crops. Channelization dramatically alters channel dimensions, gradient, stream flow, and instream habitats, and these modified channels are often managed through vegetation removal and dredging to improve flood conveyance (Allan and Castillo 2007, p. 327) and through placement of quarried stone or gabion baskets to protect against bank erosion. All of these activities create unstable stream segments with shifting substrates, heavy sedimentation, eroding banks, and poor to marginal habitat conditions for the species. Twenty-one streams within the species' historical and current range have been identified as impaired (primarily due to siltation from mining, logging, agricultural activities, and land development) and have been included on Kentucky's 303(d) list of impaired waters (Table 2). The species has been extirpated from most of these streams (or watersheds) and is considered to be stable in only one (Frozen Creek).

Resource extraction activities (e.g., surface coal mining, legacy coal extraction, logging, oil and gas exploration and drilling) are major sources of sedimentation in streams (Paybins *et al.* 2000, p. 1; Wiley *et al.* 2001, pp. 1–16; KDOW 2013a, pp. 189–214). Activities associated with surface coal mining (e.g., land clearing, road construction, excavation) produce large areas of bare soil that, if not protected or controlled through various erosion

control practices, can contribute large amounts of sediment during storm events. Mining companies are required to implement erosion control measures during mining activities, but sedimentation continues to be a significant stressor in some mined watersheds (KDOW 2013a, pp. 189–214). Land use practices such as the placement of valley fills can affect sediment and water discharges into downstream stream reaches, leading to increased erosion or sedimentation patterns, destruction or modification of in-stream habitat and riparian vegetation, stream bank collapse, and increased water turbidity and temperature (Wiley *et al.* 2001, pp. 1–16; Messinger 2003, pp. 17–20).

Similarly, logging activities can adversely affect Kentucky arrow darters and other fishes through removal of riparian vegetation, direct channel disturbance, and sedimentation of instream habitats (Allan and Castillo 2007, pp. 332–333). During logging activities, sedimentation occurs as soils are disturbed, the overlying leaf or litter layer is removed, and sediment is carried overland from logging roads, stream crossings, skid trails, and riparian zones during storm events. Logging impacts on sediment production can be considerable, but access and haul roads often produce more sediment than the land harvested for timber (Brim Box and Mossa 1999, p. 102). Excess sediment can bury instream habitats used by the species for foraging, reproduction, and sheltering, and it can disrupt the dynamic equilibrium of channel width, depth, flow velocity, discharge, channel slope, roughness, sediment load, and sediment size that maintains stable channel morphology (Allan 2004, p. 262). The lack of stream-side vegetation also promotes bank erosion that alters stream courses and introduces large quantities of sediment into the channel. This can lead to channel instability and further degradation of in-stream habitats. Reductions in riparian vegetation can adversely affect the species through increased solar radiation, elevated stream temperatures, loss of allochthonous (organic material originating from outside the channel) food material, and bank instability/erosion (Allan 2004, p. 262; Hauer and Lamberti 2006, pp. 721–723). Direct channel disturbance occurs primarily at stream crossings during culvert, log, or rock placement. Severe impacts can occur when loggers use stream channels illegally as skid trails (M. Floyd pers. obs. 2009).

Stormwater runoff from unpaved roads, all-terrain vehicle (ATV) trails,

and driveways represents a significant but difficult to quantify source of sediment that impacts streams in the upper Kentucky River basin. Observations made by Service personnel during field collections suggest that this is a common and widespread problem during storm events across the species' range. Sediment has been shown to damage and suffocate fish gills and eggs, larval fishes, bottom-dwelling algae, and other organisms; reduce aquatic insect diversity and abundance; and, ultimately, negatively impact fish growth, survival, and reproduction (Berkman and Rabeni 1987, pp. 285–294; Waters 1995, pp. 5–7; Wood and Armitage 1997, pp. 211–212; Meyer and Sutherland 2005, pp. 2–3).

#### Invasion of Hemlock Woolly Adelgid

The hemlock woolly adelgid (HWA) (*Adelges tsugae*), an aphid-like insect native to Asia, represents a potential threat to the Kentucky arrow darter because it has the potential to severely damage stands of eastern hemlocks (*Tsuga canadensis*) that occur within the species' range. The HWA was introduced in the Pacific Northwest during the 1920s, and has since spread throughout the eastern United States, reaching eastern Tennessee by 2002, and Kentucky by 2006. The species creates an extreme amount of damage to natural stands of hemlock, specifically eastern hemlock and Carolina hemlock (*Tsuga caroliniana*). Loss of hemlocks along Kentucky arrow darter streams has the potential to result in increased solar exposure and subsequent elevated stream temperatures, bank erosion, and excessive inputs of woody debris that will clog streams and cause channel instability and erosion (Townsend and Rieske-Kinney 2009, pp. 1–3). We expect these impacts to occur in some Kentucky arrow darter watersheds; however, we do not believe these impacts will be widespread or severe. Eastern hemlocks are not abundant in all portions of the Kentucky arrow darter's range, and we expect hemlocks to be replaced by other tree species in areas where hemlocks are more common. Our review of the available information indicates that the invasion of HWA and the subsequent loss of eastern hemlock in eastern Kentucky does not pose a threat to the Kentucky arrow darter, nor is it likely to become a threat in the future.

In summary, habitat loss and modification represent threats to the Kentucky arrow darter. Severe degradation from contaminants, sedimentation, and physical habitat disturbance have contributed to extirpations of Kentucky arrow darter

populations, and these threats continue to impact water quality and habitat conditions across the species' range. Contaminants associated with surface coal mining (metals, other dissolved solids), domestic sewage (bacteria, nutrients), and agriculture (fertilizers, pesticides, herbicides, and animal waste) cause degradation of water quality and habitats through increased conductivity and sulfates, instream oxygen deficiencies, excess nitrification, and excessive algal growths. Sedimentation from surface coal mining, logging, agriculture, and land development negatively affect the Kentucky arrow darter by burying or covering instream habitats used by the species for foraging, reproduction, and sheltering. These impacts can cause reductions in growth rates, disease tolerance, and gill function; reductions in spawning habitat, reproductive success, and egg, larval, and juvenile development; modifications of migration patterns; decreased food availability through reductions in prey; and reduction of foraging efficiency. Furthermore, these threats faced by the Kentucky arrow are the result of ongoing land uses that are expected to continue indefinitely.

#### Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Kentucky arrow darter is not believed to be utilized for commercial, recreational, scientific, or educational purposes. Individuals may be collected occasionally in minnow traps by recreational anglers and used as live bait, but we believe these activities are practiced infrequently and do not represent a threat to the species. Our review of the available information does not indicate that overutilization is a threat to the Kentucky arrow darter now or likely to become so in the future.

#### Factor C: Disease or Predation

No information is available suggesting that disease is a threat to the Kentucky arrow darter; therefore, we do not consider disease to be a factor in the decline of the species. As to predation, although the Kentucky arrow darter is undoubtedly consumed by native predators (e.g., fishes, amphibians, and birds), the available information suggests that this predation is naturally occurring and a normal aspect of the species' population dynamics. Nonnative rainbow trout (*Oncorhynchus mykiss*) represent a potential predation threat (Etnier and Starnes 1993, p. 346) as they are introduced annually by KDFWR into portions of three Kentucky arrow darter

streams: Big Double Creek (Clay County), Sturgeon Creek (Lee County), and Swift Camp Creek (Wolfe County). Annual totals of 800 and 1,000 rainbow trout are introduced into Sturgeon Creek and Swift Camp Creek, respectively, but in these watersheds Kentucky arrow darter populations occupy portions of small tributaries located outside of actual stocking locations. Therefore, it is unlikely that rainbow trout and Kentucky arrow darters interact in these watersheds.

Up to 1,000 rainbow trout are stocked annually by KDFWR within Big Double Creek, with releases occurring in March, April, May, and October in habitats occupied by Kentucky arrow darters. KDFWR has no specific information on the feeding habits of rainbow trout in Big Double Creek, but KDFWR supported a research project (Brandt 2006, pp. 1–59) investigating the impact of stocked rainbow trout on native fishes in Rock Creek, McCreary County, Kentucky. Brandt (2006, pp. 1–59) examined the guts of 11 introduced rainbow trout obtained from 32 sampling sites within the Rock Creek watershed. The majority of stomachs were empty or contained remains of macroinvertebrates; however, gut contents from two individuals included remains of two native fishes, telescope shiner (*Notropis telescopus*) (n=2) and emerald darter (n=1). Brandt (2006, pp. 1–59) demonstrated that stocked rainbow trout can be piscivorous in Kentucky streams, but the magnitude of this threat was unclear.

Within Big Double Creek, stockings of rainbow trout have occurred for over 30 years (Williams 2014, pers. comm.), but the Kentucky arrow darter population in this stream continues to persist and appears to be stable (Table 1, above) based on recent surveys (Thomas 2008, p. 4; Thomas *et al.* 2014, p. 23). KDFWR also has no evidence suggesting that stocked rainbow trout can survive typical summer temperatures (greater than 19 °C (66 °F)) within Big Double Creek (Williams 2014, pers. comm.); stocked individuals are caught by anglers or perish once stream temperatures rise in warmer months. To assess the potential predation of rainbow trout on Kentucky arrow darters or other fishes, the Service and DBNF surveyed a 2.1-km (1.3-mile) reach of Big Double Creek on April 21, 2014, 17 days after KDFWR's April stocking event (250 trout). A total of seven rainbow trout were captured, and the gut contents of these individuals were examined. Food items were dominated by Ephemeroptera (mayflies), with lesser amounts of Plecoptera (stoneflies), Trichoptera

(caddisflies), Diptera (flies), Decapoda (crayfish), and terrestrial Coleoptera (beetles). No fish remains were observed. Based on all these factors and the absence of rainbow trout from the majority (98 percent) of Kentucky arrow darter streams, we do not believe that predation by nonnative rainbow trout poses a threat to the species. Our review of available information indicates that neither disease nor predation is currently a threat to the species or likely to become a threat to the Kentucky arrow darter in the future.

*Factor D: The Inadequacy of Existing Regulatory Mechanisms*

The Kentucky arrow darter has been identified as a threatened species within Kentucky (KSNPC 2014, p. 40), but this State designation conveys no legal protection for the species or its habitat. Kentucky law prohibits the collection of the Kentucky arrow darter (or other fishes) for scientific purposes without a valid State-issued collecting permit (Kentucky Revised Statutes (KRS) sec. 150.183). Enforcement of this permit requirement is difficult, but as discussed above under Factor B, we do not believe that these activities represent a threat to the species. Kentucky regulations (301 KAR 1:130, sec. 1(3)) also allow persons who hold a valid Kentucky fishing license (obtained from KDFWR) to collect up to 500 minnows per day (a minnow is defined as any non-game fish less than 6 inches in length, with the exception of federally listed species). This regulation allows for the capture, holding, and potential use of the Kentucky arrow darter as a bait species; however, again as discussed under Factor B, we believe these activities are practiced infrequently and do not represent a threat to the species. Because activities associated with these laws and regulations do not represent threats to the Kentucky arrow darter, we find that these existing regulatory mechanisms have been adequate in protecting the species.

Streams within UK's Robinson Forest (Coles Fork, Snag Ridge Fork, and Clemons Fork) are currently protected from the effects of surface coal mining due to a 1990 "lands unsuitable for mining" designation (405 KAR 24:040). The Secretary of the Kentucky Energy and Environment Cabinet (KEEC) has the authority to designate certain lands as unsuitable for mining if these activities will: (1) Be incompatible with existing State and local land use plans; (2) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values,

and natural systems; (3) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, and such lands to include aquifers and aquifer recharge areas; or (4) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology. The designation was made by the Secretary of the KEEC in response to a petition from the Sierra Club, Kentucky Resources Council, Inc., and Kentucky Conservation Foundation. The Secretary concluded that surface coal mining and reclamation operations were incompatible with UK's existing land use management plan and that these activities would significantly damage important scientific resources within the petition area.

Portions of 22 of the 47 streams with extant Kentucky arrow darter populations are located on the DBNF and receive management and protection through DBNF's land and resource management plan (LRMP) (USFS 2004, pp. 7–16). Public ownership in these watersheds ranges from about 50 to 100 percent. The LRMP is implemented through a series of project-level decisions based on appropriate site-specific analysis and disclosure. It does not contain a commitment to select any specific project; rather, it sets up a framework of desired future conditions with goals, objectives, and standards to guide project proposals. Projects are proposed to solve resource management problems, move the forest environment toward desired future conditions, and supply goods and services to the public (USFS 2004, pp. 7–16). The LRMP contains a number of protective standards that in general are designed to avoid and minimize potential adverse effects to the Kentucky arrow darter and other sensitive species; however, the DBNF will continue to consult with the Service when their activities may adversely affect streams supporting Kentucky arrow darters. In addition to conservation benefits provided by the LRMP, the Service and DBNF signed a candidate conservation agreement (CCA) for the Kentucky arrow darter in August 2015. The CCA is intended to conserve the Kentucky arrow darter on the DBNF by (a) protecting known populations and habitat, (b) reducing threats to its survival, (c) conserving the watersheds and ecosystems on which it depends, and (d) enhancing and/or restoring degraded habitat (USFWS and USFS 2015). The DBNF's ownership

and management under the LRMP contributes substantially to the conservation of the Kentucky arrow darter. A significant portion (about 38 percent) of the species' remaining populations occurs within the DBNF, and these populations have benefited from management goals, objectives, and protective standards included in the LRMP. Collectively, these streams contain some of the best remaining habitats for the species and support some of the species' most robust populations.

The Kentucky arrow darter and its habitats are afforded some protection from water quality and habitat degradation under the Federal Water Pollution Control Act of 1977, commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*); the Federal Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1201 *et seq.*) of 1977; Kentucky's Forest Conservation Act of 1998 (KRS secs. 149.330–355); Kentucky's Agriculture Water Quality Act of 1994 (KRS secs. 224.71–140); and additional Kentucky laws and regulations regarding natural resources and environmental protection (KRS secs. 146.200–360; KRS sec. 224; 401 KAR secs. 5:026, 5:031). While these laws have undoubtedly resulted in some improvements in water quality and stream habitat for aquatic life, including the Kentucky arrow darter, we must conclude that they alone have been inadequate in fully protecting this species; sedimentation and other nonpoint-source pollutants continue to be a pose a threat to the species.

Although water quality has generally improved since the Clean Water Act and SMCRA were enacted or amended in 1977, there is continuing, ongoing degradation of water quality within the range of the Kentucky arrow darter. The species has been extirpated from 36 of its 74 historical streams (49 percent), and 16 of these extirpations (16 streams) have occurred since the mid-1990s. A total of 21 streams (335.8 stream km (208.7 stream mi)) within the species' historical range have been identified as impaired by the KDOW and placed on the State's 303(d) list of impaired waters. Of these 21 streams, only 5 continue to be occupied by Kentucky arrow darter (see Table 2), 4 of which are considered "vulnerable" (see Table 1). Resource extraction (*e.g.*, coal mining, logging, oil/gas well development), land development, agricultural activities, stream bank modification, channelization, riparian habitat loss, and inadequate sewage treatment have been identified as sources of the impairment (Branson and Batch 1972, pp. 513–516; Branson and



Batch 1974, pp. 82–83; Thomas 2008, pp. 6–7; KDOW 2010, pp. 70–84; KDOW 2013a, pp. 189–214, 337–376; KDOW 2013b, pp. 88–94). Identified stressors (pollutants) include dissolved solids and elevation of instream conductivity, sediment/siltation, fecal coliform bacteria, nutrients/eutrophication, and turbidity (KDOW 2010, p. 84; KDOW 2013a, pp. 189–214, 337–376). For water bodies on the 303(d) list, States are required under the Clean Water Act to establish a total maximum daily load (TMDL) for the pollutant of concern that will improve water quality to meet the applicable standards. At present, the KDOW has not established TMDLs for identified pollutants within portions of the upper Kentucky River basin historically occupied by the Kentucky arrow darter. At present, TMDLs are not an adequate mechanism to address chemical pollutants or sedimentation of aquatic habitats. The Service is also not aware of any other current or future changes to State or Federal water quality or mining laws that will substantially affect the currently observed degradation of water quality.

Nonpoint-source pollution, originating from mine sites, unpaved roads, all-terrain vehicle (ATV) trails, driveways, logging skid trails, and other disturbed habitats is considered to be a continuing threat to Kentucky arrow darter habitats. Nonpoint-source pollution is caused by rainfall or snowmelt moving over and through the ground as runoff and transporting natural (sediment) and human-made pollutants to lakes, rivers, wetlands, coastal waters, and ground waters. Current laws do not adequately protect the Kentucky arrow darter and its habitats from nonpoint-source pollution because there is limited compliance with existing laws to prevent sediment and other pollutants from entering waterways. For example, forestry operations do not have permitting requirements under the Clean Water Act because there is a silvicultural exemption as long as best management practices (BMPs) are used to help control nonpoint-source pollution (Ryder and Edwards 2006, entire). The Kentucky Forest Conservation Act of 1998 (KRS 149.330–149.355) was developed to regulate timber harvesting operations in Kentucky. It requires that a Master Logger be on-site and in charge of commercial logging operations, and it also requires that all timber harvesting operators use appropriate best management practices (BMPs) for protection of water quality (Stringer and Thompson 2000, pp. 2–3). Without properly installed BMPs, sedimentation

occurs as soils are disturbed, the overlying leaf or litter layer is removed, and sediment is carried overland from logging roads, stream crossings, skid trails, and riparian zones during storm events.

Compliance monitoring from May 2014 to May 2015 within counties located in the upper Kentucky River basin indicated that approximately 19 percent of inspected sites (47 sites out of a total of 246 inspected sites) had some kind of compliance issue (e.g., poor BMP use), resulting in a written warning by the Kentucky Division of Forestry and at least a follow-up visit (Metzger 2015, pers. comm.). Because sediment BMPs are not always strictly applied and logging activities often result in water quality impairment, the Kentucky Forest Conservation Act is an inadequate regulatory mechanism for the protection of aquatic habitats supporting the Kentucky arrow darter.

Kentucky State laws and regulations regarding oil and gas drilling are generally designed to protect fresh water resources like the Kentucky arrow darter's habitat, but these regulatory mechanisms do not contain specific provisions requiring an analysis of project impacts to fish and wildlife resources (Kentucky Division of Oil and Gas *et al.* 2012, entire). Current regulations also do not contain or provide any formal mechanism requiring coordination with, or input from, the Service or the KDOW regarding the presence of federally endangered, threatened, or candidate species, or other rare and sensitive species.

In July of 2015, the Office of Surface Mining Reclamation and Enforcement (OSM) published in the **Federal Register** a Notice of Availability for a draft environmental impact statement regarding a proposed Stream Protection Rule (80 FR 42535; July 17, 2015) and the proposed Stream Protection Rule (80 FR 44436, July 27, 2015). The proposed rule states: "This proposed rule would better protect streams, fish, wildlife, and related environmental values from the adverse impacts of surface coal mining operations and provide mine operators with a regulatory framework to avoid water pollution and the long-term costs associated with water treatment" (80 FR 44436, see SUMMARY). While this proposed rule may provide benefits for the Kentucky arrow darter in the future, until the rule is finalized and implemented, we are unable to evaluate its potential effectiveness with regard to the Kentucky arrow darter and its habitat.

In summary, degradation of habitat for the Kentucky arrow darter is ongoing

despite existing regulatory mechanisms. These regulatory mechanisms have been inadequate to reduce or remove the threats to the Kentucky arrow darter.

#### *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence*

##### Restricted Range and Population Size

The disjunct nature of some Kentucky arrow darter populations (Figures 2 and 3, above) restricts the natural exchange of genetic material between populations and makes natural repopulation following localized extirpations of the species arduous without human intervention. The localized nature and small size of many populations also makes them vulnerable to extirpation from intentional or accidental toxic chemical spills, habitat modification, progressive degradation from runoff (nonpoint-source pollutants), natural catastrophic changes to their habitat (e.g., flood scour, drought), and other stochastic disturbances, such as loss of genetic variation and inbreeding (Soulé 1980, pp. 157–158; Hunter 2002, pp. 97–101; Allendorf and Luikart 2007, pp. 117–146). Inbreeding and loss of neutral genetic variation associated with small population size can further reduce the fitness of the population (Reed and Frankham 2003, pp. 230–237), subsequently accelerating population decline (Fagan and Holmes 2006, pp. 51–60).

Species that are restricted in range and population size are more likely to suffer loss of genetic diversity due to genetic drift, potentially increasing their susceptibility to inbreeding depression, decreasing their ability to adapt to environmental changes, and reducing the fitness of individuals (Soulé 1980, pp. 157–158; Hunter 2002, pp. 97–101; Allendorf and Luikart 2007, pp. 117–146). It is likely that some of the Kentucky arrow darter populations are below the effective population size required to maintain long-term genetic and population viability (Soulé 1980, pp. 162–164; Hunter 2002, pp. 105–107). The long-term viability of a species is founded on the conservation of numerous local populations throughout its geographic range (Harris 1984, pp. 93–104). These separate populations are essential for the species to recover and adapt to environmental change (Noss and Cooperrider 1994, pp. 264–297; Harris 1984, pp. 93–104). The level of isolation seen in this species makes natural repopulation following localized extirpations virtually impossible without human intervention.

## Climate Change

The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2014, p. 3). Numerous long-term climate changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns and aspects of extreme weather including droughts, heavy precipitation, heat waves, and the intensity of tropical cyclones (IPCC 2014, p. 4). Species that are dependent on specialized habitat types, limited in distribution, or at the extreme periphery of their range may be most susceptible to the impacts of climate change (see 75 FR 48911, August 12, 2010); however, while continued change is certain, the magnitude and rate of change is unknown in many cases.

Climate change has the potential to increase the vulnerability of the Kentucky arrow darter to random catastrophic events (McLaughlin *et al.* 2002, pp. 6060–6074; Thomas *et al.* 2004, pp. 145–148). An increase in both severity and variation in climate patterns is expected, with extreme floods, strong storms, and droughts becoming more common (Cook *et al.* 2004, pp. 1015–1018; Ford *et al.* 2011, p. 2065; IPCC 2014, pp. 58–83). Thomas *et al.* (2004, pp. 145–148) report that frequency, duration, and intensity of droughts are likely to increase in the Southeast as a result of global climate change. Predicted impacts of climate change on fishes include disruption to their physiology (such as temperature tolerance, dissolved oxygen needs, and metabolic rates), life history (such as timing of reproduction, growth rate), and distribution (range shifts, migration of new predators) (Jackson and Mandrak 2002, pp. 89–98; Heino *et al.* 2009, pp. 41–51; Strayer and Dudgeon 2010, pp. 350–351; Comte *et al.* 2013, pp. 627–636). According to Kaushal *et al.* (2010, p. 465), stream temperatures in the Southeast have increased roughly 0.2–0.4 °C per decade over the past 30 years, and as air temperature is a strong predictor of water temperature, stream temperatures are expected to continue to rise.

Estimates of the effects of climate change using available climate models typically lack the geographic precision needed to predict the magnitude of effects at a scale small enough to discretely apply to the range of a given species. However, data on recent trends and predicted changes for Kentucky (Girvetz *et al.* 2009, pp. 1–19), and, more specifically, the upper Kentucky

River drainage (Alder and Hostetler 2013, entire) provide some insight for evaluating the potential threat of climate change to the Kentucky arrow darter. These models provide estimates of average annual increases in maximum and minimum temperature, precipitation, snowfall, and other variables. Depending on the chosen model, average annual temperatures for Kentucky and the upper Kentucky River drainage are expected to increase by 2.5 to 5 °C (4.5 to 9 °F) by the 2080s (Girvetz *et al.* 2009, pp. 1–19; Alder and Hostetler 2013, pp. 1–9), while precipitation models predict that Kentucky will experience a slight increase in average annual precipitation (2 cm/day (0.8 in/day) (x 100)) through 2074 (Girvetz *et al.* 2009, pp. 1–19; Alder and Hostetler 2013, pp. 1–9).

There is uncertainty about the specific effects of climate change (and their magnitude) on the Kentucky arrow darter; however, climate change is almost certain to affect aquatic habitats in the upper Kentucky River drainage of Kentucky through increased water temperatures and more frequent droughts (Alder and Hostetler 2013, entire), and species with limited ranges, fragmented distributions, and small population size are thought to be especially vulnerable to the effects of climate change (Byers and Norris 2011, p. 18). Thus, we consider climate change to be a threat to the Kentucky arrow darter.

In summary, we have determined that other natural and manmade factors, such as geographical isolation, small population size, and climate change, are threats to remaining populations of the Kentucky arrow darter across its range. The severity of these threats is high because of the species' reduced range and population size, which result in a reduced ability to adapt to environmental change. Further, our review of the best available scientific and commercial information indicates that these threats are likely to continue or increase in the future.

### Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Kentucky arrow darter. As described in detail above, the Kentucky arrow darter has been extirpated from about 49 percent of its historical range (36 of 74 historical streams), 16 of these extirpations have occurred since the mid-1990s, populations in nearly half of the species' occupied streams are ranked as vulnerable (see Table 1, above), remaining populations are fragmented

and isolated, and the species continues to be at risk throughout all of its range due to the immediacy, severity, and scope of threats from three of the five threat factors: habitat degradation and range curtailment (Factor A), inadequacy of existing regulatory mechanisms (Factor D), and other natural or manmade factors affecting its continued existence (Factor E).

Anthropogenic activities such as surface coal mining, logging, oil/gas development, land development, agriculture, and inadequate sewage treatment have all contributed to the degradation of stream habitats within the species' range (Factor A). These land use activities have led to chemical and physical changes to stream habitats that continue to affect the species. Specific stressors include inputs of dissolved solids and elevation of instream conductivity, sedimentation/siltation of stream substrates, turbidity, and inputs of nutrients and organic enrichment. These high magnitude stressors, especially the inputs of dissolved solids and sedimentation, have had profound negative effects on Kentucky arrow darter populations and have been the primary factor in the species' decline. Existing regulatory mechanisms (*e.g.*, the Clean Water Act) have provided for some improvements in water quality and habitat conditions across the species' range, but these laws and regulations have been inadequate in protecting the species' habitat (Factor D), as evidenced by recent extirpations (16 streams since the 1990s) and the 21 303(d) listed streams within the species' historical range. The Kentucky arrow darter's vulnerability to these threats is even greater due to its reduced range, fragmented populations, and small or declining population sizes (Factor E) (Primack 2012, pp. 146–150). The effects of certain threats, particularly habitat degradation and loss, increase in magnitude when population size is small (Primack 2012, pp. 150–152).

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species “that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.” We find that the Kentucky arrow darter meets the definition of a threatened species based on the immediacy, severity, and scope of the threats identified above. The species' overall range has been reduced substantially, most of the species' historical habitat has been degraded, and much of the remaining habitat exists primarily in fragmented patches. Current Kentucky

arrow darter habitats continue to be lost or degraded due to surface coal mining, logging, oil/gas development, land development, agriculture, and inadequate sewage treatment, and it appears this trend will continue in the future. Regulatory mechanisms such as the Clean Water Act have been inadequate to reduce or remove these types of threats to the species. Extant populations are known from 47 streams, but these populations continue to be threatened by small population size, isolation, fragmentation, climate change, and the habitat degradation summarized above. All of these factors make the species particularly susceptible to extinction in the future.

We find that endangered status is not appropriate for the Kentucky arrow darter because we do not consider the species' threats to be so severe that extinction is imminent. Although threats to the species are ongoing, often severe, and occurring across the range, populations continue to occupy 47 scattered streams, 23 of which appear to support stable populations (see Table 1, above). Additionally, a significant number of extant Kentucky arrow darter populations (49 percent) occur primarily on public lands (*i.e.*, DBNF and Robinson Forest) that are at least partially managed to protect habitats used by the species. For example, the CCA with the U.S. Forest Service (USFS) for DBNF should provide an elevated level of focused management and conservation for portions of 20 streams that support populations of the Kentucky arrow darter. Based on all these factors, the Kentucky arrow darter does not meet the definition of an endangered species. Therefore, on the basis of the best available scientific and commercial information, we propose listing the Kentucky arrow darter as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or threatened species throughout all or a significant portion of its range. Because we have determined that the Kentucky arrow darter is a threatened species throughout all of its range, no portion of its range can be "significant" for purposes of the definitions of "endangered species" and "threatened species." See the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37577, July 1, 2014).

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The plan may be revised to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened or for delisting and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. If the species is listed, a recovery outline, draft recovery plan, and the final recovery plan will be available on

our Web site (<http://www.fws.gov/angered>), or from our Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Kentucky would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Kentucky arrow darter. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the Kentucky arrow darter is only proposed for listing under the Act at this time, please let us know if you are interested in participating in conservation efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for conservation planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to

jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the USFS; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; construction and maintenance of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; Environmental Protection Agency pesticide registration; construction and maintenance of roads or highways by the Federal Highway Administration; and projects funded through Federal loan programs which may include, but are not limited to, roads and bridges, utilities, recreation sites, and other forms of development.

Several conservation efforts are already being undertaken for the Kentucky arrow darter. The Service, in cooperation with KDFWR, KSNPC, U.S. Geological Survey (USGS), KDOW, DBNF, CFI, and The Appalachian Wildlife Foundation, Inc., completed a conservation strategy for the Kentucky arrow darter in 2014 (Service 2014, entire). The strategy was developed as a guidance document that would assist the Service and its partners in their conservation efforts for the species. The strategy is divided into four major sections: (1) Biology and status, (2) listing factors/current threats, (3) current conservation efforts, and (4) conservation objectives/actions. The strategy's first conservation objective addresses current informational needs on the species' biology, ecology, viability, and survey methods, while the remaining three conservation objectives address specific threats facing the species (Factors A, D, and E, respectively).

With respect to the conservation strategy's first objective, several research projects have been initiated that will provide new information on the species' biology and threats (see descriptions in the following paragraphs). These projects include studies on the species' distribution, status, and population size; movement and microhabitat characteristics; genetics; and response to changes in water quality (*e.g.*, conductivity). Initial efforts to address objectives 2–4 have included the development of a CCA with the USFS, a propagation and reintroduction study

by KDFWR and CFI, field investigations to determine the predatory risk posed by nonnative trout, and continued informal discussions with our Federal, State, and private partners. If implemented, specific actions identified in the conservation strategy will help to reduce current threats to the Kentucky arrow darter.

As stated above, the Service and USFS recently signed a CCA for the Kentucky arrow darter on the DBNF. About half of the species' extant streams occur on lands owned and managed by the DBNF, so conservation of these populations is essential to the species' recovery, and a DBNF-specific conservation plan is needed to guide those efforts. The CCA is intended to conserve the Kentucky arrow darter on the DBNF by (a) protecting known populations and habitat, (b) reducing threats to its survival, (c) conserving the watersheds and ecosystems on which it depends, and (d) enhancing and/or restoring degraded habitat.

In 2005, KDFWR identified the Kentucky arrow darter as 1 of 251 Species of Greatest Conservation Need (SGCN) in its State Wildlife Action Plan (KDFWR 2005, entire). The species remains a SGCN in the most recent version of the plan (KDFWR 2013, pp. 61–62), which identifies conservation issues (threats), conservation actions, and monitoring strategies for 301 animal species belonging to 1 of 20 terrestrial and aquatic habitat guilds (collection of species that occur in the same habitat). In the original plan, KDFWR developed a priority list of research and survey needs for Kentucky's SGCN. In 2008, KDFWR attempted to address two of these needs by initiating a propagation and reintroduction study for the Kentucky arrow darter through the Service's State Wildlife Program (Ruble *et al.* 2010, entire). The study was designed to document details on the species' reproductive biology and to begin conservation actions (*e.g.*, propagation followed by reintroduction or augmentation) that would benefit the species. The KDFWR partnered with CFI to develop successful spawning protocols and produce the offspring needed to augment populations within the species' current range.

From 2009 to 2011, a total of 145 captive-spawned, juvenile Kentucky arrow darters (originating from brood stock taken from Big Double Creek) were produced by CFI, tagged (Northwest Marine Technologies elastomer tag), and introduced into Sugar Creek, Leslie County, a tributary of the Red Bird River in the DBNF, Redbird District (Thomas and Brandt 2012, pp. 57–64). Attempts to relocate tagged darters in August

2009, October 2009, March 2010, January 2012, and February 2012, were unsuccessful, so KDFWR and CFI made the decision to abandon efforts at Sugar Creek and begin another reintroduction effort at Long Fork, another DBNF stream and tributary of Hector Branch in Clay County.

Since August 2012, a total of 1,447 captive-spawned KADs (about 50–55 mm TL) have been tagged and reintroduced within a 1.5-km (0.9 mi) reach of Long Fork. Monitoring has been conducted on 14 occasions since the initial release using visual searches and seining methods. Tagged darters have been observed during each monitoring event, with numbers increasing from 18 (October 2012) to 86 (August 2013) (Thomas *et al.* 2014, p. 23). Tagged darters have been observed throughout the Long Fork mainstem, both upstream and downstream of the release points, and two tagged individuals have been observed outside of Long Fork—one in Hector Branch, just downstream of its confluence with Long Fork, and one at the mouth of Deerlick Branch, a first-order tributary of Hector Branch located approximately 1 km (0.6 mi) downstream of the confluence of Long Fork and Hector Branch. The majority of individuals have been found in pools (depth of 20–61 cm (8–24 in)) with rock substrates, exposed bedrock, and some marginal cover (*e.g.*, tree roots). Surveys in July, August, and October 2013, produced a total of 20, untagged young-of-year arrow darters, while surveys in March, July, August, and October 2013, produced 25 untagged young-of-year. These results indicate natural reproduction in Long Fork. In 2015, KDFWR observed five untagged individuals in Hector Branch, approximately 0.6 km (0.4 mi) upstream of its confluence with Long Fork, and four untagged individuals in Deerlick Branch, approximately 1 km (0.6 mi) downstream of the confluence of Long Fork and Hector Branch. Additional monitoring and releases are planned for 2015.

The Service and KDFWR are working with ECU on a study that is investigating Kentucky arrow darter movements, habitat characteristics, and population size in two DBNF streams, Gilberts Big Creek and Elisha Creek, in Clay and Leslie Counties (Harrel and Baxter 2013, entire). ECU is using PIT-tags and placed antenna systems to monitor intra- and inter-tributary movement patterns in both streams, and they have collected seasonal (Spring, Summer, and Fall of 2013) biotic and abiotic data from 20 100-m (328-ft) reaches to determine habitat use and population density/size for both

streams. Preliminary findings include the following:

- 126 individuals pit-tagged;
- Population estimates for Elisha Creek: 592–1,429 individuals (summer) and 661–1,359 (fall) (range here and below reflects 95 percent confidence intervals);
- Population estimate for Gilberts Big Creek: 175–358 (summer);
- Maximum observed movement: 4,078 m (2.5 mi) (female, downstream in Gilberts Big Creek); and
- Other observed movements (7 individuals): 134 m (439 ft) (upstream), 328 m (1,076 ft) (downstream), 351 m (1,151 ft) (upstream), 900 m (2,952 ft) (upstream/downstream), 950 m (3,116 ft) (downstream), 1,282 m (4,208 ft) (downstream) and 1,708 m (5,603 ft) (downstream).

In 2013, KSNPC and the Service initiated a study to investigate the distribution, status, population size, and habitat use of the Kentucky arrow darter within the upper Kentucky River basin. One important aspect of the study was to account for imperfect detection when surveying for the species. Studies that do not account for imperfect detection can often lead to an underestimation of the true proportion of sites occupied by a species and can bias assessments and sampling efforts (MacKenzie *et al.* 2002, entire; MacKenzie *et al.* 2005, entire). From June to September 2013, KSNPC and the Service visited 80 randomly chosen sites (ranging from first- to third-order) across the upper Kentucky River basin in order to address these concerns and meet project objectives. As expected, Kentucky arrow darters were rare during the study and were observed at only 7 of the 80 sites, including two new localities (Granny Dismal Creek in Owsley County and Spring Fork Quicksand Creek in Breathitt County) and one historical stream (Hunting Creek, Breathitt County) where the species was not observed during status surveys by Thomas (2008, pp. 1–33) and Service (2012, pp. 1–4). Presently, KSNPC and the Service are in the data analysis stage of this project.

In July 2013, ECU, the Service, and KSNPC initiated a population estimate and microhabitat characterization study on Clemons Fork, Breathitt County. The study was designed to estimate the Kentucky arrow darter's current population size and average density within Clemons Fork and to compare current densities with historical densities reported by Lotrich (1973). Additionally, population densities and habitat parameters will be compared to data from Gilberts Big Creek and Elisha Creek (both DBNF) to aid in delineation of essential habitat characteristics and

development and implementation of conservation efforts. Field surveys were completed in August 2013. Data analyses are incomplete, but initial results include a mean density of 9.69 Kentucky arrow darters per sampling reach and a population estimate of 986 to 2,113 darters in Clemons Fork (95 percent confidence intervals). Preliminary findings of this study were presented at the 2013 Southeastern Fishes Council Meeting, Lake Guntersville, Alabama (November 14–15, 2013).

Austin Peay State University is currently working with KDFWR and the Service on the first comprehensive assessment of genetic variation and gene flow patterns across the range of the Kentucky arrow darter (Johansen *et al.* 2013, pp. 1–3). Approximately 25 individuals per population from up to 12 populations across the range of the species will be genotyped using microsatellite markers. Resulting data will be used to generate robust estimates of effective population sizes and overall population and species' variability. This information is essential to the development of effective conservation and recovery measures to ensure the long-term persistence of the species. Funding for this project is being provided through the Service's section 6 program.

Through Service-USGS Quick Response funding, the USGS Leetown Science Center evaluated the relationship between Kentucky arrow darter abundance and stream conductivity in the upper Kentucky River basin (Hitt 2014, entire). Nonlinear regression techniques were used to evaluate significant thresholds and associated confidence intervals for Kentucky arrow darter abundance related to conductivity levels. As a contrast to Kentucky arrow darter, Dr. Hitt also evaluated blackside dace occurrence in this regard. Data for the study were supplied by the Service's Kentucky and Tennessee Field Offices, KDFWR, and KSNPC. Nonlinear regressions indicated a distinct decline in Kentucky arrow darter abundance at 258  $\mu\text{S}/\text{cm}$  (95 percent confidence intervals 155–590  $\mu\text{S}/\text{cm}$ ), above which abundances were negligible. Nonlinear threshold declines for blackside dace were observed at 343  $\mu\text{S}/\text{cm}$ , and 95 percent confidence intervals bounded this relationship between 123–632  $\mu\text{S}/\text{cm}$ . Boosted regression results indicated that stream conductivity was the strongest predictor in separate analyses of Kentucky arrow darter and blackside dace abundance. Hitt (2014, pp. 7–8) concluded that the similar responses of these ecologically distinct taxa suggest

the general importance of this water quality attribute for stream fish ecology in central Appalachia.

### Proposed Special Rule

Under section 4(d) of the Act, the Service has discretion to issue regulations that we find necessary and advisable to provide for the conservation of threatened wildlife. We may also prohibit by regulation, with respect to threatened wildlife, any act that is prohibited by section 9(a)(1) of the Act for endangered wildlife. Exercising this discretion, the Service has developed general prohibitions that are appropriate for most threatened species at 50 CFR 17.31 and exceptions to those prohibitions at 50 CFR 17.32. While most of the prohibitions of 17.31 and 17.32 are appropriate for the Kentucky arrow darter, we find that some activities that would normally be prohibited under 17.31 and 17.32 are necessary for the conservation of this species because the species could benefit from habitat improvements in first- to third-order streams that are physically degraded (*e.g.*, unstable stream channels, eroding banks, no canopy cover). Therefore, for the Kentucky arrow darter, the Service has determined that a species-specific section 4(d) rule may be appropriate to promote the conservation of this species. As discussed in the Summary of Factors Affecting the Species section of this rule, the primary threat to the species is the continuing loss and degradation of habitat. Physical habitat degradation is widespread within the species' range, and sediment has been identified as the most common stressor (KDOW 2013a, pp. 189–214; KDOW 2013b, pp. 88–94). Sedimentation may originate from areas outside of the stream channel as a result of land use activities associated with surface coal mining, legacy coal extraction, logging, land development, channel relocations, and riparian clearing. All of these activities can cause sedimentation, but they may also lead to canopy removal, clearing of riparian vegetation, and elevation of stream temperatures, thereby degrading habitats used by Kentucky arrow darters for feeding, sheltering, and reproduction. Sedimentation may also originate from areas within the stream channel as a result of channel instability and bank or stream bed erosion. Numerous streams within the species' current range have been identified as impaired (primarily due to siltation) and have been included on Kentucky's 303(d) list of impaired waters (see Table 2, above). Activities such as stream reconfiguration/riparian restoration, bridge and culvert

replacement or removal, bank stabilization, and stream crossing repair and maintenance, that follow the provisions of the species specific 4(d) rule below will improve or restore physical habitat quality for the Kentucky arrow darter and will provide an overall conservation benefit to the species.

The 4(d) rule, if approved, will not remove or alter in any way the consultation requirement under section 7 of the Act. However, we expect the 4(d) rule to provide greater certainty to Federal agencies and any third parties (e.g., permit applicants) in the consultation process for activities conducted in accordance with the provisions of the 4(d) rule. The consultation process may be further streamlined through programmatic consultations between Federal agencies and the Service for these activities. We ask the public, particularly Federal agencies and other interested stakeholders that may be affected by the 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or utilize, respectively, to streamline the implementation of this 4(d) rule (see Information Requested).

#### *Provisions of the Proposed 4(d) Rule*

This proposed 4(d) rule would except from the general prohibitions in 50 CFR 17.32 take incidental to the following activities when conducted within habitats currently occupied by the Kentucky arrow darter. All of the activities listed below must be conducted in a manner that (1) maintains connectivity of suitable Kentucky arrow darter habitats, allowing for dispersal between streams; (2) minimizes instream disturbance by conducting activities during low-flow periods when possible; and (3) maximizes the amount of instream cover that is available for the species:

(1) Channel reconfiguration or restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems) that are reconnected with their groundwater aquifers (Parola and Biebighauser 2011, pp. 8–13; Parola and Hansen 2011, pp. 2–7; Floyd *et al.* 2013, pp. 129–135). These projects can be accomplished using a variety of methods, but the desired outcome is a natural, sinuous channel with low shear stress (force of water moving against the channel); low bank heights and reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil,

rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. First- to third-order, headwater streams reconstructed in this way would offer suitable habitats for the Kentucky arrow darter and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species for spawning, rearing, growth, feeding, migration, and other normal behaviors.

(2) Bank stabilization projects that utilize bioengineering methods outlined in Kentucky Environmental and Public Protection Cabinet and Kentucky Transportation Cabinet (2005, pp. 116–128) to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these methods, stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods would not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(3) Bridge and culvert replacement/removal projects that remove migration barriers (e.g., collapsing, blocked, or perched culverts) or generally allow for improved upstream and downstream movements of Kentucky arrow darters while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species.

(4) Repair and maintenance of USFS concrete plank stream crossings on the DBNF that allow for safe vehicle passage while maintaining instream habitats, reducing bank and stream bed erosion and instream sedimentation, and improving habitat conditions for the species. These concrete plank crossings have been an effective stream crossing structure on the DBNF and have been used for decades. Over time, the planks can be buried by sediment, undercut during storm events, or simply break down and decay. If these situations occur, the DBNF must make repairs or replace the affected plank.

We believe these actions and activities, while they may have some minimal level of mortality, harm, or disturbance to the Kentucky arrow darter, are not expected to adversely

affect the species' conservation and recovery efforts. In fact, we expect they would have a net beneficial effect on the species. Across the species' range, instream habitats have been degraded physically by sedimentation and by direct channel disturbance. The activities proposed in this rule will correct some of these problems, creating more favorable habitat conditions for the species. Like the proposed listing rule, this proposed 4(d) rule will not be finalized until we have reviewed comments from the public and peer reviewers.

Based on the rationale above, the provisions included in this proposed 4(d) rule are necessary and advisable to provide for the conservation of the Kentucky arrow darter. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Kentucky arrow darter.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, economic hardship, zoological exhibition, educational purposes, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibited activities, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act (for this species, those section 9 prohibitions adopted through the proposed 4(d) rule). The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements, although this list is not comprehensive:

(1) Normal agricultural and silvicultural practices, including herbicide and pesticide use, which are carried out in accordance with any existing regulations, permit and label

requirements, and best management practices; and

(2) Surface coal mining and reclamation activities conducted in accordance with the 1996 Biological Opinion between the Service and OSM.

However, we believe the following activities may potentially result in a violation of section 9 of the Act, although this list is not comprehensive:

(1) Unauthorized collecting or handling of the species.

(2) Destruction or alteration of the habitat of the Kentucky arrow darter (e.g., unpermitted instream dredging, impoundment, water diversion or withdrawal, channelization, discharge of fill material) that impairs essential behaviors such as breeding, feeding, or sheltering, or results in killing or injuring a Kentucky arrow darter.

(3) Discharges or dumping of toxic chemicals, contaminants, or other pollutants into waters supporting the Kentucky arrow darter that kills or injures individuals, or otherwise impairs essential life-sustaining behaviors such as breeding, feeding, or sheltering.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Required Determinations**

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1,

1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of references cited in this rulemaking is available on the

Internet at <http://www.regulations.gov> and upon request from the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Kentucky Ecological Services Field Office.

**List of Subjects in 50 CFR Part 17**

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

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

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

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.11(h) by adding an entry for “Darter, Kentucky arrow” to the List of Endangered and Threatened Wildlife in alphabetical order under FISHES 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						
* * * * *							
FISHES							
Darter, Kentucky arrow.	<i>Etheostoma spilotum</i> .	U.S.A. (KY) .....	Entire .....	T	.....	NA	17.44(p)
* * * * *							

- 3. Amend § 17.44 by adding paragraph (p) to read as follows:

**§ 17.44 Special rules—fishes.**

\* \* \* \* \*

(p) Kentucky arrow darter (*Etheostoma spilotum*).

(1) *Prohibitions.* Except as noted in paragraph (p)(2) of this section, all prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to the Kentucky arrow darter.

(2) *Exceptions from prohibitions.* (i) All of the activities listed in paragraph (p)(2)(ii) must be conducted in a manner that maintains connectivity of suitable Kentucky arrow darter habitats, allowing for dispersal between streams; that minimizes instream disturbance by conducting activities during low-flow periods when possible; and that maximizes the amount of instream cover that is available for the species.

(ii) Incidental take of the Kentucky arrow darter will not be considered a violation of section 9 of the Act if the take results from any of the following when conducted within habitats currently occupied by the Kentucky arrow darter:

(A) Channel reconfiguration or restoration projects that create natural, physically stable, ecologically functioning streams (or stream and

wetland systems) that are reconnected with their groundwater aquifers (Parola and Biebighauser 2011, pp. 8–13; Parola and Hansen 2011, pp. 2–7; Floyd *et al.* 2013, pp. 129–135). These projects can be accomplished using a variety of methods, but the desired outcome is a natural, sinuous channel with low shear stress (force of water moving against the channel); low bank heights and reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools comprised of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands. First- to third-order, headwater streams reconstructed in this way would offer suitable habitats for the Kentucky arrow darter and contain stable channel features, such as pools, glides, runs, and riffles, which could be used by the species for spawning, rearing, growth, feeding, migration, and other normal behaviors.

(B) Bank stabilization projects that utilize bioengineering methods outlined

in Kentucky Environmental and Public Protection Cabinet and Kentucky Transportation Cabinet (2005, pp. 116–128) to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Following these methods, stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). These methods would not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Bridge and culvert replacement/removal projects that remove migration barriers (*e.g.*, collapsing, blocked, or perched culverts) or generally allow for improved upstream and downstream movements of Kentucky arrow darters while maintaining normal stream flows,

preventing bed and bank erosion, and improving habitat conditions for the species.

(D) Repair and maintenance of USFS concrete plank stream crossings on the DBNF that allow for safe vehicle passage while maintaining instream habitats, reducing bank and stream bed erosion and instream sedimentation, and improving habitat conditions for the species. These concrete plank crossings have been an effective stream crossing structure on the DBNF and have been used for decades. Over time, the planks can be buried by sediment, undercut during storm events, or simply break down and decay. If these situations occur, the DBNF must make repairs or replace the affected plank.

\* \* \* \* \*

Dated: September 22, 2015.

**Cynthia T. Martinez,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2015–25278 Filed 10–7–15; 8:45 am]

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Part III

## Department of the Interior

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Sierra Nevada Red Fox as an Endangered or Threatened Species; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R8-ES-2011-0103;  
4500030113]

**Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Sierra Nevada Red Fox as an Endangered or Threatened Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list Sierra Nevada red fox (*Vulpes vulpes necator*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the entire Sierra Nevada red fox subspecies is not warranted. We were also petitioned to evaluate two populations within the subspecies' range as potential distinct population segments (DPSs). We find that both the Southern Cascades and Sierra Nevada population segments of the Sierra Nevada red fox meet the Service's DPS policy criteria, and therefore are valid DPSs. After review of the best available scientific and commercial information for these two DPSs, we find that listing the Southern Cascades DPS is not warranted at this time, and listing the Sierra Nevada DPS is warranted. Currently, however, listing the Sierra Nevada DPS is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month finding, we will add the Sierra Nevada DPS of the Sierra Nevada red fox to our candidate species list. We will develop a proposed rule to list the Sierra Nevada DPS as our priorities allow. We will make a determination on critical habitat during development of the proposed listing rule. In the interim period, we will address the status of the candidate DPS through our annual candidate notice of review (CNOR).

**DATES:** The finding announced in this document was made on October 8, 2015.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R8-ES-2011-0103. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during

normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Norris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES**); by telephone at 916-414-6600; or by facsimile at 916-414-6712. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Acronyms and Abbreviations Used in This Document**

We use many acronyms and abbreviations throughout this 12-month finding. To assist the reader, we provide a list of these here for easy reference:

Act = Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)  
 BWRA = Bridgeport Winter Recreation Area  
 CBD = Center for Biological Diversity  
 CDFG = California Department of Fish and Game (see below)  
 CDFW = California Department of Fish and Wildlife (formerly CDFG)  
 CESA = California Endangered Species Act  
 CFR = Code of Federal Regulations  
 dbh = diameter at breast height  
 DNA = deoxyribonucleic acid  
 DPS = distinct population segment  
 EFF = elokomin fluke fever  
 Forest Service = U.S. Forest Service  
 FR = Federal Register  
 INRMP = integrated natural resources management plan  
 IPCC = Intergovernmental Panel on Climate Change  
 ISAB = Independent Scientific Advisory Board  
 LRMP = land and resource management plan  
 MWTC = Marine Warfare Training Center  
 mtDNA = mitochondrial deoxyribonucleic acid  
 NFMA = National Forest Management Act (16 U.S.C. 1600 *et seq.*)  
 NMFS = National Marine Fisheries Service  
 NPS = National Park Service  
 NWFP = Northwest Forest Plan  
 ODFW = Oregon Department of Fish and Wildlife  
 OHV = off-highway vehicle  
 OPLMA = Omnibus Public Land Management Act (Pub. L. 111-11)  
 Service = U.S. Fish and Wildlife Service  
 SPD = salmon poisoning disease  
 SNFPA = Sierra Nevada Forest Plan Amendment  
 SPR = significant portion of [a species'] range  
 USDA = U.S. Department of Agriculture  
 USDI = U.S. Department of the Interior

**Background**

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for

any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information suggesting that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants ("warranted but precluded"). Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

**Previous Federal Actions**

On April 27, 2011, we received a petition dated April 27, 2011, from the Center for Biological Diversity, requesting that Sierra Nevada red fox be listed as endangered or threatened, and that critical habitat be designated under the Act. The petition also requested that we evaluate two populations within the subspecies' range as potential distinct population segments (DPSs) under the Service's DPS Policy: One in the Southern Cascades (south of the Columbia River) and the other in the Sierra Nevada Mountains. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by title 50 of the Code of Federal Regulations (CFR) at section 424.14(a). In a May 24, 2011, letter to the petitioner, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we were required to complete a significant number of listing and critical habitat actions in Fiscal Year 2011 pursuant to court orders, judicially approved settlement agreements, and other statutory deadlines, but that we had secured funding for Fiscal Year 2011 to allow publication of a finding in the **Federal Register** in early Fiscal Year 2012.

On January 3, 2012, we published in the **Federal Register** a 90-day finding (77 FR 45) that the petition presented

substantial information indicating that listing may be warranted and that initiated a status review. This notice constitutes the 12-month finding on the April 27, 2011, petition to list the Sierra Nevada red fox as an endangered or threatened species.

This finding is based upon the Species Report titled “Species Report, Sierra Nevada Red Fox (*Vulpes vulpes necator*)” (Service 2015) (Species Report), a scientific analysis of available information prepared by a team of Service biologists from the Service’s Sacramento Fish and Wildlife Office, Yreka Fish and Wildlife Office, Klamath Falls Fish and Wildlife Office, Roseburg Fish and Wildlife Office, Pacific Southwest Regional Office, Pacific Regional Office, and National Headquarters Office. The purpose of the Species Report is to provide the best available scientific and commercial information about Sierra Nevada red fox so that we can evaluate whether or not the subspecies warrants protection under the Act. In it, we compiled the best scientific and commercial data available concerning the status of the subspecies, including past, present, and future stressors. As such, the Species Report provides the scientific basis that informs our regulatory decision in this document, which involves the further application of standards within the Act and its regulations and policies. The Species Report can be found on the Internet at <http://www.regulations.gov>, Docket No. FWS–R8–ES–2011–0103.

#### Summary of Species Information

A thorough review of the taxonomy, genetics, habitat use, life history, range, distribution, and occurrence information for the Sierra Nevada red fox is presented in the Species Report (Service 2015, pp. 6–14), available on the Internet at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2011–0103; a summary of this information is presented below. We used data specific to the Sierra Nevada red fox when they were available. When such information was lacking, we relied on information regarding other North American red fox subspecies in general, including montane red fox such as Cascade red fox (*Vulpes vulpes cascadiensis*) or Rocky Mountain red fox (*V.v. macroura*), as well as other subspecies of lowland red fox, such as the Sacramento Valley red fox (*V.v. patwin*). We make these distinctions in the text that follows, when applicable.

Sierra Nevada red fox is classified in the mammalian order Carnivora, family Canidae, and is one of 10, 11, or 13 subspecies of red fox recognized in North America by various sources (Hall

1981, p. 938; Larivière and Pashitschniak-Arts 1996, pp. 1–2; Aubry 1997, p. 55; Sacks *et al.* 2010a, pp. 1523, 1535; ITIS 2014, p. 1). The Sierra Nevada red fox can be distinguished from lowland-dwelling red fox subspecies based on its smaller size and use of high-elevation, snow-covered habitat (Roest 1977, p. 13; Perrine *et al.* 2010, p. 5). The Sierra Nevada red fox was first described by Merriam (1900, pp. 662, 664) as the species *Vulpes necator*, but was redesignated as a subspecies of North American red fox (*Vulpes fulva necator*) in 1936 (Bailey 1936, pp. 272, 317), and then as a subspecies of a single red fox species stretching across Europe, Asia, and North America (*Vulpes vulpes necator*) in 1957 (Churcher 1957, p. 202; Churcher 1959, p. 519). The scientific community continues to recognize the Sierra Nevada red fox as a subspecies (Roest 1977, p. 1; Larivière and Pashitschniak-Arts 1996, pp. 1–2; Aubry 1997, p. 55; Sacks *et al.* 2010a, p. 1542). Therefore, we accept the classification of the Sierra Nevada red fox as a subspecies of the red fox. Other red fox subspecies found nearest the Sierra Nevada red fox’s range include the closely related and morphologically similar Cascade red fox (occurring in the Washington Cascades north of the Columbia River (Sacks *et al.* 2010a, pp. 1528, 1536), and the Sacramento Valley red fox (occurring in the Sacramento Valley of California (Sacks *et al.* 2010a, pp. 1523–1524, 1535)). Additionally, descendants of red fox originally imported from eastern and more northern areas of North America into California and Oregon as fur-farm stock (described as “nonnative red fox” herein) reside in lowland areas of California and Oregon (Sacks *et al.* 2010a, pp. 1524).

The red fox is a relatively small canid with an elongated snout, large ears, slender legs and body, and a bushy tail with a white tip (Larivière and Pashitschniak-Arts 1996, p. 2; Aubry 1997, p. 55; Perrine 2005, p. 1; Perrine *et al.* 2010, p. 5). Red foxes typically have primarily red fur, but can also occur in a “cross phase” (primarily grayish-brown, with darker lines along the back and shoulders) or “black phase” (also called the silver phase; primarily black with occasional silver guard hairs) (Aubry 1997, p. 55; Perrine *et al.* 2010, p. 5). Cross and black phases are generally rare, but tend to be more common in cold mountainous areas (Aubry 1997, p. 55; Perrine *et al.* 2010, p. 5).

The Sierra Nevada red fox and two other montane subspecies (*i.e.*, Cascades and Rocky Mountain red foxes) are

characterized by specialized adaptations to cold areas (Sacks *et al.* 2010a, p. 1524). Such adaptations include a particularly thick and deep winter coat (Grinnell *et al.* 1937, p. 377) and small toe pads (4 millimeters (mm) (0.2 inches (in)) across or less) that are completely covered in winter by dense fur to facilitate movement over snow (Grinnell *et al.* 1937, pp. 378, 393; Sacks 2014a, p. 30). The Sierra Nevada red fox and other montane subspecies also tend to be smaller than other red foxes (Perrine *et al.* 2010, p. 5), which may facilitate movement over snow by lowering weight supported per square centimeter of footpad (Quinn and Sacks 2014, p. 17).

Sierra Nevada red fox use multiple habitat types in the alpine and subalpine zones (near and above treeline) (California Department of Fish and Game (CDFG) 1987, p. 3). In addition to meadows and rocky areas (U.S. Department of Agriculture (USDA) 2009, p. 506), Sierra Nevada red fox use high-elevation conifer habitat of various types (Perrine 2005, pp. 63–64). Nearest the treeline in the Lassen sighting area, where habitat use has been best documented, the subspecies frequents subalpine conifer habitat dominated by whitebark pine (*Pinus albicaulis*) and mountain hemlock (*Tsuga mertensiana*) (Perrine 2005, pp. 6, 63–64; California Department of Fish and Wildlife (CDFW) undated, p. 3; Verner and Purcell undated, p. 3). Such conifer habitat has been described as typically “open” (Verner and Purcell undated, p. 1), and “patchy” (Lowden 2015, p. 1). We lack similarly specific habitat descriptions for Oregon.

Sierra Nevada red fox in Oregon, and at the Lassen sighting area in California, have also been found to descend during winter months into high-elevation conifer areas below the subalpine zone (Perrine 2005, pp. 63–64; Aubry *et al.* 2015, p. 1). In the Lassen sighting area, this habitat consists primarily of red fir (*Abies magnifica*), white fir (*Abies concolor*), and lodgepole pine (*Pinus contorta*) (Perrine 2005, pp. 63–64; CDFW undated, p. 3; Barrett 1988, p. 3). Winter sightings have occurred as low as 1,410 m (4,626 ft) in the Lassen sighting area (Perrine 2005, pp. 2, 162), and 1,280 m (4,200 ft) in Oregon (Aubry *et al.* 2015, p. 1). Possible reasons for this elevational migration include lessened snow depths at lower elevations (Perrine 2005, pp. 80, 81), unsuccessful dispersal movements by nonbreeding individuals (Statham *et al.* 2012, p. 130), and lack of suitable prey at high elevations in the Lassen area (Perrine 2005, p. 30). While on these lower winter ranges, the subspecies has

shown a preference for mature closed canopy conifer forests, despite the rarity of this forest structural category (less than 7 percent) in the area studied (Perrine 2005, pp. 67, 74, 90). Similar elevational migrations are not known for the Sonora Pass sighting area (Statham *et al.* 2012, p. 130).

Dispersal distances have not been documented for Sierra Nevada red fox, but one study found juvenile male red foxes in the American Midwest dispersed 30 km (18.6 mi) on average, while juvenile females dispersed an average of 10 km (6.2 mi) (Statham *et al.* 2012, p. 130). A few young American Midwest red foxes (5 percent) dispersed over 80 km (50 mi) in their first year (Statham *et al.* 2012, p. 130).

Although little direct information exists regarding the Sierra Nevada red fox's reproductive biology, there is no evidence to suggest it is markedly different from lowland-dwelling North American red fox subspecies (Aubry 1997, p. 57). Those subspecies are predominately monogamous and mate over several weeks in the late winter and early spring (Aubry 1997, p. 57). The gestation period for North American red fox is 51 to 53 days, with birth occurring from March through May in sheltered dens (Perrine *et al.* 2010, p. 14). Sierra Nevada red fox use natural openings in rock piles at the base of cliffs and slopes as denning sites (Grinnell *et al.* 1937, p. 394). They may also dig earthen dens similar to Cascade red foxes (although this has not been directly documented) (Aubry 1997, p. 58; Perrine 2005, p. 153). Sierra Nevada red fox litters are reported by Grinnell *et al.* (1937, p. 394) to average six pups with a range of three to nine; however, recent evidence suggests that litter sizes of two to three are more typical, and that reproductive output is generally low in montane foxes (Perrine 2005, pp. 152–153).

Home range sizes of Sierra Nevada red fox have not been studied throughout the range of the subspecies. However, Perrine (2005, pp. 2, 159) found within a portion of the Lassen sighting area that adult Sierra Nevada red fox established summer home ranges averaging 2,564 hectares (ha) (6,336 acres (ac)), with individual home ranges ranging from 262 ha (647 ac) to 6,981 ha (17,250 ac) (Perrine 2005, pp. 2, 159). Winter home ranges were larger, averaging 3,255 ha (8,042 ac) and ranging from 326 to 6,685 ha (806 to 16,519 ac) (Perrine 2005, p. 159). Quinn and Sacks (2014, pp. 2, 9, 11) found within a portion of the Sonora Pass sighting area that minimum home range estimates averaged 910 ha (2,249 ac), and were maintained both winter and summer.

The average lifespan, age-specific mortality rates, sex ratios, and demographic structure of Sierra Nevada red fox populations are not known, and are not easily extrapolated from other red fox subspecies because heavy hunting and trapping pressure on those other subspecies likely skew study results (Perrine *et al.* 2010, p. 18). However, one study within a portion of the Lassen sighting area found that three Sierra Nevada red fox lived at least 5.5 years (CDFW 2015, p. 1), and another study within a portion of the Sonora Pass sighting area found the average annual adult survival rate to be 82 percent, which is relatively high for red foxes (Quinn and Sacks 2014, pp. 10, 14–15, 24).

Sierra Nevada red fox appear to be opportunistic predators and foragers, with a diet primarily composed of small rodents, but also including deer carrion (*Odocoileus hemionus*) (particularly in winter and spring) and manzanita berries (*Arctostaphylos nevadensis*) (particularly in fall) (Perrine *et al.* 2010, pp. 24, 30, 32–33). Sierra Nevada red fox are most active at dusk and at night (Perrine 2005, p. 114), when many rodents are most active. High-elevation lagomorphs, such as snowshoe hare (*Lepus americanus*) and pika (*Ochotona princeps*), also are diet components of the subspecies, although they were not an important food source in the Lassen sighting area, possibly due to scarcity in the region (Perrine 2005, pp. 29–30).

#### Distribution/Range

In 1937, Grinnell *et al.* (1937, pp. 381–382) defined the range of the Sierra Nevada red fox in California as three separate areas: (1) The area of Mt. Shasta, primarily in the Cascades but extending slightly into the Trinity Mountains; (2) in the California Cascades around Lassen Peak; and (3) along the upper elevations of the Sierra Nevada Mountain Range from Tulare to Sierra Counties. A study by Sacks *et al.* (2010a, p. 1536) extended the historical range into the Cascade Mountains of Oregon to the Columbia River. This range includes those mountainous areas that exceed 1,200 m (3,937 ft) in California (Perrine *et al.* 2010, p. 8) and 1,219 m (4,000 ft) in Oregon (Aubry *et al.* 2015, pp. 2–3; Doerr 2015, pp. 2–3, 13–14, line 7). We note that the historical range description for Sierra Nevada red fox provided earlier by Grinnell *et al.* (1937, pp. 381–382) did not include the Oregon Cascades, because it was presumed these montane fox were the Cascades red fox subspecies.

At the time of the 90-day finding (77 FR 45; January 3, 2012), the distribution

of Sierra Nevada red fox was believed to be restricted to two small populations: One in the vicinity of Lassen Peak (Perrine 2005, p. 105; California Natural Diversity Database (CNDDDB) 2011, pp. 54–60) and the other in the vicinity of Sonora Pass (Perrine *et al.* 2010, notes in proof; CNDDDB 2011, pp. 54–60). Both these populations are on Federal lands, with the exception of some small private inholdings in the Lassen area. Systematic carnivore surveys conducted from 1996 to 2002 throughout the Sierra Nevada and Cascades Mountains of California did not detect any Sierra Nevada red fox (Zielinski *et al.* 2005, pp. 1385, 1387), indicating the subspecies was likely extirpated or in low densities in the regions sampled; according to Figures 1 and 3 in Zielinski *et al.* (2005, pp. 1387, 1389), the currently known Lassen sighting area was within the 1996–2002 sampling area. The population levels of Sierra Nevada red fox at that time were unknown, but the subspecies was believed to occur at very low density (Perrine *et al.* 2010, p. 9).

Following publication of our 90-day finding in the **Federal Register** (77 FR 45; January 3, 2012), the Sierra Nevada red fox's range has been confirmed (via a combination of genetics and photographic evidence) to extend into the Oregon Cascades (Figure 1, below) as far north as Mt. Hood, significantly extending the subspecies' range beyond its historically known range in California. Specifically, five sighting areas (*i.e.*, clustered locations of recent Sierra Nevada red fox sightings) have been identified on Federal lands in Oregon where surveys have occurred, in addition to the two known sighting areas in California as described in the 90-day finding (77 FR 45). Sierra Nevada red fox are thus known from a total of seven sighting areas, located in the vicinity of (north to south) Mt. Hood, Mt. Washington, Dutchman Flat, Willamette Pass, and Crater Lake in Oregon; and Lassen and Sonora Pass in California (Figure 1, below). The two California sighting areas were known in the 1930s to be occupied by Sierra Nevada red fox (Grinnell *et al.* 1937, pp. 381–382) and were found to still be occupied in 1993 and 2010 (Perrine 2005, pp. 4, 167–168; Statham *et al.* 2012, p. 123). The five Oregon sighting areas were first identified in 2012 and 2013, after publication of our 90-day finding (77 FR 45). Additional sightings within the current Oregon sighting areas have been reported as recently as 2014 (*e.g.*, Doerr 2015, pp. 1, 8, 11–14), and surveys in portions of the subspecies' range are ongoing.

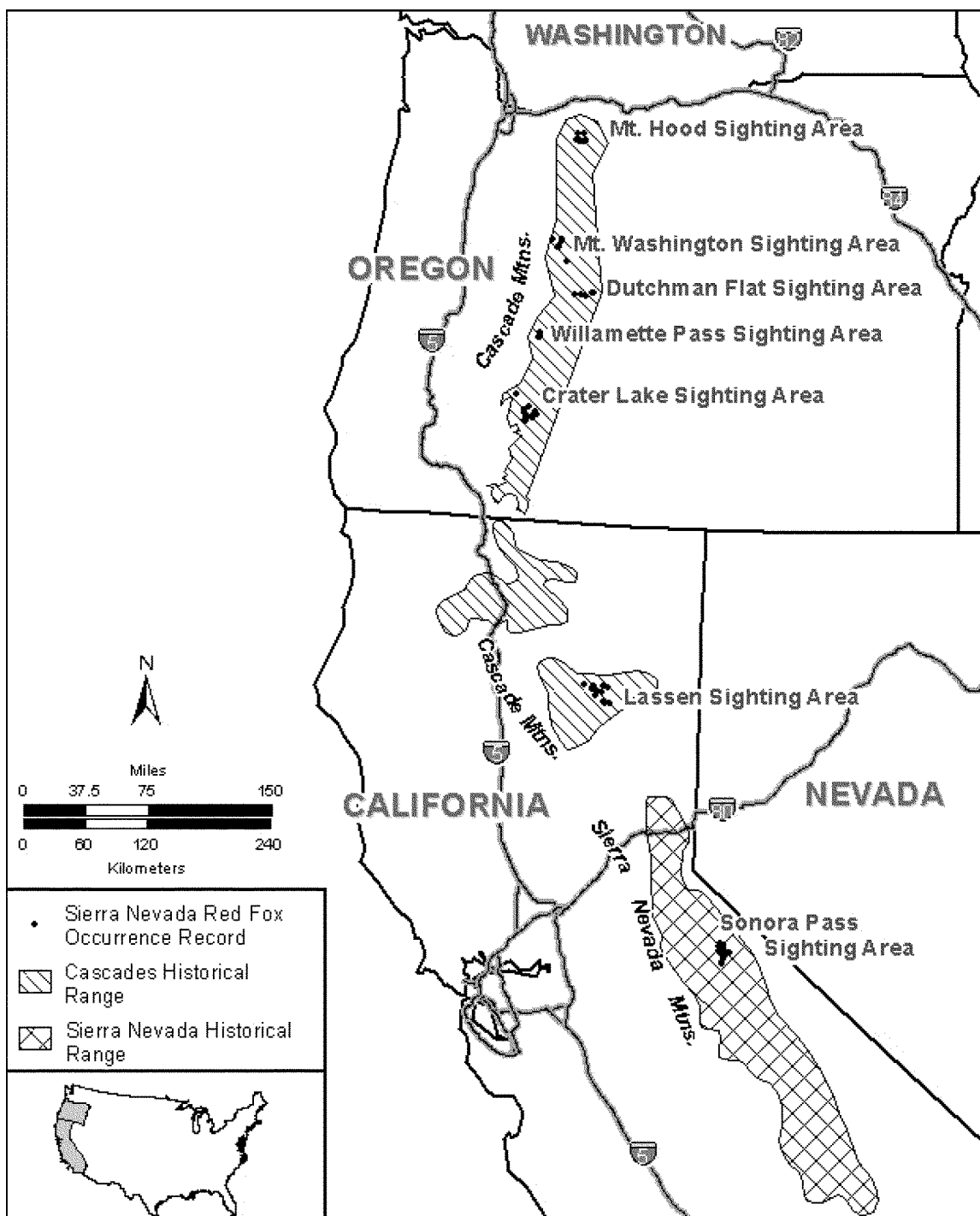


Figure 1—Historical range and sighting areas of Sierra Nevada red fox (*Vulpes vulpes necator*) from recent records (2000–2015). The historical range in Oregon is derived from Sacks *et al.* (2010a, p. 1536), who determined that museum specimens of Oregon montane red foxes were Sierra Nevada red fox. The historical range in California is based on Perrine *et al.* (2010, p. 4), which is based on Grinnell *et al.* (1937, p. 382).

It is possible that Sierra Nevada red foxes may occur in additional areas beyond the seven specific sighting areas described above, particularly in the Oregon Cascades within any areas of suitable habitat that have not been

surveyed, or have been surveyed only sporadically.

#### Population/Abundance Information

Based on interviews with trappers, Grinnell *et al.* (1937, p. 390) described

Sierra Nevada red fox population numbers as “relatively small, even in the most favorable territory,” and reported that Sierra Nevada red fox likely occurred at densities of 1 per 2.6 square km (1 per square mi). Perrine *et*

*al.* (2010, p. 9) concluded from this that Sierra Nevada red fox likely occur at low population densities even within areas of high relative abundance.

Historical trapping information in California from CDFW and Schempf and White (1977, p. 44) indicates that the numbers of Sierra Nevada red fox numbers trapped in California fell considerably in the mid-1900s as compared to trapping data reported by Grinnell *et al.* (1937, p. 389). The average annual harvest of Sierra Nevada red fox pelts in California declined from the 1920s (21 pelts per year) to the 1940s and 1950s (6.75 pelts per year) (Grinnell *et al.* 1937, p. 389; Perrine 2005, p. 154). Sightings became rare

after the 1940s (about twice per year in the 1950s and 1960s) (Schempf and White 1977, p. 44). The reduced harvest and sightings of Sierra Nevada red fox in California led to a prohibition on red fox trapping throughout the State in 1974, and to listing the subspecies as threatened under the California Endangered Species Act (CESA) in 1980 (Statham *et al.* 2012, p. 123). We note that fur trapping for red fox (regardless of the subspecies or origin) in Oregon remains legal Statewide.

Information (both historical and current) is not available regarding the abundance or trends of Sierra Nevada red fox populations in Oregon, particularly given the very recent

discovery of this subspecies' occupation at multiple sighting areas within the Oregon Cascades. However, the best available information since the 90-day finding (77 FR 45; January 3, 2012) indicates multiple individuals have been identified in five sighting areas (5 genetic records and 10 photographic records at Mt. Hood; 1 to 4 records each at the remaining four Oregon sighting areas) (Table 1, below). Surveys are ongoing in the Oregon portion of the subspecies' range, and we anticipate additional sightings and individuals to be identified with continued surveys in suitable habitat areas.

TABLE 1—CURRENT KNOWN SIGHTING AREAS OF SIERRA NEVADA RED FOX IN OREGON AND CALIFORNIA [north to south]

Location <sup>1</sup>	State	County	Primary land owners <sup>2</sup>	Estimated population size
Mt. Hood .....	OR .....	Clackamas and Hood River.	Mt Hood National Forest .....	Unknown.
Mt. Washington .....	OR .....	Linn, Jefferson, and Deschutes.	Willamette and Deschutes National Forests .....	Unknown.
Dutchman Flat .....	OR .....	Deschutes .....	Deschutes National Forest .....	Unknown.
Willamette Pass .....	OR .....	Lane .....	Willamette National Forest .....	Unknown.
Crater Lake .....	OR .....	Klamath and Douglas ...	Crater Lake National Park, Rogue River-Siskiyou National Forest, Fremont-Winema National Forest.	Unknown.
Lassen .....	CA .....	Lassen, Plumas, and Tehama.	Lassen National Forest and Lassen Volcanic National Park.	42 adults (21 breeding, 21 non-breeding <sup>3</sup> )
Sonora Pass .....	CA .....	Tuolumne, Mono, and Alpine.	Toiyabe portion of the Humboldt-Toiyabe National Forest, Stanislaus National Forest, and Yosemite National Park.	29 adults (14 breeding, 15 non-breeding <sup>4</sup> .)

<sup>1</sup> The number of Sierra Nevada red fox sighting areas may not be the same as the actual number of populations. Researchers have not yet determined the precise number or locations of Sierra Nevada red fox populations that reside in the Oregon Cascades.

<sup>2</sup> Land ownership for known sighting areas is based on surveys that have primarily occurred to date on Federal lands. It is likely that Sierra Nevada red fox reside within contiguous, suitable habitat on intervening or adjacent private/public lands where surveys have not yet occurred.

<sup>3</sup> Twenty-one breeding adults, with 95 percent confidence interval of 13 to 34 (Sacks *et al.* 2010a, pp. 1532, 1536–1537). Twenty-one non-breeding adults (estimated range of 0 to 42, based on rough estimates of ratios of nonbreeders to breeders in other red fox subspecies) (Sacks 2015, pp. 1–2).

<sup>4</sup> Fourteen breeding adults (estimated range 10 to 20) (Sacks *et al.* 2015, pp. 3, 14). Fifteen nonbreeding adults (estimated range of 0 to 30, based on rough estimates of ratios of nonbreeders to breeders in other red fox subspecies) (Sacks 2015, pp. 1–2; Sacks *et al.* 2015, p. 14).

The best available information for the Sierra Nevada red fox sighting areas (north to south) is summarized below. More information is available for the Lassen and Sonora Pass sighting areas because they have been studied more thoroughly, and over a longer time.

- *Mt. Hood sighting area*—This sighting area includes the general vicinity surrounding Mt. Hood. Lands within this sighting area are owned and managed by Mt. Hood National Forest. Approximately 15 sightings of Sierra Nevada red fox (consisting either of photographs or genetically tested scat or hair) have been made in the area, and three individuals have been distinguished from the Mt. Hood sighting area (Akens 2014, entire; Akens and Sacks 2014, entire; Akens and Sacks

2015, p. 1). At this time, there are no empirical data on which to base an estimate of either current population(s) abundance or trend of Sierra Nevada red fox within this sighting area.

- *Mt. Washington, Dutchman Flat, Willamette Pass, and Crater Lake sighting areas*—Lands within these sighting areas are owned and managed by: (1) Willamette and Deschutes National Forest (Mt. Washington); Deschutes National Forest (Dutchman Flat); Willamette National Forest (Willamette Pass); and Crater Lake National Park, and Rogue-River-Siskiyou and Fremont-Winema National Forests (Crater Lake). At this time, similar to the Mt. Hood sighting area, there are no empirical data on which to base an estimate of either current

population(s) abundance or trend of Sierra Nevada red fox within these sighting areas.

- *Lassen sighting area*—This sighting area includes lands managed by Lassen National Forest and Lassen Volcanic National Park (including the Caribou Wilderness), and some private inholdings primarily as timberlands (CDFW 2015, p. 1). Sacks *et al.* (2010a, pp. 1532, 1536–1537) estimated that the effective size of the population at the Lassen sighting area (referred to in the study as the modern Southern Cascades population) is 21 breeding individuals, with a 95 percent confidence interval of 13 to 34 breeding individuals (see also Statham *et al.* 2012, pp. 122, 123). The “effective size” of the population refers to the number of breeding individuals in

an “ideal” population (with discreet, non-overlapping generations, equal contribution of all members to the next generation, and free mixing prior to mate choice) that experiences the same amount of genetic drift (random change in gene frequencies) as the actual population (Lande and Barrowclough 1987, pp. 88–89). Actual Sierra Nevada red fox populations are likely to be somewhat larger than their effective population sizes because they include non-breeding individuals, including pups, and (possibly) adult offspring remaining on their parent’s territory to help raise their siblings. Such “helpers” are not uncommon in other red fox subspecies, though clear evidence of them has not been demonstrated in Sierra Nevada red fox (Wildlife Online 2015, p. 60; Sacks 2015, pp. 1–2). A high-end estimate of actual population size for the Lassen sighting area might therefore assume two non-breeders for every breeder, resulting in a total population of about 63 individuals (Sacks 2015, p. 2).

CDFW obtained 187 Sierra Nevada red fox scat and hair samples from the Lassen sighting area between 2007 and 2013, and was able to genetically identify 18 separate individuals from those samples (CDFW 2015, p. 1), thereby tending to support the low effective population size estimate (*i.e.*, 21 breeding individuals) of Sacks *et al.* (2010a, p. 1532). CDFW was also able to identify the source individuals for over 100 Sierra Nevada red fox genetic samples collected within the Caribou Wilderness (immediately east of Lassen Volcanic National Park within the sighting area) in 2012 and 2013, finding that no new individuals (*i.e.*, offspring) entered the population within the study area during those years (CDFW 2015, p. 2). Thus, successful reproduction in that portion of the sighting area during those years was low or nonexistent. However, CDFW cameras did photograph a Sierra Nevada red fox near the Caribou Wilderness in 2009 that appeared visibly pregnant (CDFW 2015, p. 2).

- *Sonora Pass sighting area*—This sighting area includes the general vicinity surrounding Sonora Pass, which includes lands that are owned and managed by Humboldt-Toiyabe National Forest, Stanislaus National Forest, and Yosemite National Park. The Sonora Pass sighting area includes several multi-year Sierra Nevada red fox residents (Quinn and Sacks 2014, p. 2), and so may be considered a population site rather than merely a dispersal area from some undiscovered population. Researchers (Sacks *et al.* 2015, p. 3) conducting a 3-year study in a portion of the sighting area from October 2011

through September 2014 used genetic tests to identify eight individuals. With the exception of a female killed on U.S. Highway 395, possibly while dispersing, all Sierra Nevada red fox sightings were found within an area of 13,000 ha (32,124 ac), extending both north and south from California State Route 108, within 3 km of the Sierra Crest (Quinn and Sacks 2014, p. 10). This study area constituted 20 to 50 percent of the contiguous high-quality habitat for the subspecies in the region (Quinn and Sacks 2014, p. 14), with the remainder of the high-quality habitat primarily extending south into the northern portion of Yosemite National Park (Quinn and Sacks 2014, pp. 10, 36). Thus, the Sacks *et al.* (2015, entire) study area south into the northern portion of Yosemite National Park is what we have roughly defined as the Sonora Pass sighting area. However, we note that this sighting area has been poorly surveyed for Sierra Nevada red fox due to rough terrain. It is likely that the data obtained by Quinn and Sacks (2014, entire) is representative of the entire population in the region because the area studied was of high quality habitat similar to the rest of the high quality habitat in the region (Quinn and Sacks 2014, p. 14), and because the area studied was large enough to support the assumption that the Sierra Nevada red fox included in the study were representative of the larger population (Quinn and Sacks 2014, pp. 10, 14).

Based on the extent of suitable habitat in the Sonora Pass sighting area, and on the number of adult Sierra Nevada red fox per hectare in the surveyed portion of the habitat at any given time (usually six adults in 13,000 ha (32,124 ac)), Quinn and Sacks (2014, pp. 3, 11, 14) estimated the total number of adult Sierra Nevada red fox in the entire Sonora Pass sighting area to be 14, with a likely range of 10 to 20. Repeated resampling of individuals over the 3-year study period (2011 through 2014) suggests that most adults with territories overlapping the study area were found (Quinn and Sacks 2014, p. 14). However, Quinn and Sacks (2014, pp. 11, 14; Sacks 2015, p. 1) indicated their estimates were “crude,” and that the total number of adults in the population could possibly be as high as 50 due to the presence of nonbreeding helpers at natal den sites.

Low population size estimates for the Sonora Pass sighting area were also supported by analyses of genetic diversity (Quinn and Sacks 2014, pp. 13–14). For instance, the average heterozygosity (a measure of genetic diversity) in nuclear deoxyribonucleic acid (DNA; from the cell nucleus) for

Sierra Nevada red fox (0.44) was lower than at the Lassen sighting area (0.53), suggesting that the population size at the Sonora Pass sighting area may be smaller (Quinn and Sacks 2014, pp. 13–14). Current heterozygosity levels at the Sonora Pass sighting area are also considerably lower than heterozygosity levels present historically (0.64), thus indicating a negative trend in population size (Quinn and Sacks 2014, pp. 13–14). Reductions in the diversity of mitochondrial DNA (mtDNA) since historical times also indicate a decline in population numbers (Quinn and Sacks 2014, p. 14).

Sacks *et al.* (2015, pp. 3, 9) found no evidence to indicate that any Sierra Nevada red fox successfully produced surviving, non-hybrid pups during their 3-year period within the study area at the Sonora Pass sighting area. However, two adult females were determined genetically to be the daughters of a known breeding Sierra Nevada red fox pair (Sacks *et al.* 2015, pp. 3, 9). Additionally, we note that hybridization of Sierra Nevada red fox with nonnative red fox is also known to occur within this small population (see *Hybridization With Nonnative Red Fox*, below).

#### Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be an endangered or threatened species based on any of the following five factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the Sierra Nevada red fox in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats to a species, we must look beyond the mere exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor but no response, or only a positive response,

that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine if that factor rises to the level of a threat, meaning that it may drive or contribute to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species as those terms are defined in the Act. However, the identification of factors that could impact a species negatively is not sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act.

An analysis of the potential threats for the Sierra Nevada red fox is included in the Species Report (Service 2015, entire) associated with this document (and available at <http://www.regulations.gov> under Docket No. FWS-R8-ES-2011-0103). All potential threats (identified in the Species Report as “stressors” or “potential stressors”) of which we are aware that may be acting upon the Sierra Nevada red fox currently or in the future (and consistent with the five listing factors identified above) were evaluated and addressed in the Species Report, and are summarized in the following paragraphs.

The following sections include summary evaluations of nine potential threats to the Sierra Nevada red fox that may have low or medium-level impacts on the subspecies or its habitat. Potential threats that may impact the subspecies in Oregon and California are those actions that may affect individuals or sighting areas either currently or in the future, including: Wildfire and fire suppression (*Factors A and E*); climate change (*Factor A*); hunting and trapping (*Factor B*); disease, to include salmon poisoning disease (SPD), elokomin fluke fever (EFF), and potentially mange, distemper, or rabies) (*Factor C*); competition and predation by coyotes, which could be exacerbated in the future dependent on climate change impacts to habitat (*Factors C and E*); predation by domestic dogs (*Factor C*); hybridization with nonnative red fox (*Factor E*); vehicles (*Factor E*); and small population size and isolation, specifically for the Lassen and Sonora Pass sighting areas (*Factor E*). We also note that potential impacts associated with logging/vegetation management and grazing were evaluated but found to result in low or no impacts, overall, across the subspecies’ range (see Service 2015, pp. 23–27, 30–32).

To provide a temporal component to our evaluation of potential stressors (*i.e.*, impacts into the future), we first determined whether we had data available that would allow us to reasonably predict the likely future impact of each specific stressor over time. Overall, we found that, for all potential stressors, the likelihood and severity of future impacts became too uncertain to address beyond a 50-year timeframe. For example:

- Logging and grazing impacts on National Forest lands are largely regulated by the Northwest Forest Plan (NWFP) and the Sierra Nevada Forest Plan Amendment (SNFPA). These governing regulations were first adopted in 1994 and 2004, respectively, but the primary impetus for their adoption was the question of how best to carry out logging, grazing, and vegetation management actions in a manner that is sustainable over the long term and that is consistent with applicable laws, including the Multiple Use—Sustained Yield Act of 1960, the Endangered Species Act, and the Federal Land Policy and Management Act of 1976 (USDA 1994, p. 5). As these governing laws have remained in place for 40 to 50 years, and an important management goal under those laws has been “long-term sustainability” (USDA and USDI 1994, p. 5), we consider 50 years a reasonable timeframe for considering future impacts.

- Laws governing hunting and trapping of red foxes in California and Oregon have remained largely unchanged since 1974 and 1978, respectively (CDFG 1987, p. 4; Oregon Department of Fish and Wildlife (ODFW) 2011, p. 26); thus, we consider regulatory mechanisms sufficiently stable to support a 50-year timeframe.

- In analyzing potential impacts from disease, small isolated populations, hybridization, coyote competition, and vehicles, we considered all available information regarding any future changes that could alter the likelihood or extent of impacts. We had no such information extending beyond a 50-year timeframe.

- Although information exists regarding potential impacts from climate change beyond a 50-year timeframe, the projections depend on an increasing number of assumptions, and thus become more uncertain with increasingly large timeframes. Therefore, a timeframe of 50 years is used to provide the best balance of scope of impacts considered, versus certainty of those impacts.

Each potential stressor was evaluated to determine the likely impact to Sierra Nevada red foxes or their habitat. The

Species Report describes impacts using the following general categories:

- A low-level impact indicates a stressor is impacting individual Sierra Nevada red fox currently or in the future, or a stressor is resulting in a minor amount of habitat impacts or possibly temporary habitat impacts currently or in the future.
- A medium-level impact indicates a stressor is impacting Sierra Nevada red fox at the population (or sighting area) level currently or in the future, or a stressor is resulting in more serious impacts to suitable habitat at the population (or sighting area) level currently or in the future.
- A high-level impact indicates a stressor is significantly impacting Sierra Nevada red fox at the subspecies level currently or in the future, or a stressor is causing significant impacts to suitable habitat at the subspecies level currently or in the future.

#### *Competition With Coyotes*

Both coyotes and Sierra Nevada red foxes are opportunistic predators with considerable overlap in food consumed (Perrine 2005, pp. 36–37). Perrine (2005, pp. 84, 105) suggests that competition with coyotes (*Factor C*), as well as predation as described below, is likely a primary reason why the range of Sierra Nevada red fox is restricted to such high elevations. Any competition likely varies in intensity with prey availability, specifically including in the Lassen sighting area where competition may be stronger during winter months when Sierra Nevada red fox descend in elevation. See the *Predation by Domestic Dogs or Coyotes* section, below, and *Summary of Species Information* section, above, for additional discussion and background information on Sierra Nevada red fox/coyote interactions.

Coyotes occur throughout the current range of the Sierra Nevada red fox, but typically at lower elevations during winter and early spring when snowpacks are high. If snowpacks are reduced in area due to climate change, coyotes would likely encroach into high-elevation areas during early spring when Sierra Nevada red fox are establishing territories and raising pups. Even in the absence of direct predation, the tendency of coyotes to chase off red foxes generally, and to compete with Sierra Nevada red fox for prey, may interfere with the ability of the subspecies to successfully raise offspring (Service 2015, pp. 48–51).

Coyotes were rare or nonexistent in the Oregon Cascades prior to about 1930, but their numbers increased after that time due to the extirpation of gray



wolves (*Canis lupus*), which is a species that tends to compete with and help control coyote population numbers as opposed to impacting smaller species like red fox (Toweill and Anthony 1988, p. 507). Coyote populations also benefitted from clearcutting, which left numerous forest openings in which productivity of berries and prey species was increased (Toweill and Anthony 1988, p. 511); however, timber practices today are much improved compared to those used in the past, in large part due to the NWFP and beneficial management operations as outlined in the National Forests LRMPs. Coyote numbers may also be controlled to an unknown degree into the future given the recent establishment of two packs of the federally endangered gray wolf in the southern Cascades between the Crater Lake and Lassen sighting areas, and likely future growth of these packs or establishment of additional wolf packs. Restoration of wolves to the Cascades in sustainable populations would likely lower coyote population numbers or exclude them from higher elevation forested areas, thereby facilitating the persistence of Sierra Nevada red fox populations (Levi and Wilmers 2012, p. 926); wolves are unlikely to compete heavily with Sierra Nevada red fox because they tend to take larger game (ODFW 2015, p. 8).

Overall, the potential increase of coyote competition as it relates to shifting or modified habitats, or diminished snowpack levels from potential climate change impacts, may still occur throughout the range of the subspecies. The best available data indicate presence of coyotes at the same elevations as Sierra Nevada red fox during certain times of the year; however, there is no information to indicate any population-level impacts. Coyote populations in the southern Cascades sighting areas might not grow over the next 50 years given a decrease in clearcutting as compared to historical timber activity, continued presence of snowpacks at high-elevation areas that are not favorable to coyotes, and the presence and potential increase in wolf presence in Oregon and northern California. As a result, based on the information presented above and in the Species Report (Service 2015, pp. 48–51), the best available data indicate that the impact of coyote competition with Sierra Nevada red fox may occur across the subspecies' range at similar levels (*i.e.*, potential impacts to individuals) into the future, although potentially to a lesser degree in the southern Cascades. Similar to the potential impacts resulting from coyote predation (see

*Predation by Domestic Dogs or Coyotes*, below), there may be an overall medium-level impact on the subspecies (*i.e.*, impacts to multiple populations). However, this stressor does not rise to the level of a threat currently or in the future because information indicates coyote presence (and potential competition) is likely occurring within portions of most of the sighting areas, and the best available data indicate, at most, potential impacts to individuals. Also, information indicates that coyote populations occurring in the southern portion of the Cascade Range in Oregon and California may be naturally controlled as a result of the current wolf packs that are likely to increase in size into the future, thus decreasing the likelihood of coyotes causing a subspecies-level impact on the Sierra Nevada red fox.

#### *Wildfire and Fire Suppression*

Wildfires may impact Sierra Nevada red fox by modifying suitable habitat that the subspecies relies on for multiple aspects of its life history (*e.g.*, reducing denning habitat, reducing or eliminating habitat conditions that support an adequate prey base) (*Factor A*). In general, wildfires in western States, including California and Oregon, have been more frequent, larger, and more intense in the past 50 years, and particularly in the past 15 years (Independent Scientific Advisory Board (ISAB) 2007, pp. 22–23). These increases are directly correlated with climate change (ISAB 2007, pp. 22–23; USDA 2004, p. 6) (see *Climate Change*, below), and are likely to continue. Long-term habitat changes caused by wildfires acting in concert with increased temperatures and altered moisture regimes could possibly result in tree mortality or long-term removal of forested habitat that the subspecies relies on.

Wildfire could also potentially impact individual Sierra Nevada red fox directly through mortality (*Factor E*). However, fires generally kill or injure a relatively small proportion of animal populations, particularly if they are mobile (Lyon *et al.* 2000, pp. 17–20), and the best available data do not indicate that wildfire is causing loss of individual Sierra Nevada red fox. If direct mortality of individual Sierra Nevada red fox occurs, we expect the impact to be discountable because the subspecies is capable of rapid evacuation from an approaching fire, and adequate suitable habitat exists adjacent to the existing sighting areas to establish a new home range (provided the majority of the suitable habitat within the sighting area vicinity is not

subjected to an overly large, high-severity wildfire). However, there are no reports of direct mortality to red foxes, including the Sierra Nevada subspecies, from fires (Tesky 1995, p. 7).

Fire suppression can change suitable habitat conditions for the Sierra Nevada red fox to denser stands of trees with fewer open meadow or shrub areas, thereby potentially reducing the prey base for the subspecies (*Factor E*). Fire suppression could also lead to direct effects on Sierra Nevada red fox by allowing greater fuel buildup, thereby producing larger and hotter wildfires. Researchers (Miller 2003, p. 379; Truex and Zielinski 2013, p. 85) indicate that potential current and future concerns are associated with historical policies of wildfire suppression in western North America that have led to unnatural fuel accumulations and an increased risk of uncharacteristically severe wildfires, which may also be the case specifically within the Sierra Nevada red fox's range.

Although wildfire and fire suppression have the potential to result in negative impacts to Sierra Nevada red fox or their habitat, short-term habitat impacts from all but the largest fires can also benefit Sierra Nevada red foxes by encouraging growth of grasses and shrubs, which in turn lead to increases in small mammal populations preyed on by the subspecies (Tesky 1995, p. 7), as well as increases of fruiting shrubs that are an important supplementary food source (Tesky 1995, p. 8; Perrine 2005, p. 191). These benefits, coupled with active vegetation or management strategies that help reduce hazardous fuel accumulations (such as those strategies outlined in the SNFPA, NWFP, and LRMPs, the latter of which include the Mt. Hood, Willamette, Deschutes, Umpqua, Winema, Rogue River, Klamath, Shasta-Trinity, Lassen, Tahoe, El Dorado, Stanislaus, Sierra, Inyo, Sequoia, and Humboldt-Toiyabe National Forest LRMPs within the range of the subspecies) could have the greatest impact on Sierra Nevada red fox. Additionally, wildfire is not a major disturbance of habitat within the range of the Sierra Nevada red fox, primarily due to the subspecies' residence at high-elevation areas of the Cascades and Sierra Nevada. Recent wildfires have occurred in portions of the Mt. Hood (2011 Dollar Lake fire), Dutchman flat (2012 Pole Creek fire), Lassen (2012 Reading fire), and Sonora Pass (2013 Rim fire) sighting areas. These wildfires are not expected to have permanent, long-term impacts that would prevent the subspecies from remaining or returning to these areas. For example, following the 2012 wildfire at

Dutchman Flat (which was a stand-replacing wildfire), Sierra Nevada red fox were recently detected within the fire perimeter at two locations (McFadden-Hiller and Hiller 2015), indicating minimal impacts to the subspecies given the short time period between the wildfire and the recent 2014 detections in this sighting area.

Based on the analysis contained within the Species Report and summarized above, we expect an increased risk of wildfire overall, and the recent occurrence of such fires at or near various Sierra Nevada red fox sighting areas impacts the subspecies' habitat, at least minimally, for periods of few to several years. The prevalence of such fires is likely to increase in the future due to climate change (see *Climate Change*, below). However, there are no reports of direct mortality to red foxes from wildfires, and wildfires can improve habitat for red foxes by removing competing vegetation and encouraging production of grasses and shrubs favored by small mammals (Tesky 1995, p. 7), which the Sierra Nevada red fox depends upon as a prey base. Accordingly, these potential impacts are balanced with the potential benefits, thus resulting in our consideration of wildfire and fire suppression to constitute a low-level impact that does not rise to the level of a threat either currently and into the future.

#### *Climate Change*

"Climate" refers to the mean and variability of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (Intergovernmental Panel on Climate Change [IPCC] 2013, p. 1,450). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2013, p. 1,450). A recent synthesis report of climate change and its effects is available from the IPCC (IPCC 2014, entire).

Changes in climate may have direct or indirect effects on species (*Factor A*). These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation, fire frequency) (IPCC 2007, pp. 8–14, 18–19). Typically, expert judgment and appropriate analytical approaches are

used to weigh relevant information, including uncertainty, in various aspects of climate change.

Global climate projections are informative, and in some cases, the only scientific information available. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007, pp. 8–12). Therefore, we use "downscaled" projections (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling) when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given taxon. For this analysis across the range of the Sierra Nevada red fox, downscaled projections are used in addition to some California and Pacific Northwest regional climate models, which generally encompass a range of sensitivities to low-emission and medium- to high-emission scenarios. The differences between higher- and lower-emissions scenarios are minimal in the next few decades, but become increasingly pronounced after the mid-21st century (Mote and Salathé 2010, p. 39; Cayan *et al.* 2009, p. 7). However, the current emissions trajectory is higher than any of the emissions scenarios used in climate projections for California and the Pacific Northwest (Hansen *et al.* 2013, pp. 1–2). Therefore, the projections we discuss here may underestimate the potential effects of climate change.

All simulations project a larger increase in temperature across the analysis area over the 21st century than occurred during the 20th century. Projections for temperature increases across the analysis area range from 1 °Celsius (C) to 3 °C (1.8 °Fahrenheit (F) to 5.4 °F) by mid-century and from 2 °C to 5.8 °C (3.6 °F to 10.4 °F) by late in the 21st century (Mote *et al.* 2013, p. 34; Pierce *et al.* 2013, p. 844; Cayan *et al.* 2012, p. 4; Halofsky *et al.* 2011, p. 14; Mote and Salathé 2010, p. 41; Hayhoe *et al.* 2004, p. 12423).

Over the past 50 years, warming temperatures have led to a greater proportion of precipitation falling as rain rather than snow, earlier snowmelt, and a decrease in snowpack throughout the western United States (Kapnick and Hall 2010, pp. 3446, 3448; Halofsky *et al.* 2011, p. 21). The consequent lengthening of summer drought and associated increases in mean annual temperature have, in recent decades, caused increased tree mortality rates in mature conifer forests in the range of the SNRF (van Mantgem *et al.* 2009, pp.

522–523). In addition to increased tree mortality, water deficit from climate change is also expected to decrease seedling establishment and tree growth in many currently forested areas, thereby altering tree species distributions (Littell *et al.* 2013, p. 112). Montane scrub communities, which require less water, may tend to increase, thereby decreasing and isolating areas of appropriate habitat for the subspecies. For example, soil types at higher elevations may not support dense forests with a 40 percent or greater canopy cover (Fites-Kaufman *et al.* 2007, pp. 457–458). Thus, this type of vegetation change/shift could lead to greater competition and predation from coyotes (which are better adapted to drier and warmer conditions; see *Competition with Coyotes*, above). Potential shifts in future vegetation type may lead to range shifts for the Sierra Nevada red fox in some localities, although information is not available to indicate precisely where nor how rapidly this may occur. It is important to note that studies of climate change present a range of effects, although conditions are not expected to change to a degree that would be considered significant within the next 50 years. Overall, it is not clear how finer-scale abiotic factors may shape local climates and influence local vegetation trends either to the benefit or detriment of Sierra Nevada red fox, nor is the timeframe clear over which these influences may be realized.

The Sierra Nevada red fox's currently suitable habitat may also be affected by climate change with relation to reduced snowpack, which in turn could result in habitat conditions more suitable for coyotes, thus potentially increasing the level of competition from or predation by coyotes. This is discussed in more detail in the *Predation by Domestic Dogs or Coyotes* (above), *Competition With Coyotes* (above), and *Cumulative Effects* (below) sections. In general, given the best available information, we expect coyotes to remain throughout the Sierra Nevada red fox's range, but we do not expect coyote populations to grow over the next 50 years based on the current and past best available information regarding coyote presence. The potential for coyote competition or predation exists, and it may possibly increase as it relates to shifting habitats from potential climate change impacts. However, any increase would likely be minimal into the future given the continued presence of snowpack at high-elevation areas over the next 50 years. Additionally, it is probable that the presence of wolves (which are likely

to compete with coyotes but not Sierra Nevada red fox (see *Competition With Coyotes* (above)) could be reduced currently and into the future particularly in areas with newly established wolf packs (such as the two wolf packs currently known to occur between the Crater Lake and Lassen sighting areas in the Southern Cascades).

Overall, studies of climate change present a range of effects on vegetation and snowpack levels, including those that indicate conditions are likely to remain suitable for Sierra Nevada red fox throughout its range into the next 50 years. It is also probable that the severity of potential impacts to Sierra Nevada red fox habitat will likely vary across the range, with effects to the subspecies potentially ranging from negative to neutral. The most significant potential future impact is reduced snowpack levels that in turn could make Sierra Nevada red fox habitat more suitable to coyotes and thus cause the fox to shift up in elevation to remain in higher snowpack areas. If this occurs, it would likely pose the greatest risks to the subspecies at the Sonora Pass sighting area because the currently occupied area is relatively small, with a narrow elevational range, and the subspecies is already occupying the highest elevations in the area. Sighting areas at Lassen and Crater Lake also may be at an elevated risk into the future because the subspecies is already using most of the highest elevation habitats available. In considering these factors, the Species Report ascribed a medium-level impact to Sierra Nevada red fox for this stressor (Service 2005a, pp. 47–48). Modeling projections are done at a large scale, and effects to species' habitat can be complex, unpredictable, and highly influenced by local-level biotic and abiotic factors. Although many climate models generally agree about potential future changes in temperature and a greater proportion of precipitation falling as rain rather than snow, the consequent effects on snowpack levels and possibly vegetation changes are more uncertain, as is the rate at which any such changes might be realized. Therefore, it is not clear how or when changes in snowpack levels, forest type, or plant species composition will affect the distribution of Sierra Nevada red fox habitat. Thus, uncertainty exists when determining the level of impact climate change may have on Sierra Nevada red fox habitat. Consequently, at this time and based on the analysis contained within the Species Report and summarized above, we have determined that we do not have reliable information to indicate that climate change is a

threat to Sierra Nevada red fox habitat now or in the future, although we will continue to seek additional information concerning how climate change may affect the subspecies' habitat.

#### *Trapping or Hunting*

##### Trapping for Fur

The Sierra Nevada red fox has historically been hunted and trapped for its thickly furred pelt, which was the most valuable of any terrestrial animal in California (Grinnell *et al.* 1937, pp. 396–397). The average yearly harvest in California was approximately 21 animals in the 1920s (Grinnell *et al.* 1937, p. 389); by the 1940s and 1950s (over the 20-year period), the average yearly harvest in California had decreased to 6.75 animals (Perrine 2005, p. 154). Legal Sierra Nevada red fox fur trapping in California ended in 1974 (CDFG 1987, p. 4; Perrine 2005, p. 2). Until recently, Sierra Nevada red fox in Oregon were considered to be Cascade foxes—of the same subspecies that occupied the Cascades in Washington (Sacks *et al.* 2010a, p. 1536). Fur trapping is regulated and remains legal throughout Oregon (*Factor B*), although information is not available regarding historical hunting and trapping pressures on foxes in the Oregon Cascades.

Due to regulatory protections, hunting and trapping do not constitute a current or likely future stressor to Sierra Nevada populations in California or at the Crater Lake sighting area in Oregon, as there is no legal hunting or fur trapping for Sierra Nevada red fox in California or at Crater Lake National Park where the sightings in that area are known. In the counties where the other four Oregon sighting areas occur, low numbers of red foxes are harvested, some of which may be Sierra Nevada red fox. Fox harvest rates in Oregon have generally been low, however, and have been declining in recent years. Hunting and trapping potentially impact individual Sierra Nevada red fox within the four Oregon sighting areas (excluding Crater Lake). However, in the absence of more definite information regarding population levels of the subspecies in Oregon, we do not consider such harvest levels likely to produce detrimental impacts to Sierra Nevada red fox populations, as a whole, across its range. These activities therefore constitute stressors meeting the definition of low-level impact. The best available data indicate that relatively few red fox (some of which may be Sierra Nevada red fox) are removed from an unknown number of populations as a result of fur trapping in Oregon, and

we have no evidence to suggest that the subspecies is in decline as a consequence of fur trapping.

Based on the analysis contained within the Species Report and summarized above, we consider the legal fur trapping of Sierra Nevada red fox as having no overall impact to Sierra Nevada red fox at the Sonora Pass, Lassen, and Crater Lake sighting areas, as there is no legal fur trapping for Sierra Nevada red fox in California and at Crater Lake National Park. Fur trapping harvest for red fox in the four remaining Oregon sighting areas is relatively minimal, and red fox harvested are likely not trapped or minimally trapped in the high elevations where the Sierra Nevada red fox resides. Thus, we estimate at most a low level of impact to the four northernmost sighting areas in Oregon. We estimate that the potential impacts of fur trapping on Sierra Nevada red fox in Oregon (outside of the Crater Lake sighting area) will continue at a similar level, both currently and into the future, because the best available data do not suggest that either fur trapping effort or impacts are likely to change. Additionally, of note for California, we expect that nearly all Sierra Nevada red fox that are accidentally captured in box traps (body-gripping traps are illegal in California) set for other furbearer species, or that are live-trapped for research purposes, will be released unharmed. As a result of this best available information for Oregon and California, we have determined that fur trapping, overall, does not have a significant population-level impact across the subspecies' range and therefore does not rise to the level of a threat currently nor is it likely to increase into the future.

##### Trapping for Research Purposes

We consider the potential impacts of live-trapping and handling for research purposes (*Factor B*) on Sierra Nevada red fox as discountable. There is limited distribution of Sierra Nevada red fox research projects across the subspecies' range (*e.g.*, noninvasive sampling (hair and scat collection), camera-trapping, or both, at Sonora Pass, Lassen, Mount Hood; and in other Oregon sighting areas as funding permits). The best available data indicate that no Sierra Nevada red fox have been injured or killed as a result of research-related live-trapping or handling efforts. Available information does not suggest that there would be any change to the level of anticipated impacts of live-trapping and handling for research purposes into the future, and, therefore, we find that the potential impacts to the Sierra Nevada

red fox from trapping for research purposes do not rise to the level of a threat.

#### Disease

Numerous pathogens are known to cause severe disease (*Factor C*) in canids. Those that have the highest potential to have population-level impacts on Sierra Nevada red fox are sarcoptic mange, canine distemper, and rabies (Perrine 2010, pp. 17, 28), as well as SPD and EFF. Although the CDFW (2015, p. 2) has noted cases of rabies and distemper in gray foxes (*Urocyon cinereoargenteus*) in Lassen County, the best available data do not indicate impacts to Sierra Nevada red fox from these three diseases in any of the seven sighting areas. Future impacts of such diseases on any given population are difficult to predict, but the low population densities of the subspecies (Perrine *et al.* 2010, p. 9) should make transmission within a population or sighting area less likely except within family groups. The relative isolation of the sighting areas themselves should make transmission from one such area to another less likely, particularly for the Lassen, Sonora Pass, Crater Lake, and Mt. Hood sighting areas because they are the most physically separated from the sighting areas nearest to them.

SPD and EFF are known to occur within the subspecies' range and could potentially result in bacterial infections that are typically fatal to canids. Foxes are highly susceptible to SPD, as are domestic dogs and coyotes (Cordy and Gorham 1950, p. 622; Headley *et al.* 2009, p. 1). The responsible bacterium, *Neorickettsia helminthoeca*, is transmitted to canines when they eat infected fish (generally, but not solely, salmonids—trout or salmon), or infected Pacific giant salamanders (*Dicamptodon* spp.) (Headley *et al.* 2009, pp. 3, 4; Rikihsa 2014, p. 2). The range of the SPD (and thus presumably of the host snail) extends north from California (north of the Sonora Pass sighting area, but including the Lassen sighting area) through western Oregon (including the western slopes of the Cascades) to the Olympic Peninsula of Washington State (Headley *et al.* 2009, p. 2). Naturally occurring cases of SPD infection have been found in red foxes in the past (Todoroff and Brown, p. 5), though never in Sierra Nevada red fox. Additional future opportunities for ingestion of infected fish may occur in the Lassen sighting area, as improvements to Pine Creek allow infected Eagle Lake trout to spawn in headwaters of the creek within the Lassen sighting area. EFF is widely present in Oregon and is transmitted in

the same manner as SPD (with the same flatworm vector and snail host) (Rikihsa 2014, pp. 1–3).

The presence of SPD and EFF within the range of the Sierra Nevada red fox is considered minimal, with no exposures detected within the subspecies. As stated above, SPD is native in western Oregon, from the coast to the western slopes of the Cascades (Headley *et al.* 2009, p. 2), and EFF is endemic throughout Oregon. Thus, all five Oregon sighting areas are subject to exposure. We also consider the likelihood of exposure of SPD and EFF in the Oregon Cascades to have remained constant (but low) in recent years, and expect that it will continue at the same level into the future. The Lassen sighting area is outside the historical range of SPD (Todoroff and Brown 2014, p. 6), and we have no information regarding presence of EFF at that location. However, rainbow trout from various hatcheries are stocked in the Lassen National Forest for recreational fishing (Todoroff and Brown 2014, p. 15). The Sonora Pass sighting area is unlikely to be exposed because CDFW does not stock fish from northern California south of the Feather River in order to prevent transmittal of diseases (including SPD and EFF) (Beale 2011, p. 1).

Overall, despite possible exposure to pathogens, no outbreaks of sarcoptic mange, canine distemper, rabies, SPD, or EFF have been detected in Sierra Nevada red fox, and we have no evidence to suggest that disease has impacted Sierra Nevada red fox in the past, nor do we have evidence to suggest that any diseases are present currently or will be present in the future in any of the Sierra Nevada red fox sighting areas. Additionally, given the current sighting areas are disjunct from one another, this would be beneficial in terms of reducing the ease of transmission of disease between the sighting areas, should an outbreak occur. Thus, as presented in the Species Report and summarized here, the best available scientific and commercial data do not indicate that a disease outbreak has had, or is likely to have, a significant population-level effect on Sierra Nevada red fox. We note that there is a low probability that a disease outbreak may occur. We anticipate that if there should be an outbreak, it will likely have a low effect on all seven sighting areas combined, as the distance between them makes it unlikely that the effects of such an outbreak would spread. Thus, we have determined that disease has a low-level population impact across the range of the Sierra Nevada red fox and, therefore, does not

rise to the level of a threat currently nor is it likely to increase into the future.

#### Predation by Domestic Dogs or Coyotes

Sierra Nevada red fox could be predated on by domestic dogs at recreational areas (such as ski lodges or national parks) within their sighting areas, and in the course of being hunted with dogs, in any of the Oregon sighting areas other than at Crater Lake (*Factor C*). Dogs are more likely to interact with Sierra Nevada red fox at the Crater Lake and Willamette Pass sighting areas (but they also could potentially be found along many other roads or recreational areas (*e.g.*, hiking trails) within the subspecies' range), where they are allowed on roads, parking lots, campgrounds, and picnic areas. To date, one documented case of Sierra Nevada red fox predation by a dog exists (*i.e.*, a radio-collared female Sierra Nevada red fox was found dead in October 2002, as a result of a dog attack within 175 m (574 ft) of a ski chalet in the Lassen sighting area (Perrine 2005, p. 141)). Overall, the best available information indicates that predation by dogs is not producing population-level or subspecies-level effects to Sierra Nevada red fox currently, nor is this stressor expected to increase in the future. Therefore, predation by dogs is considered a low-level impact that may potentially impact individuals across the subspecies' range (although more likely in two of the seven sighting areas) and, therefore, does not rise to the level of a threat to the subspecies currently nor is it likely to increase into the future.

Sierra Nevada red fox could also be predated by coyotes (*Factor C*). Sierra Nevada red fox and coyotes both are opportunistic predators with considerable overlap in food consumed (Perrine 2005, pp. 36–37). Although no direct documentation of coyote predation on Sierra Nevada red fox is available, coyotes will chase and occasionally kill other North American red fox subspecies, and are considered important competitors of red fox generally (Perrine 2005, pp. 36, 55; Perrine *et al.* 2010, p. 17). Thus, red foxes tend to avoid areas frequented by coyotes (though not necessarily to the point of complete exclusion) (Perrine 2005, p. 55). Additional discussion specifically related to coyote competition with Sierra Nevada red fox is presented in *Competition With Coyotes*, above.

The general tendency of red foxes to avoid coyotes often relegates them to suboptimal habitats and has likely been an important factor determining red fox distribution (Perrine 2010, p. 20; Sacks

*et al.* 2010b, p. 17). Perrine (2005, pp. 84, 105) suggests that predation (and competition; see *Competition With Coyotes*, above) from coyotes is likely a primary reason why the range of Sierra Nevada red fox is restricted to such high elevations.

Minimal information exists on Sierra Nevada red fox and coyote interactions with relation to the potential for predation. Perrine's (2005, pp. 73–74) investigations at the Lassen sighting area during summer months found coyotes present at all elevations with a positive correlation between Sierra Nevada red fox and coyotes during that time (which was a likely artifact of their common affinity for roads (Perrine 2005, p. 83)). However, Perrine (2005, p. 192) found coyote population density to be greater at lower elevations, thus producing an elevational separation between most coyotes and the Sierra Nevada red fox population. During winter months in the Lassen sighting area, Perrine (2005, pp. 30, 78) found that both Sierra Nevada red fox and coyotes descended to lower elevations, where mule deer (*Odocoileus hemionus*) (and more specifically in the case of Sierra Nevada red fox, mule deer carrion) became important components of their diets. Perrine (2005, p. 31) also notes that Sierra Nevada red fox may potentially benefit from the presence of coyotes during winter by scavenging deer carcasses killed by coyotes. However, Sierra Nevada red fox, whose main winter food source (at the Lassen study site) was small rodents rather than deer (Perrine 2005, p. 24), tend to stay at higher elevations than coyotes, thereby reducing potential predation.

At this time, the best available data indicate that coyotes are present year-round throughout the subspecies' range, but generally at lower elevations than Sierra Nevada red fox during winter and early spring when snowpacks are high (Service 2015, p. 52). Regardless, information does not indicate there has been any coyote predation on Sierra Nevada red fox, nor is there any information to indicate that coyotes are increasing at any of the sighting areas. However, as climate change progresses, climatologists predict that snowpacks are expected to diminish in the future (Kapnick and Hall 2010, pp. 3446, 3448; Halofsky *et al.* 2011, p. 21). Thus, higher elevations with deep snowpack that currently deter coyotes may become more favorable to them, potentially increasing the likelihood of coyote predation in the future. For instance, in the Sonora Pass sighting area, unusually low snowpacks occurred in 2013 (Rich 2014, pers. comm., p. 1), which allowed a family of four coyotes to establish a

year-round territory in the high-elevation portions of the range (Quinn and Sacks 2014, p. 12). Sierra Nevada red fox are likely to be most vulnerable to predation and competition from coyotes during early spring because Sierra Nevada red fox typically establish territories and begin raising pups around that time. In some sighting areas, the subspecies may be able to respond to reduction of snowpacks and encroachment of coyotes by retreating to higher elevations to raise pups. But in the Crater Lake, Lassen, and Sonora Pass sighting areas, Sierra Nevada red fox already occupy the highest available elevations.

Recently, two packs of gray wolves have become established in the Southern Cascades between the Crater Lake and Lassen sighting areas (one pack each in Oregon and California). It is probable that restoration of wolves to the Southern Cascades in sustainable populations would lower coyote population numbers or exclude them from higher elevation forested areas, thereby facilitating the persistence of nearby Sierra Nevada red fox populations (Levi and Wilmers 2012, p. 926); wolves are unlikely to compete heavily with Sierra Nevada red fox because they tend to take larger game (ODFW 2015, p. 8). At this time in Oregon, ODFW's conservation objectives for the wolf include establishment of seven breeding pairs in western Oregon for 3 consecutive years (ODFW 2010, p. 17). In California, the wolf pack discovery is so new that CDFW and the Service have just initiated coordination efforts, and we anticipate additional conservation-related coordination efforts in the near future. Accordingly, we consider it likely that the current wolf population will expand over the next 50 years to effectively overlap the Crater Lake sighting area, and possibly the Willamette Pass, Dutchman Flat, and Mt. Washington sighting areas (ODFW 2015, pp. 3, 4). Therefore, we currently lack information that coyote predation on Sierra Nevada red fox is likely to occur over the next 50 years at the Crater Lake sighting area, or at the three more-northerly Oregon sighting areas.

Based on the best available scientific and commercial data, we find that predation may have had an overall low-level impact to the Sierra Nevada red fox due to the presence of coyotes co-occurring at multiple sighting areas within the subspecies' range; the potential for predation in the Crater Lake, Lassen, and Sonora Pass sighting areas into the future given climate model projections of decreased snowpack levels that may make the

habitat more favorable to coyotes; and the overall inability of the populations at those three locations to shift up in elevation (*i.e.*, the Crater Lake, Lassen, and Sonora Pass populations appear at or near the highest elevations available for the subspecies). However, at this time, the best available data indicate that predation is not impacting the Sierra Nevada red fox at the subspecies-level to the degree that any more than individuals at a couple of the sighting areas may be affected both currently and into the future. Further, the best available data do not indicate that potential future changes in shifting habitat at high elevations (as suggested by climate models) would occur within the next 50 years to such a degree that coyote numbers would increase significantly throughout the subspecies' range to the point that coyote predation would rise to the level of a threat. Therefore, based on the analysis contained within the Species Report and summarized above, we have determined that predation does not rise to the level of a threat currently nor is it likely to increase into the future.

#### *Hybridization With Nonnative Red Fox*

Hybridization of Sierra Nevada red fox with other nonnative red fox (*Factor E*) could result in outbreeding depression or genetic swamping (Quinn and Sacks 2014, pp. 16–17). Outbreeding depression is a reduction in survivorship or reproduction caused by an influx into the population of alleles from other areas. Such a reduction can be caused by the loss of locally adaptive alleles, or by the breakup of co-adapted gene complexes (*i.e.*, groups of alleles that work together to provide a particular ability or advantage in the native habitat) (Templeton 1986, pp. 106–107; Quinn and Sacks 2014, p. 17). Genetic swamping occurs when continued influx of outside alleles cause the replacement of most native alleles, effectively turning what was once a native population into a population of some other subspecies or species.

The best available data indicate that hybridization with nonnative red fox has been documented within the Sierra Nevada red fox's range at two sighting areas. First, hybridization with nonnative red fox is occurring at the Sonora Pass sighting area (Quinn and Sacks 2014, pp. 2, 10). Researchers documented interbreeding between female Sierra Nevada red fox and two male nonnative red foxes, resulting in seven hybrid pups in 2013, and an additional four hybrid pups in 2014 (Sacks *et al.* 2015, p. 3). These hybrids were the only clear indication of

successful reproduction in the study area between 2011 and 2014. In comparison, only eight full-blooded Sierra Nevada red fox were identified in the area during those years (Sacks *et al.* 2015, p. 3). Second, two Sierra Nevada red fox individuals at the Mt. Hood sighting area show evidence (via genetic testing of mtDNA) of past hybridization with nonnative red foxes, although the timing and extent of that hybridization remains unknown (Akins and Sacks 2015, p. 1).

Based on the information presented above and in the Species Report (Service 2015, pp. 42–43), the best available data indicate that nonnative red fox are currently present in one sighting area (*i.e.*, the Sonora Pass sighting area) and historically known from the Mt. Hood sighting area but not known to be present currently. These are the only sighting areas within the subspecies' range where hybridization has been documented to date, although it is possible that nonnative red fox could occur in other portions of the subspecies' range. At this time, based on the best available scientific and commercial information, this stressor does not rise to the level of a threat to the subspecies because information indicates hybridization is currently occurring within portions of only one sighting area across the subspecies' range, with only a single record of past hybridization occurring at the Mt. Hood sighting area, and we have no information to indicate this level of impact will increase into the future.

#### Vehicles

Collision with vehicles (*Factor E*) is a known source of mortality for the Sierra Nevada red fox currently and is expected to continue into the future, given the presence of roads within the range of the subspecies. A low density of roads with heavy traffic traveling at high speeds (greater than 45 miles per hour) suggest that few individuals die from vehicle collisions. There are a total of three reports since 2010 of road-killed Sierra Nevada red foxes across the subspecies' range, one each occurring at the Sonora Pass sighting area (California State Highway 395), the Crater Lake sighting area (main Park road near administration building), and near Silver Lake, Oregon, about 80 km (50 mi) west of the Crater Lake sighting area (Statham *et al.* 2012, p. 124; Mohren 2015, p. 1; Doerr 2015, p. 14).

Snowmobiles are another potential source for collisions and noise disturbance (*Factor E*) in all sighting areas with the exception potentially of the Lassen sighting area and a small area in the northwest portion of the Crater

Lake sighting area, given the high level of recreational activity within or adjacent to those sighting areas. However, no snowmobile-related incidents have been reported. Researchers are currently investigating potential impacts of snowmobile activity to Sierra Nevada red fox in the Sonora Pass sighting area in accordance with Standard 32 from the SNFPA, which requires activities near verified Sierra Nevada red fox sightings to be analyzed to determine if they have a potential to affect the subspecies (USDA 2004, p. 54; Rich 2014, p. 1). Results are not yet available, in part because the snowpack has been low during the last two winters (those ending in 2013 and 2014), and, therefore, the area has not been available for snowmobile use (Rich 2014, p. 1). Additionally, although no studies have been completed, the mere location of the Sierra Nevada red fox sightings in these areas suggest that the subspecies adjusts to the noise involved, and that sufficient Sierra Nevada red fox prey remain in such areas.

Overall across the Sierra Nevada red fox's range, few Sierra Nevada red fox are killed as the result of collisions with vehicles. We expect that in the future a small number of individuals will be struck by vehicles, including dispersing juveniles searching for unoccupied suitable habitat for establishment of a home range. However, the best available information does not suggest any significant increases in vehicular traffic or new roads are likely in areas where the subspecies occurs. Therefore, based on the information presented above and in the Species Report (Service 2015, pp. 53–55), the best available data indicate that the impact of vehicle collisions on Sierra Nevada red fox will be minor and continue at similar levels into the future, resulting in a low-level impact on the subspecies (*i.e.*, impacts to individual Sierra Nevada red foxes as opposed to populations); therefore, this stressor does not rise to the level of a threat.

#### Small and Isolated Population Effects

Small, isolated populations (*Factor E*) are more susceptible to impacts overall, and relatively more vulnerable to extinction due to genetic problems, demographic and environmental fluctuations, and natural catastrophes (Primack 1993, p. 255). That is, the smaller a population becomes, the more likely it is that one or more stressors could impact a population, potentially reducing its size such that it is at increased risk of extinction. Particularly small populations may suffer reproductive decreases due to demographic stochasticity: A sex ratio

heavily skewed by chance from 50:50 (Soule and Simberloff 1986, p. 28). Inbreeding depression may result from the accumulation of deleterious alleles (gene variants) in the population (Soule 1980, pp. 157–158). This happens because alleles in general tend to be lost quickly from small populations due to the chance nature of reproduction (genetic drift) (Soule 1980, pp. 157–158). Additionally, inbreeding effects may occur because closely related individuals are likely to share many of the same deleterious alleles, and are thus more likely to pass two copies of a deleterious allele to their young, even if non-deleterious versions of the gene still remain in the population (Soule 1980, pp. 157–158). Over time, inbreeding depression also commonly results in low reproductive success (Soule 1980, pp. 157–158; O'Brien 2003, pp. 62–63; Quinn and Sacks 2014, p. 15). Given the best available information on Sierra Nevada red fox at this time, we evaluated information suggesting that Sierra Nevada red fox populations may be small or isolated from one another to the degree that such negative effects may be realized in the subspecies.

It is probable that Sierra Nevada red fox population densities have always been relatively low, although historical populations likely have not been as isolated as they appear to be today, particularly in California. Based on interviews with trappers, Grinnell *et al.* (1937, p. 396) described Sierra Nevada red fox population numbers as “relatively small, even in the most favorable territory,” and reported that the subspecies likely occurred at densities of 1 per 2.6 square km (1 per square mi). Perrine *et al.* (2010, p. 9) concluded from this that Sierra Nevada red fox likely occur at low population densities even within areas of high relative abundance. Additionally, although data are not available across the historical range of the subspecies, the best available information suggests that Sierra Nevada red fox distribution within California (*i.e.*, Lassen and Sonora Pass sighting areas) has contracted in the recent past. For example, Schempf and White (1977, p. 44) examined CDFW sighting and trapping data and found that in California, the number of sightings and trappings fell considerably in the mid-1900s as compared to similar data reported by Grinnell *et al.* (1937, p. 389).

At present, we have identified at least seven sighting areas: (1) Five in the Oregon Cascades from Mt. Hood south to the Crater Lake vicinity; (2) one in the southern extent of the Cascades in

California (Lassen sighting area); and (3) one in the Sierra Nevada mountain range (Sonora Pass sighting area) (see Figure 1, above). This represents a significant increase in our knowledge of the subspecies' distribution as compared to that known at the time of the 90-day finding (77 FR 45; January 3, 2012), which at that time included only the Lassen and Sonora Pass sighting areas. Surveys and incidental sightings conducted in 2012 and 2013 include 35 from near Mt. Hood, 13 from around Mt. Washington, 2 from near Dutchman Flat, 8 from around Willamette Pass, and 43 from the area of Crater Lake National Park (Sacks 2014b, pp. 3–5; Cascadia Wild 2014, p. 1). As a result of the newly identified area of the historical range in the Oregon Cascades, researchers have not yet determined the exact number of individuals or populations that currently exist in Oregon, nor the distribution of those populations. It is likely the number of individuals actually sighted is less than the number of actual individuals present in these sighting areas because the same individual may be sighted numerous times (Perrine 2005, pp. 147, 148). Surveys are continuing at the time of publication of this document.

In most cases of small populations, genetic interchange need occur only occasionally between populations (a minimum of 1 migrant per generation, possibly up to 10 migrants per generation) to offset the potential negative impacts of inbreeding (*e.g.*, Mills and Allendorf 1996, p. 1516; Wang 2004, entire). In addition, depending on population sizes and the distance between them, the ability of even a few individuals to move between population areas can preserve the potential for recolonization or augmentation (Brown and Kodric-Brown 1977, entire).

For the Sierra Nevada red fox in the Southern Cascades range, suitable habitat that could harbor additional individuals or provide for dispersal occurs between the Oregon sighting areas, as well as between the southernmost Oregon sighting area (Crater Lake) and the northernmost California sighting area (Lassen). Although the Sierra Nevada red fox's dispersal distance is not known, Statham *et al.* (2012, p. 130) state that juvenile male red foxes in the American Midwest dispersed an average of 30 km (18.6 mi); juvenile females dispersed an average of 10 km (6.2 mi); and a few young red foxes (5 percent) dispersed over 80 km (50 mi) in their first year. Distances between the Southern Cascades range sighting areas (north to south) are 90 km (56 mi), 25 km (15.5

mi), 45 km (28 mi), 50 km (31 mi), and 250 km (155 mi), respectively, and there are no clear barriers to dispersal, particularly within Oregon. Although these data are based on dispersal information for a different geographic location and habitat type, it is the best available dispersal information for red fox, indicating that dispersal of Sierra Nevada red fox could be rare but possible between the majority of sighting areas in the Southern Cascades range. Based on our evaluation of the best available information, the Sonora Pass sighting area (and population) within the Sierra Nevada portion of the subspecies' range appears isolated, given that it is 150 km (93 mi) from the Lassen population to the north, with no known Sierra Nevada red fox sightings or populations to the south. At this time, the combined small size and apparent isolation of the Sonora Pass population make future impacts from inbreeding depression and from stochastic events possible.

As stated above, information is not available on population size and various life-history characteristics specific to the Sierra Nevada red fox within the Oregon Cascades portion of the subspecies' range. The majority of information available on population size and life history of the subspecies is from the two California sighting areas, both of which have been identified as two separate populations that are not interbreeding (based on genetic information (Statham *et al.* 2012, pp. 129–130)). Population size for these known populations include: (1) Lassen—42 adults, or 21 breeding and 21 nonbreeding individuals; and (2) Sonora Pass—29 adults, or 14 breeding and 15 nonbreeding individuals (see Table 1, above, for additional details).

As stated above, survey efforts are underway throughout the Oregon Cascades, having been limited to California prior to June 2010 (when the Service learned that the Oregon Cascades range was newly considered to be a part of the subspecies' historical range). In the Sierra Nevada portion of the subspecies' range, the majority of information has been provided from various carnivore and fox surveys between 1996 and 2014 (Perrine 2005; Mohren 2014; Sacks 2014b; Ferland 2014; Akins 2014; Doerr 2015, pp. 1–14). These surveys have been extensive throughout large portions of this portion of the range to such a degree that we do not anticipate other populations of Sierra Nevada red fox currently within the Sierra Nevada. Given the above information, we consider the Sonora Pass sighting area (population) to currently be isolated and small although

it appears that considerable suitable habitat occurs at the appropriate elevation throughout portions of the subspecies historical range in the Sierra Nevada.

Based upon the analysis contained within the Species Report and summarized above, we determined that impacts associated with small population size is an overall moderate-level impact, specifically as it relates to the Lassen and Sonora Pass sighting areas, which may be small and isolated enough to be at risk of impacts from inbreeding depression and chance deleterious events. The primary risk of such impacts is in the future (within 50 years), although evidence of low reproductive success based on studies in portions of both populations (see Population/Abundance Information, above) suggest this could constitute a current impact of inbreeding depression, but to an unknown degree. Overall across the subspecies range at this time, the best available information indicates that Sierra Nevada red foxes may be reduced in distribution relative to their historical range (and possibly reduced in numbers relative to abundance); however, there is no empirical evidence that the Sierra Nevada red fox is in decline across its range. Thus, small or isolated population size effects do not rise to the level of a threat either currently or in the future.

#### Cumulative Effects

We estimate the potential impact of each stressor described above acting alone on Sierra Nevada red fox individuals, populations, and suitable habitat. However, Sierra Nevada red fox and suitable habitat can also be affected by all or some of the stressors acting together. The combined effects of those stressors could impact the subspecies or suitable habitat in an additive or synergistic manner. Acting together, one or more stressors could impact individuals, a portion of a sighting area or population, or available suitable habitat to varying degrees or magnitude, whereas alone a single stressor may not significantly impact the subspecies or its habitat.

Based on our analysis of all stressors that may be impacting Sierra Nevada red fox or their habitat, if any cumulative impacts occur, they would do so under the following two scenarios:

(1) Potential increased competition with coyotes on Sierra Nevada red fox as a result of high-elevation forested areas becoming more suitable for coyotes following potential impacts from climate change (*i.e.*, lowered

snowpack levels, increased incidence and extent of wildfires).

(2) A combination of potential stressors (*i.e.*, hunting and trapping, SPD and other diseases, competition and predation from coyotes, hybridization with nonnative red fox, and vehicles) that directly result in death or loss of reproductive ability for the Sierra Nevada red fox.

Here we consider the impacts of each of these potential cumulative effect scenarios:

Models of climate change predict potential increases in temperature within the Sierra Nevada red fox's range of the southern Cascades and Sierra Nevada ranges. In turn, this could result in lower snowpack levels and an increase in the number and extent of wildfires, leading to increased competition and predation from coyotes that currently (and primarily) reside at lower elevations in habitat that is more favorable to them. As described in our analyses discussing coyote predation (see *Predation by Domestic Dogs or Coyotes*, above) and competition (see *Competition With Coyotes*, above), we expect that impacts associated with coyotes may continue to occur in most sighting areas throughout the range of the Sierra Nevada red fox into the future, and that lowered snowpack levels or wildfire impacts that may result in a shift in Sierra Nevada red fox distribution (where possible) is not likely over the next 50 years. Thus, we expect similar levels of competition and predation as what may be occurring currently throughout the subspecies range, or possibly lowered levels as a result of the recent establishment of gray wolves in the southern portion of the Oregon Cascades. Therefore, the best available data at this time do not suggest that the cumulative effects of increased coyote numbers and climate change rise to the level of a threat to the Sierra Nevada red fox overall.

When a population is small, the relative importance to the population of each potentially reproducing individual is increased. Thus, potential stressors that directly result in death or loss of reproductive ability for individual Sierra Nevada red fox where their populations are known to be small could have a greater relative impact on small populations than on larger ones. As indicated above, the stressors that could potentially impact the reproductive ability of the Sierra Nevada red fox include hunting and trapping, SPD and other diseases, competition and predation from coyotes, hybridization with nonnative red fox, and collision with vehicles. The

best available data at this time indicate that:

(1) Potential impacts associated with hunting and trapping (*Factor B*), SPD and other diseases (*Factor C*), and vehicles (*Factor E*) are negligible or nonexistent, and there is no indication that these stressors are expected to change into the future to such a degree that they would significantly contribute to decreased reproductive viability of the Sierra Nevada red fox either by themselves or cumulatively.

(2) As discussed above under *Predation by Domestic Dogs or Coyotes*, *Competition With Coyotes*, and *Hybridization With Nonnative Red Fox* sections, coyotes and nonnative red fox are currently known to occur in multiple areas within the Sierra Nevada red fox's range. Coyote abundance at high-elevation areas could increase in the future if decreased snowpack levels at high elevations occur, potentially resulting in more favorable habitat conditions for them. It is possible that nonnative red fox could also increase in numbers in the future, or result in impacts greater than what has currently been observed. However, based on climate models and possible resultant changes in vegetation types, such increases in abundance of either of these are not likely in the next 50 years. Therefore, we do not believe increases in nonnative red foxes or coyotes will contribute to cumulative effects to the Sierra Nevada red fox. Information to support this includes:

(a) The continued presence and spread of wolves across the west, it is reasonable to assume the two wolf packs now established in the Southern Cascades (*i.e.*, between the Crater Lake and Lassen sighting areas) will remain and increase in pack size given ongoing conservation, thus further decreasing the likelihood and magnitude of coyote-related impacts (due to expected competition between wolves and coyotes (see *Competition With Coyotes*, above)) within this portion of the subspecies' range into the future.

(b) The majority of the Sierra Nevada red fox's range harbors high-elevation area above elevations considered suitable for coyotes. Thus, Sierra Nevada red fox could utilize this additional area if snowpack levels decrease from their current extent. The least amount of additional high-elevation area available for Sierra Nevada red fox to shift upwards is at the Lassen and Sonora Pass sighting areas, and no shift up in elevation appears available at the Crater Lake sighting area. However, the latter is also the closest sighting area to benefit from decreased potential coyote competition/

predation associated with the recently established wolf pack (approximately 24 km (15 mi) south of the Crater Lake sighting area).

(c) Some unknown level of nonnative red fox hybridization may continue into the future within portions of the Sierra Nevada red fox's range. However, the best available data do not indicate that hybridization would increase to a significant degree throughout the Sierra Nevada red fox's range within the next 50 years such that the extent and magnitude of impacts would be significant contributors to the overall potential cumulative impacts to the subspecies across its range. At this time, hybridization is of concern specifically at the Sonora Pass sighting area as opposed to across the entire range of the subspecies (given the Sonora Pass sighting area's apparent small and isolated population size and recent lack of reproduction with its own subspecies).

In summary, the best available scientific and commercial data at this time do not show that combined effects of the most likely cumulative impact scenarios are resulting in significant individual-level effects to the Sierra Nevada red fox, or population-level effects across multiple populations/sighting areas. Although all or some of the stressors could potentially act in concert as a cumulative threat to the Sierra Nevada red fox, there is ambiguity in either the likelihood or level of impacts for the various stressors at the population or rangewide level, or the data indicate only individual-level impacts. It is probable that Sierra Nevada red fox populations today are smaller than historical times, which potentially increases the vulnerability of the subspecies to potential cumulative low- or medium-level impacts. Although the Lassen and Sonora Pass populations experienced a bottleneck or decline in the recent past (Sacks *et al.* 2010a, pp. 1523, 1536), the best available information does not provide reliable evidence to suggest that Sierra Nevada red fox sighting areas (or known populations specifically at the Lassen and Sonora Pass sighting areas) are currently experiencing population declines or further reductions in distribution, which would be indicative of such impacts. Thus, the best available scientific and commercial data do not indicate that these stressors are cumulatively causing now or will cause in the future a substantial decline of the Sierra Nevada red fox across its range. Therefore, we have determined that the cumulative impacts of these potential stressors do not rise to the level of a threat.



### Existing Regulatory Mechanisms

Existing regulatory mechanisms that affect the Sierra Nevada red fox include laws and regulations promulgated by the Federal and individual State governments (*Factor D*). Federal agencies manage nearly all of the lands represented by the currently known sighting areas, with the exception of a few private inholdings in the Lassen sighting area. No tribal governments (sovereign entities with their own system of laws and regulations) own or manage lands within potentially suitable habitat within the range of the subspecies. Stressors acting on the Sierra Nevada red fox for which governments may have regulatory control include impacts associated with wildfire and fire suppression (*Factor A*—habitat modification or loss), injury or mortality due to fur trapping (*Factor B*), and collision with vehicles (*Factor E*). These regulations differ among government entities, are explained in detail in the Species Report (Service 2015, pp. 58–63), and are summarized below.

#### Federal

##### Forest Service

The Forest Service policy manual (USDA FS 2005, section 2670.22) allows for designation of sensitive species of management concern. The Sierra Nevada red fox is a sensitive species where it occurs on National Forests in California (U.S. Forest Service Region 5) and in Oregon (U.S. Forest Service Region 6) (USDA 2013, p. 1; Chapman 2015, Excel atch., wksht. 2, line 655). The Sensitive Species Policy is contained in the Forest Service Manual, section 2670.32 (USDA Forest Service 2005, section 2670.32) and calls for National Forests to assist and coordinate with other Federal agencies and States to conserve these species. Special consideration for sensitive species is made during land use planning and activity implementation to ensure species viability and to preclude population declines that could lead to a Federal listing under the Act (USDA Forest Service 2005, section 2670.22). At this time, proposed activities that occur within National Forests within the range of the Sierra Nevada red fox will include measures to avoid or minimize project-related impacts to the subspecies and its habitat.

National Forest management is directed by the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528 *et seq.*) and the National Forest Management Act of 1976, as amended (NFMA) (16 U.S.C. 1600 *et seq.*). NFMA specifies that the Forest

Service must have an LRMP to guide and set standards for all natural resource management activities on each National Forest or National Grassland. Current LRMPs within the range of the Sierra Nevada red fox were developed under the 1982 planning rule (47 FR 43026; September 30, 1982, pp. 43037–43052), which required the Forest Service to maintain viable populations of existing native and desired nonnative vertebrate species. Recently revised NFMA planning rules (77 FR 21162, April 9, 2012) require National Forests to use an ecosystem and species-specific approach in their LRMPs to provide for the diversity of plant and animal communities and maintain the persistence of native species in the plan areas. As stated above, the Sierra Nevada red fox is a sensitive species of conservation concern under these new rules in all the National Forests in which it occurs.

The NWFP (USDA and U.S. Department of the Interior (USDI) 1994, entire) was adopted by the Forest Service in 1994, to guide the management of over 9.7 million ha (24 million ac) of Federal lands (USDA and USDI 1994, p. 2) in portions of western Washington and Oregon, and northwestern California within the range of the northern spotted owl (*Strix occidentalis caurina*). The NWFP amends the LRMPs of National Forests (*i.e.*, the Mt. Hood, Willamette, Deschutes, Umpqua, Winema, and Rogue River National Forest's LRMPs) and is intended to provide the basis for conservation of the spotted owl and other late-successional, old-growth forest associated species on Federal lands. The NWFP is important for the Sierra Nevada red fox because the conservation initially established to benefit the northern spotted owl also creates a network of late-successional and old-growth forests that help meet the Sierra Nevada red fox's habitat requirements (see *Summary of Species Information*, above, and the "Habitat" section of the Species Report (Service 2015, pp. 14–16)) at four of five Oregon sighting areas (*i.e.*, Mt. Hood, Mt. Washington, Dutchman Flat, and Willamette Pass Sighting areas). Additionally, the NWFP establishes reserve lands (consisting of Congressionally Reserved Areas such as Wilderness Areas, Late Successional Reserves, Administratively Withdrawn areas, and any additional reserved areas identified by the LRMP for the National Forest in question) that are managed to protect and enhance conditions of late-successional and old-growth forest ecosystems (USDA and USDI 1994, C8–

C11; USDA 2015, p. 4), all of which includes habitat managed over the long term that will likely continue to benefit the Sierra Nevada red fox.

Forest Service lands outside of the NWFP areas (a portion of lands within the Lassen and Sonora Pass Sighting areas) operate under LRMPs that have been amended by the SNFPA, which was finalized in 2004 (USDA 2000, volume 3, chapter 3, part 4.4.1, pp. 2–18; USDA 2001, entire; USDA 2004, entire). The SNFPA requires fire and fuels management projects in most areas to retain at least 40 percent (preferably 50 percent) canopy cover within a treatment unit, and effectively requires retention of trees 63.5 cm (25 in) diameter at breast height (dbh) in most treated areas (USDA 2004, pp. 3, 50). This is close to the preferred winter habitat characteristics discussed above for the Lassen Sighting area (60 cm (23.6 in) dbh and 40 percent or greater canopy closure). SNFPA Standard and Guideline #32 requires the Forest Service to conduct an analysis to determine whether activities within 8 km (5 mi) of a verified Sierra Nevada red fox sighting have the potential to affect the species (USDA 2004, p. 54). It also mandates a limited operating period of January 1 to June 30 as necessary to avoid adverse impacts to potential breeding, and it requires 2 years of evaluations for activities near sightings that are not associated with a den site.

Additionally, in accordance with the requirements of the SNFPA, vehicle use that may impact Sierra Nevada red fox is managed to a limited extent to reduce potential impacts to Sierra Nevada red fox (*e.g.*, limiting OHV use to designated OHV use areas and trails, limiting snowmobile use in the Sonora Pass sighting area to a designated BWRA area). All Oregon sighting areas include roads and snowmobile trails, though the relative areas devoted to such use differ. Those areas with off-road, regulated travel include:

(1) Mt. Hood sighting area is mostly designated wilderness, although a few off-highway vehicle (OHV) trails exist near Sierra Nevada red fox sightings at lower elevations.

(2) The Mt. Washington sighting area has many miles of snowmobile and OHV trails.

(3) The Dutchman Flat sighting area harbors numerous snow-parks, with many miles of snowmobile and OHV trails.

(4) Willamette Pass is a high-use recreational area at all times of the year, including extensive use of snowmobiles, and snow groomers at the Willamette pass Ski Area; the effects to the local

Sierra Nevada red fox population are unknown at this time.

(5) The Lassen National Forest prohibits wheeled vehicle travel except on designated routes and limited OHV use areas (USDA 2009, pp. iii, 461).

Additionally, National Forest's LRMPs that are covered by the SNFPA (Klamath, Shasta-Trinity, Lassen, Tahoe, El Dorado, Stanislaus, Sierra, Inyo, and Sequoia National Forests) or within the Intermountain Region (Humboldt-Toiyabe National Forest) provide direct and indirect protections to Sierra Nevada red fox and their habitat (e.g., implementing fuels reduction activities to reduce the likelihood of overly large, high-severity wildfire) beyond those National Forests that limit OHV and snowmobile vehicle activity.

Finally, the Omnibus Public Land Management Act of 2009 (OPLMA) (Pub. L. 111–11, p. 1059) establishes the Bridgeport Winter Recreation Area for control of winter vehicles on Forest Service land, consisting of about 2,833 ha (7,000 ac) in the northern portion of the Sonora Pass sighting area (USDA 2010, p. 4). The OPLMA states that the winter use of snowmobiles is allowed in the Recreation Area, subject to terms and conditions established by the Secretary of Agriculture. Prior to passage of the OPLMA, the area had been under consideration for designation as wilderness, although snowmobile use had been allowed in the area since 2005 (USDA 2010, pp. 3–4). The Forest Service has completed a management plan that calls for monitoring of impacts to wildlife (USDA 2010, p. 9), and is proceeding with evaluations of impacts to Sierra Nevada red fox in accordance with Standard 32 from the SNFPA (see *Vehicles*, above).

#### National Park Service

Statutory direction for the National Park Service lands that overlap the Sierra Nevada red fox's range is provided by provisions of the National Park Service Organic Act of 1916, as amended (16 U.S.C. 1 *et seq.*) and the National Park Service General Authorities Act of 1970 (16 U.S.C. 1a–1). Natural resources are managed to “preserve fundamental physical and biological processes, as well as individual species, features, and plant and animal communities” (USDI NPS 2006, p. 36). Land management plans for the National Parks do not contain specific measures to protect Sierra Nevada red fox or their habitat, but areas not developed specifically for recreation and camping are managed toward natural processes and species composition and are expected to

maintain Sierra Nevada red fox habitat. Prescribed fire is often used as a habitat management tool by the Park Service. The effects of these burns on the subspecies have not been directly studied, the best available data do not indicate direct mortality to red foxes from fires, and fuels reduction through prescribed fire will likely benefit Sierra Nevada red fox in the long term by reducing the threat of Sierra Nevada red fox habitat loss (Truex and Zielinski 2013, p. 90; Zielinski 2014, pp. 411–412). Additionally, hunting and trapping are generally prohibited in National Parks, which is the case at both Crater Lake and Lassen Volcanic National Parks where Sierra Nevada red fox are known to reside.

#### State

##### Oregon

Sierra Nevada red fox in Oregon may be hunted and trapped, including with use of dogs (635 Oregon Administrative Rules 050–0045(1), 0045(8)). As discussed above (see *Trapping or Hunting*, above, and the “Hunting and Trapping” section of the Species Report (Service 2015, pp. 32–34)), actual impacts to Sierra Nevada red fox are difficult to determine because of record-keeping conventions, but likely to be relatively low because relatively few red fox (some of which may be Sierra Nevada red fox) are removed from an unknown number of populations as a result of fur trapping in Oregon, and we have no evidence to suggest that the subspecies is in decline as a consequence of fur trapping.

##### California

The CESA (CFGF 2050 *et seq.*) prohibits possession, purchase, or “take” of threatened or endangered species without an incidental take permit, issued by CDFW. The Sierra Nevada red fox was designated as a threatened species under CESA in 1980 (CDFW 2014, p. 12). Therefore, CESA establishes protections to Sierra Nevada red fox by emphasizing early consultation to avoid potential impacts to the subspecies, and to develop appropriate mitigation planning to offset project caused losses associated with the listed subspecies.

The State of California classifies red foxes as a furbearing mammal that is protected from commercial harvest (14 California Code of Regulations (C.C.R.) 460), and provides protection to Sierra Nevada red foxes in the form of fines between \$300 and \$2,000, and up to a year in jail for illegal trapping (114 C.C.R. 465.5(h)). Body-gripping traps are also generally prohibited in California,

so accidental harvest of Sierra Nevada red fox incidental to legal trapping of other species is unlikely (see *Trapping or Hunting*, above). Between 2000 and 2011, approximately 150 trapping permits were sold annually in California; thus, the effects of legal trapping to all species combined are probably low (Callas 2013, p. 6). Licensed trappers must pass a trapping competence and proficiency test and must report their trapping results annually. Scientists who are trapping Sierra Nevada red foxes for research purposes must obtain a memorandum of understanding from the State (California Fish and Game Code, sections 1002 and 1003, and section 650). Additionally, strict trapping and handling protocols must be adhered to by researchers to ensure the safety of study animals.

#### Summary of Existing Regulatory Mechanisms

Overall, existing Federal and State land-use plans include some general conservation measures for northern spotted owl habitat that are not specific to Sierra Nevada red fox but nonetheless provide a benefit to the subspecies, for example through the maintenance and recruitment of late-successional forest and old-growth habitat. Most management plans address structural habitat features (e.g., snags that could be utilized as denning structures) or land allocations (e.g., reserves, wilderness areas) that contribute to the Sierra Nevada red fox's habitat. These land-use plans are typically general in nature and afford relatively broad latitude to land managers, but with explicit sideboards for directing management activities. Federal regulatory mechanisms have abated the large-scale loss of late-seral coniferous forest habitat. Much of the land in Federal ownership across the range of the Sierra Nevada red fox is managed for interconnected blocks of late-successional forests that are likely to benefit the Sierra Nevada red fox. Timber harvest has been substantially reduced on Forest Service lands within the NWFP area, and does not occur on National Park Service lands, and existing management is designed to maintain or increase the amount and quality of coniferous forest that provides Sierra Nevada red fox habitat, including the ability of these areas to potentially help connect populations of the subspecies. Outside of public (Federal) ownership, forest practice rules provide no explicit protection for Sierra Nevada red fox; however, there are limited protections for habitat of value to the subspecies.

Based on the analyses contained within the Species Report (Service 2015,

pp. 58–63) and summarized above on the existing regulatory mechanisms for the Sierra Nevada red fox, we conclude that the best available scientific and commercial information, overall, indicates that the existing regulatory mechanisms are adequate to address impacts to the subspecies from the stressors for which governments may have regulatory control (*i.e.*, wildfire and fire suppression (*Factor A*), injury or mortality due to fur trapping (*Factor B*), and collision with vehicles (*Factor E*)).

### Conservation Efforts

Because the Sierra Nevada red fox has only been documented to date to occur on Forest Service and NPS lands, primary conservation actions currently fall to those land management agencies, as well as the States. Various conservation and management efforts have been occurring since approximately 1974, including: (1) Significant subspecies-specific protections in California from hunting and trapping as a California-listed species in 1980; (2) minimized impacts from various stressors by the Forest Service as a result of its sensitive species designation in California (since 1998) and Oregon (since 2015); and (3) National Park Service protections at the Lassen and Crater Lake sighting areas associated with their requirement to “preserve fundamental physical and biological processes, as well as individual species, features, and plant and animal communities” (USDI NPS 2006, p. 36). All beneficial conservation or management actions are described above and in the Species Report (Service 2015, p. 63) and under the *Existing Regulatory Mechanisms* section, above. We also note that we anticipate coordinating with our Federal and State partners in the future if we collectively determine that translocation of Sierra Nevada red fox individuals to different populations are prudent to aid in the conservation of the subspecies.

### Finding

As required by the Act, we considered the five factors in assessing whether the Sierra Nevada red fox is an endangered or threatened species throughout all of its range. We examined the best scientific and commercial data available regarding the past, present, and future stressors faced by the Sierra Nevada red fox. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized Sierra Nevada red fox and habitat experts, and other Federal and State agencies. Listing

is warranted if, based on our review of the best available scientific and commercial data, we find that the stressors to the Sierra Nevada red fox are so severe or broad in scope as to indicate that the subspecies is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range.

For the purposes of this evaluation, we are required to consider potential impacts to the Sierra Nevada red fox into the foreseeable future. Based on the best available scientific and commercial information and to provide the necessary temporal context for assessing stressors to Sierra Nevada red fox, we determined 50 years to be the foreseeable future because the likelihood and severity of future impacts became too uncertain to address beyond a 50-year timeframe (see examples and further discussion for this time period in the general discussion above under Summary of Information Pertaining to the Five Factors).

We evaluated each of the potential stressors in the Species Report (Service 2015, pp. 21–58) for the Sierra Nevada red fox, and we determined that the following are factors that have either minimally impacted individuals, impacted one or more sighting areas (or known populations), or may potentially impact individuals, sighting areas, or known populations in the future: wildfire and fire suppression (*Factor A*), habitat impacts due to the effects of climate change (*Factor A*), trapping (for fur and research purposes) (*Factor B*), disease (*Factor C*), predation (*Factor C*), hybridization with nonnative red fox (*Factor E*), competition with coyotes (*Factor E*), collisions with vehicles (*Factor E*), and small and isolated population size effects (*Factor E*). Our analysis resulted in the following conclusions for each of the stressors:

- *Wildfire or fire suppression* impacts may occur throughout the range of the Sierra Nevada red fox. There may be an overall increased risk of wildfire, as demonstrated by recent occurrence of wildfires and potential predictions into the future related to temperature and precipitation (see *Climate Change*). At this time, there are no reports of direct mortality to red foxes from wildfires, and wildfires can improve habitat for red foxes by removing competing vegetation and encouraging production of grasses and shrubs favored by small mammals (Tesky 1995, p. 7), which the Sierra Nevada red fox depends upon as a prey base. Accordingly, these potential impacts are balanced with the potential benefits, thus resulting in our

consideration of wildfire and fire suppression to constitute an overall low-level impact that does not rise to the level of a threat both currently and into the future.

- The severity of potential *climate change* impacts to Sierra Nevada red fox habitat will likely vary across its range, with effects to the subspecies potentially ranging from negative to neutral. Although many climate models generally agree about the changes in overall temperature and precipitation (the latter as it relates to precipitation falling potentially more as rain as opposed to snow at some upper elevations), the consequent effects on the landscape are more uncertain, as is the rate at which any such changes might be realized. Therefore, it is not clear how or when changes in snowpack at the upper elevations will affect the distribution of Sierra Nevada red fox or coyotes, the latter of which may compete or predate upon the subspecies. Overall, we lack sufficient information to predict with any certainty the future direct or indirect impacts of climate change on Sierra Nevada red fox habitat or populations. Consequently, we have determined that we do not have reliable information to suggest that climate change rises to the level of a threat to the Sierra Nevada red fox now or in the future (*i.e.*, conditions are not expected to change to a degree that would be considered significant within the next 50 years), although we will continue to seek additional information concerning how climate change may affect Sierra Nevada red fox habitat.

- *Trapping or hunting* for Sierra Nevada red fox fur has no impact to the subspecies in California because trapping for Sierra Nevada red fox is illegal in California. Possible illegal fur trapping in California, as well as statewide potential impacts associated with live-trapping for research purposes or incidental trapping of Sierra Nevada red fox (when intentionally trapping for other furbearer species), is not expected to result in population-level impacts. Some Sierra Nevada red fox could be trapped in Oregon where fur trapping for all red fox subspecies is legal, although we estimate that potential impacts will not be significant at the population- or statewide-level based on the best available trapping data for Oregon. Additionally, potential impacts to Sierra Nevada red fox from live-trapping and handling for research purposes is discountable because the best available data indicate that no Sierra Nevada red fox have been injured or killed during research-related live-trapping efforts. Available information

does not suggest that there would be any change to the level of anticipated impacts of live-trapping and handling for research purposes into the future. Thus, impacts from fur trapping and trapping for research purposes across the Sierra Nevada red fox's range do not rise to the level of a threat.

- *Disease* has not been documented within Sierra Nevada red fox individuals or the known populations. The prevalence of possible past exposure to lethal pathogens within the subspecies has not been determined, and we have no information to suggest that disease is currently present in any portion of the subspecies' range. At this point in time, there is a low probability that a disease outbreak may occur. We anticipate that if there should be an outbreak, it would likely have a low impact on all seven sighting areas combined since the distance between those sighting areas makes it unlikely that an outbreak would spread to all seven sighting areas. Thus, disease does not rise to the level of a threat.

- *Predation* is possible by both domestic dogs and coyotes, the latter of which could also potentially include *competition with coyotes* for resources. For domestic dogs, although one documented case of a dog attack on Sierra Nevada red fox (resulting in death) has occurred, data indicate that predation by dogs is not expected to increase in the future based on our evaluation of recent information. Thus, population-level or subspecies-level effects to Sierra Nevada red fox are not likely to occur both currently or in the future. For coyotes, predation and competition have an overall medium-level impact to the Sierra Nevada red fox due to:

(a) The presence of coyotes co-occurring at multiple sighting areas within the subspecies' range.

(b) The potential for increased predation in the Crater Lake, Lassen, and Sonora Pass sighting areas into the future given climate model projections of decreased snowpack levels that may make the habitat more favorable to coyotes.

(c) The overall inability of the populations at those three locations to shift up in elevation.

However, the best available data indicate that predation and competition are not impacting the Sierra Nevada red fox at the subspecies-level to the degree that any more than individuals at a couple sighting areas may be affected both currently and into the future. Additionally, there is no indication that potential future changes in snowpack levels or shifting habitat at high elevations (as suggested by climate

models) would occur within the next 50 years to such a degree that coyote numbers would increase throughout the subspecies' range to the point that coyote predation or competition would rise to the level of a threat.

- *Hybridization with nonnative red fox* has been documented to occur in two sighting areas, although one (Mt. Hood) is a genetic record indicating hybridization at some point in the past. Recent hybridization was documented at the Sonora Pass sighting area based on recent research in a portion of the sighting area. Hybridization involved interbreeding between female Sierra Nevada red fox and two male nonnative red foxes, which resulted in seven hybrid pups in 2013, followed by an additional four hybrid pups in 2014 (Sacks *et al.* 2015, pp. 16, 30). Although interbreeding is documented, it is only known to be a current impact within a portion of one sighting area across the subspecies' range. At this time, based on the best available scientific and commercial information, this stressor does not rise to the level of a threat because information indicates hybridization is currently occurring within a portion of only one sighting area across the subspecies' range. We have no information to indicate this level of impact will increase across the subspecies' range in the future.

- Potential *vehicle impacts* include both collisions and noise disturbance. Collisions with vehicles are rare, but they can be expected into the future. Known rates of mortality due to collisions with vehicles have been low for Sierra Nevada red fox, and the best available information does not suggest increases in vehicular traffic or roads to be built in areas where the subspecies occurs. In addition to collisions, Sierra Nevada red fox could be impacted from noise disturbance associated with recreational areas; however, the magnitude of impacts from noise is unknown, and the location of the subspecies' sightings in these areas suggest that they adjust to the noise involved. Overall, it is reasonable to expect the impact of vehicles on Sierra Nevada red fox to be minor and continue at similar levels into the future, thus not rising to the level of a threat.

- *Small, isolated populations* are susceptible to inbreeding depression, and are more susceptible to losses from other stressors. Therefore, we evaluated whether the Sierra Nevada red fox may have small and isolated populations where these negative effects are likely to be realized. At this time, evidence suggests that Sierra Nevada red fox distribution (and likely numbers of

individuals) has contracted from the past in California. This contraction cannot be determined with certainty for Oregon given the Sierra Nevada red fox's range in the Oregon Cascades is a recent discovery since publication of the 90-day finding (77 FR 45; January 3, 2012). We note that the Sierra Nevada red fox rangewide distribution and possibly abundance may have declined at some point in the past based on historical trapping numbers (Grinnell *et al.* 1937, p. 389; Schempf and White 1977, p. 44) compared to our current knowledge of the subspecies' abundance and distribution, where available. The abundance, trend, and numbers of Sierra Nevada red fox populations in Oregon are unknown, although recent surveys within the Oregon Cascades are documenting the presence of Sierra Nevada red fox. Although the known sighting areas are disjunct, the dispersal capabilities of Sierra Nevada red fox suggest the potential for interchange of individuals between sighting areas, with the exception of the Sonora Pass sighting area where genetic analysis reveals a clear separation and lack of breeding with the next closest northern Sierra Nevada red fox population in the Lassen sighting area. The best available data at this time indicate that although Sierra Nevada red fox may be reduced in abundance or distribution relative to their historical numbers and range, there is no empirical evidence that any current populations of Sierra Nevada red fox in Oregon are in decline. Thus, small or isolated population size effects when considering the subspecies across its entire range do not rise to the level of a threat either currently or in the foreseeable future.

- Potential *cumulative impacts* to the Sierra Nevada red fox are possible; however, the most likely scenarios for cumulative impacts are likely to only occur from the following two scenarios: (1) Potential increased competition with and predation by coyotes on Sierra Nevada red fox as a result of high-elevation areas becoming more suitable for coyotes as a result of climate change; and (2) a combination of potential stressors (*i.e.*, hunting and trapping in Oregon, SPD and other diseases, competition and predation from coyotes, hybridization with nonnative red fox, vehicles) that directly result in death or loss of reproductive ability for the Sierra Nevada red fox. Based on the best available data at this time and as described above, none of these possible cumulative impacts are likely to occur currently nor are they likely to increase or into the foreseeable future to such a degree that the effects are expected to

lead to or rangewide-level declines. Therefore, the cumulative impact of these potential stressors does not rise to the level of a threat.

We also evaluated existing regulatory mechanisms (*Factor D*) and did not determine an inadequacy of existing regulatory mechanisms for the Sierra Nevada red fox. Specifically, we found that multiple Federal land use plans (e.g., LRMPS, NWFP, SNFPA), plus State regulations in California that prevent hunting/trapping of Sierra Nevada red fox, are being implemented, often providing broad latitude for land managers, but with explicit sideboards for directing management activities. We note that significant Federal efforts have been developed and are being implemented (e.g., NWFP) to abate the large-scale loss of forested habitat-types that the Sierra Nevada red fox depends upon. Beneficial management efforts of habitat occupied by Sierra Nevada red fox are also underway on Forest Service and NPS lands that currently constitute the entire area known to be occupied by Sierra Nevada red fox, which in turn will promote further recruitment of such suitable habitat.

None of these impacts, as summarized above, was found to individually or cumulatively impact the Sierra Nevada red fox to a degree such that listing is warranted at this time. Based on the analysis contained within the Species Report (Service 2015, pp. 21–58), we conclude that the best available scientific and commercial information indicates that these stressors are not singly or cumulatively causing a decline of the Sierra Nevada red fox or its habitat currently, nor are the stressors likely to be significant in the foreseeable future to the degree that they would result in declines of multiple populations (represented by the seven sighting areas) such that the subspecies would be in danger of extinction, or likely to become so within the foreseeable future.

We recognize a need to continue to monitor the Sierra Nevada red fox throughout its range because the currently known sighting areas are disjunct (with an unknown number of populations in Oregon), which in general could make them more susceptible to stressors than species with large, well-connected populations. There has been relatively little survey effort specifically for Sierra Nevada red fox in portions of its range (e.g., Mt. Shasta vicinity, are extending southward along the Sierra Nevada from the Yosemite National Park area), as opposed to general carnivore surveys, which may not be sufficient to accurately determine presence/absence

of Sierra Nevada red fox. As indicated above, survey efforts are underway throughout Oregon at the time of the publication of this document. In general, the interchange of only a few individuals is needed to maintain genetic connectivity between populations over time. As described in this document and the Species Report (Service 2015, entire), there are stressors that we find may be having some effect on Sierra Nevada red foxes, albeit not to the degree that they currently rise to the level that listing the entire subspecies is warranted. We will continue to monitor the status of the subspecies and evaluate any other information we receive. Additional information will continue to be accepted on all aspects of the subspecies. If at any time data indicate that protective status under the Act should be provided or if there are new threats or increasing stressors that rise to the level of a threat, we can initiate listing procedures, including, if appropriate, emergency listing pursuant to section 4(b)(7) of the Act.

In conclusion, we acknowledge that the Sierra Nevada red fox populations in California (and possibly Oregon) may be reduced in size relative to their historical abundance, and that the subspecies may be reduced in distribution as compared to its historical range. A listing determination, however, must be based on our assessment of the current status of the subspecies in relation to the five listing factors under the Act. Section 4 of the Act requires that we make such a determination based solely on the best scientific and commercial data available. To this end, we must rely on reasonable conclusions as supported by the best available science to assess the current and future status to determine whether the Sierra Nevada red fox meets the definition of an endangered or threatened species under the Act. Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting upon the Sierra Nevada red fox are not of sufficient imminence, intensity, or magnitude to indicate that the subspecies is in danger of extinction now (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range.

#### Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or a threatened species throughout all or a significant portion of its range. The Act defines “endangered species” as any species which is “in danger of

extinction throughout all or a significant portion of its range,” and “threatened species” as any species which is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The term “species” includes “any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.” We published a final policy interpreting the phrase “Significant Portion of its Range” (SPR) (79 FR 37578; July 1, 2014). The final policy states that (1) if a species is found to be an endangered or a threatened species throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act’s protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is “significant” if the species is not currently an endangered or a threatened species throughout all of its range, but the portion’s contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or NMFS makes any particular status determination; and (4) if a vertebrate species is an endangered or a threatened species throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR Policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our analysis of the status of a species (“species” under the Act refers to any listable entity, including species, subspecies, or DPS) is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis is required. If the species is neither an endangered nor a threatened species throughout all of its range, we determine whether the species is an endangered or a threatened species

throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant, and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is an endangered or a threatened species throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats apply only to portions of the range that clearly do not meet the biologically based definition of “significant” (*i.e.*, the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is an endangered or a threatened species. We must go through a separate analysis to determine whether the species is an endangered or a threatened species in the SPR. To determine whether a species is an endangered or a threatened species throughout an SPR, we will use the same standards and methodology that we use to determine if a species is an endangered or a threatened species throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the “significant” question first, or the

status question first. Thus, if we determine that a portion of the range is not “significant,” we do not need to determine whether the species is an endangered or a threatened species there; if we determine that the species is not an endangered or a threatened species in a portion of its range, we do not need to determine if that portion is “significant.”

We consider the historical range of the Sierra Nevada red fox to include: (1) The Southern Cascades (from the Columbia River at Mt. Hood south into California, including the area of Mt. Shasta and slightly into the Trinity Mountains, and continuing south to the Lassen Peak area), and (2) the Sierra Nevada (the upper elevations of the Sierra Nevada Mountain Range from Sierra to Tulare Counties). This range includes those mountainous areas that exceed 1,200 m (3,937 ft) in California (Perrine *et al.* 2010, p. 8) and 1,219 m (4,000 ft) in Oregon (Aubry *et al.* 2015, pp. 1–2; Doerr 2015, pp. 2–3, 13–144, line 7). Based on the best available information at this time, the seven sighting areas described above account for the current distribution of the subspecies.

In considering any significant portion of the Sierra Nevada red fox's range, we considered whether the stressors facing the subspecies might be different at the seven sighting areas where the Sierra Nevada red fox has been found and, thus, geographically concentrated in some portion of the subspecies' range. In the Summary of Information Pertaining to the Five Factors analysis, above, we identified the most likely potential differences associated with trapping or hunting for fur, hybridization with nonnative red fox, and coyote predation or competition (and its association with climate change).

(1) Trapping or hunting for fur is legal in Oregon, and thus four Oregon sighting areas may be affected by this activity. Population-level impacts of legal Sierra Nevada red fox fur trapping within the four Oregon sighting areas have not been studied, as the impact of trapping on a red fox population requires an estimate of population abundance, which is currently unavailable for Sierra Nevada red fox within the Oregon Cascades. Based on the very few red fox (lowland red fox or other subspecies) being harvested across the counties that overlap the Sierra Nevada red fox sighting areas, the best available data indicate that fur trapping is unlikely to result in population-level impacts across a significant portion of the subspecies' range.

Fur trapping of Sierra Nevada red fox is illegal in California but legal for other furbearer species. We expect that nearly all Sierra Nevada red fox that are accidentally captured in box traps set for other furbearer species (or that are live-trapped for research purposes) are released unharmed. Although illegal fur trapping specifically for Sierra Nevada red fox is also a possibility in California, the best available data at this time do not indicate that illegal fur trapping or incidental legal live-trapping for the subspecies for research purposes is resulting in population-level impacts. Overall, we do not find that the potential impacts from fur trapping (illegal or legal) and live-trapping for research purposes are geographically concentrated in any one portion of the Sierra Nevada red fox's range. Moreover, we do not find that that trapping rises to the level of a threat to the species, and therefore it is unlikely that the Sierra Nevada red fox would be found to be endangered or threatened in any portion of its range as a result of trapping.

(2) Only two sighting areas (Mt. Hood and Sonora Pass) show evidence of hybridization with nonnative red fox. However, there are no geographic barriers preventing nonnative red fox from interacting with Sierra Nevada red fox throughout the remainder of the subspecies' range. At the Mt. Hood sighting area, two Sierra Nevada red fox individuals show evidence (via genetic testing of mtDNA) of past hybridization with nonnative red foxes (Akins and Sacks 2015, p. 1). At a portion of the Sonora Pass sighting area, interbreeding between female Sierra Nevada red fox and two male nonnative red foxes resulted in seven hybrid pups in 2013, and an additional four pups in 2014 (Quinn and Sacks 2014, pp. 2, 10). During the same time period, no successful fully native reproduction was documented. If this trend continues, then the Sonora population could become completely hybridized within a few generations, potentially resulting in outbreeding depression and genetic swamping.

To date, the best available data indicate that hybridization with nonnative red fox has impacted a few individuals at two locations. Future hybridization could occur at these two or other locations, and therefore we do not anticipate a concentration of this stressor in any one portion of the subspecies' range.

(3) The presence of coyotes is likely to continue in most if not all areas throughout the range of the Sierra Nevada red fox, and may potentially result in elevated levels of predation

and competition in the future if climate change predictions become realized. The potential impacts from climate change could result in reduced snowpack and vegetation changes, which in turn could result in habitat conditions more suitable for coyotes, thus potentially increasing the level of coyote predation or competition. These impacts may be more pronounced at the Crater Lake, Lassen, and Sonora Pass sighting areas as compared to the remainder of the Sierra Nevada red fox's sighting areas due to the subspecies already occupying the highest elevations at Crater Lake and Lassen sighting areas, and the subspecies already occupying a relatively narrow elevational range at the Sonora Pass sighting area. At this time, it is not clear how finer-scale abiotic factors may shape local climates and influence local snowpack levels and vegetation trends either to the benefit or detriment of Sierra Nevada red fox, nor is the timeframe clear over which these influences may be realized.

Although information on coyote predation is not available at all three sighting areas, we note that Perrine (2005, p. 192) found coyote population density at the Lassen sighting area to be greater at lower elevations, thus producing an elevational separation between most coyotes and the Sierra Nevada red fox population. It is reasonable to assume this same type of elevational separation exists at the Crater Lake and Sonora Pass sighting areas, and that it may continue into the foreseeable future. Additionally, the Sierra Nevada red fox's main winter food source at the Lassen study site was small rodents rather than the coyote's preference of deer (Perrine 2005, p. 24); thus, the Sierra Nevada red fox tended to stay at higher elevations than coyotes, thereby reducing potential predation and competition. Although potential future climate change impacts could promote conditions for coyotes numbers to increase at the higher elevations (particularly in certain sighting areas), we believe this change is speculative at this time.

We also note that two packs of gray wolves have recently become established in the southern portion of the Oregon Cascades in Oregon and California, and it is reasonable to predict continued repopulation of wolves to the Cascades (currently occurring between the Lassen and Crater Lake sighting areas, approximately 24 km (15 mi) south of the Crater Lake sighting area). Presence of wolves would likely lower coyote population numbers or exclude them from higher elevation forested areas, thereby facilitating the

persistence of nearby Sierra Nevada red fox populations (Levi and Wilmers 2012, p. 926). Wolves are also not expected to significantly impact the Sierra Nevada red fox given they typically prey upon and compete with larger game (ODFW 2015, p. 2). Given that (1) ODFW's current conservation objectives for the wolf include establishment of seven breeding pairs in western Oregon for 3 consecutive years (ODFW 2010, p. 17), and (2) the likelihood that CDFW (in cooperation with the Service) would develop a beneficial conservation strategy for wolves in California, we consider it likely that the current wolf populations will expand over the next 50 years to effectively overlap other portions of the Sierra Nevada red fox's historical range in Oregon and California in the foreseeable future, thus potentially contributing to natural coyote control within the Sierra Nevada red fox's range.

Overall, based on the best available scientific and commercial information at this time, we do not anticipate a geographic concentration of threats in one or more sighting areas at a level greater than any other (*i.e.*, potential impacts associated with climate change and coyote predation/competition appear uniformly distributed throughout the subspecies' range). At this time, there is significant uncertainty as to the severity of impact, and data do not indicate that coyote populations will, with certainty, increase as a result of climate change into the foreseeable future at a level greater than any other in any one portion of the range of the subspecies.

In summary, our evaluation of the best available information indicates that the overall level of stressors is not geographically concentrated in one portion of the Sierra Nevada red fox's range, and that the stressors that have the potential to impact the subspecies are relatively consistent across its range (Service 2015, entire). Our review of the best available scientific and commercial information indicates that the Sierra Nevada red fox is not in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing the Sierra Nevada red fox as an endangered or threatened species under the Act is not warranted at this time.

#### **Distinct Population Segment (DPS) Analysis**

Citing the Services' DPS Policy (61 FR 4722) and the best available information at the time, the April 27, 2011, petition

from the Center for Biological Diversity (CBD 2011, pp. 7–8) suggests two potential DPSs within the range of the Sierra Nevada red fox (as originally described by Perrine *et al.* 2010 and Sacks *et al.* 2010a): a Southern Cascade population in the Cascades Mountains of northern California and Oregon, and a Sierra Nevada population in the Sierra Nevada Mountains. The petitioner stated that they believe the full subspecies (comprised of both distinct segments) should be listed, although we note that this statement was made prior to the discovery of new information documenting the Sierra Nevada red fox subspecies inhabiting the entire Oregon Cascades area as far north as Mt. Hood (see *Summary of Species Information*, above). Further, the petitioner articulated that the Service should assess whether the [then known] two populations (*i.e.*, Lassen and Sonora Pass) qualify as DPSs under the Act.

As a result of the new information received following publication of the 90-day finding (77 FR 45; January 3, 2012), and as described above under *Summary of Species Information—Distribution/Range*, we evaluate here a potential Southern Cascades DPS that includes the Cascade Mountains of Oregon from the Columbia River south into the California Cascades around Lassen Peak (including the area of Mt. Shasta, primarily in the Cascades but extending slightly into the Trinity Mountains), and a potential Sierra Nevada DPS that includes the upper elevations of the Sierra Nevada Mountain Range from Tulare to Sierra Counties. The best available information indicates that Sierra Nevada red fox occurs discontinuously throughout these mountainous areas at elevations that exceed 1,200 m (3,937 ft) in California (Perrine *et al.* 2010, p. 8) and 1,219 m (4,000 ft) in Oregon (Aubry *et al.* 2015, pp. 1–2; Doerr 2015, pp. 2–3, 13–14, line 7).

Section 3(16) of the Act defines the term “species” to include any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. We have always understood the phrase “interbreeds when mature” to mean that a DPS must consist of members of the same species or subspecies in the wild that would be biologically capable of interbreeding if given the opportunity, but all members need not actually interbreed with each other. A DPS is a subset of a species or subspecies, and cannot consist of members of a different species or subspecies. The “biological species concept” defines species according to a group of organisms, their

actual or potential ability to interbreed, and their relative reproductive isolation from other organisms. This concept is a widely accepted approach to defining species. We believe that the Act's use of the phrase "interbreeds when mature" reflects this understanding. Use of this phrase with respect to a DPS is simply intended to mean that a DPS must be comprised of members of the same species or subspecies. As long as this requirement is met, a DPS may include multiple populations of vertebrate organisms that may not interbreed with each other. For example, a DPS may consist of multiple populations of a fish species separated into different drainages. While these populations may not actually interbreed with each other, their members are biologically capable of interbreeding.

The National Marine Fisheries Service (NMFS) and the Service published a joint Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) on February 7, 1996 (61 FR 4722). According to the DPS policy, two elements must be satisfied in order for a population segment to qualify as a possible DPS: discreteness and significance. If the population segment qualifies as a DPS, the conservation status of that DPS is then evaluated to determine whether it is endangered or threatened.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

If a population is found to be discrete, then it is evaluated for significance under the DPS policy on the basis of its importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historical range; or (4) evidence that the population differs markedly from other

populations of the species in its genetic characteristics.

If a population segment is both discrete and significant (*i.e.*, it qualifies as a potential DPS) its evaluation for endangered or threatened status is based on the Act's definitions of those terms and a review of the factors listed in section 4(a) of the Act. According to our DPS policy, it may be appropriate to assign different classifications to different DPSs of the same vertebrate taxon. For this 12-month finding and DPS analysis of the Sierra Nevada red fox, we reviewed and evaluated information contained in numerous publications and reports, including but not limited to Aubry 1997, Grinnell *et al.* 1937, Perrine 2005, Perrine *et al.* 2010, Sacks *et al.* 2010a, Sacks *et al.* 2015, Schempf and White 1977, and Statham *et al.* 2012.

#### Discreteness

The best available data indicate spatial separation between the Sierra Nevada red foxes that occur in the Southern Cascades and Sierra Nevada Mountain Ranges. The mountain ranges themselves are geologically divided, and currently a large separation exists between the nearest known populations (Lassen and Sonora Pass) in these two ranges. The distance separating the Lassen and Sonora Pass sighting areas is approximately 150 km (93 mi), which is greater than the dispersal distance known from one study of red fox in the Midwest, where 95 percent of the juvenile American Midwest red fox dispersed less than approximately 80 km (50 mi) in their first year (Perrine *et al.* 2010, pp. 14–15).

In addition to marked separation (*i.e.*, spatial separation) that currently exists between the Sierra Nevada red fox in the Southern Cascades and Sierra Nevada Mountain Ranges, genetic research shows that the Lassen and Sonora Pass populations (representing the Southern Cascades and Sierra Nevada population segments, respectively) are genetically distinct from each other (Statham *et al.* 2012, pp. 129–130). Analyses using both mtDNA and microsatellites indicate that Sierra Nevada red fox at the Sonora Pass sighting area are descendants of the Sierra Nevada red fox population that was historically resident in the Sierra Nevada range (Statham *et al.* 2012, pp. 126–129). Lastly, genetic research indicates that there are no shared mitochondrial haplotypes between the Southern Cascades and Sierra Nevada populations, and there is no evidence of gene flow between the two populations (Statham *et al.* 2012, pp. 129–130).

In conclusion, the areas occupied by the Sierra Nevada red fox within the Southern Cascades and Sierra Nevada Mountain Ranges are separated by a geologic gap in the range. The best available data currently indicate this gap represents a lack of population connectivity between the two geographic areas. This separation is further supported by recent genetic studies which demonstrate that the two closest sighting areas (*i.e.*, known populations that reside at the Lassen and Sonora Pass sighting areas) show genetic differences, and there is no indication of gene flow between these populations. Therefore, we conclude that the two areas are discrete under our DPS policy.

#### Significance

If a population segment is considered discrete under one of more of the conditions described in our DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In making this determination and as described above, this consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historical range; or (4) evidence that the population differs markedly from other populations of the species in its genetic characteristics.

The current known distribution of genetic variation across the range of the Sierra Nevada red fox places a disproportionate significance on both the Southern Cascades and Sierra Nevada segments for the maintenance of genetic diversity in the subspecies. As indicated above, the Sierra Nevada red fox differs markedly from other subspecies of red fox, and those that occur within the Sierra Nevada segment are genetically distinguishable from the Sierra Nevada red foxes that occur throughout the remainder of the subspecies range (Statham *et al.* 2012, pp. 129–130). Further, genetic analyses reveal that Sierra Nevada red fox at the Sonora Pass sighting area are descendants of the Sierra Nevada red fox population that was historically resident in the area (Statham *et al.* 2012,



pp. 126–129). In addition, different mtDNA haplotypes separate the Sierra Nevada red foxes that reside in the Southern Cascades from those that reside in the Sierra Nevada, indicating a lack of gene flow. Consequently, the loss of either the Southern Cascades or the Sierra Nevada segments could result in a significant curtailment of the genetic variation and diversity of the subspecies.

Additionally, the loss of the Sierra Nevada segment of the Sierra Nevada red fox's range would create a significant gap in the geographic range of the subspecies, given the southernmost known population within the Sierra Nevada Mountain range is approximately 241 km (150 mi) south of the next closest sighting area (Lassen) at the southern end of the Southern Cascades. If the Sierra Nevada Mountain Range segment of the subspecies' range was lost, this would result in an estimated 40 to 50 percent reduction in the range of the Sierra Nevada red fox. Likewise, the loss of the Southern Cascades segment of the subspecies' range would result in an estimated 50–60 percent reduction in the range of the Sierra Nevada red fox.

Overall, the two segments (Southern Cascades and Sierra Nevada) of the Sierra Nevada red fox's range differ markedly from each other and from other subspecies of red fox based on their genetic characteristics, and loss of either the Sierra Nevada segment or the Southern Cascades segment of the Sierra Nevada red fox's range would create a significant gap in the geographic range of the subspecies. Therefore, we conclude that the two areas are significant under our DPS policy.

#### *Conclusion of Distinct Population Segment Review*

We have evaluated as possible DPSs the populations of Sierra Nevada red fox from both the Southern Cascades Mountain Range and the Sierra Nevada Mountain Range, and we have addressed the elements our DPS policy requires us to consider in deciding whether a vertebrate population may be recognized as a DPS and considered for listing under the Act. In assessing discreteness for both segments, we considered geological, ecological, and genetic information. As described above, we have determined that both the Southern Cascades and Sierra Nevada segments of the Sierra Nevada red fox's range are both discrete and significant based on marked physical separation (discreteness) and genetic variation/characteristics (discreteness and significance). Our analysis reveals that the loss of the subspecies from either

segment of the Sierra Nevada red fox's range would represent: (1) A significant gap in the subspecies' range, and (2) the loss of genetic differences from Sierra Nevada red fox in the remainder of the subspecies range, as well as from other subspecies of red fox.

Since we have identified that the Southern Cascades segment and the Sierra Nevada segment of the Sierra Nevada red fox each meet the DPS criteria for discreteness and significance, we will evaluate each DPS with regard to their potential for listing as endangered or threatened using the five listing factors enumerated in section 4(a) of the Act (16 U.S.C. 1533(a)(1)). Our evaluation of these DPSs follows.

#### **Southern Cascades Distinct Population Segment (DPS) of Sierra Nevada Red Fox**

As described above, section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) describe procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a), we may list a species on the basis of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

An endangered species is defined by the Act, with exception, as “any species which is in danger of extinction throughout all or a significant portion of its range.” A threatened species is defined as “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” A species is defined by the Act to include any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

An analysis of the potential threats for the Sierra Nevada red fox is included in the Species Report (Service 2015, entire) associated with this document (and available at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2011–0103). All potential threats of which we are aware that may act upon the Southern Cascades DPS of Sierra Nevada red fox (hereafter referred to as Southern Cascades DPS) currently or in the future are captured within the Summary of Information Pertaining to the Five Factors section, above, and

stepped down in the following paragraphs as they pertain specifically to the Southern Cascades DPS. The range of the Southern Cascades DPS includes high-elevation alpine and subalpine zones near and above treeline (roughly greater than 1,200 m (3,937 ft) in California (Perrine *et al.* 2010, p. 8) and 1,219 m (4,000 ft) in Oregon (Aubry *et al.* 2015, pp. 2–3; Doerr 2015, pp. 2–3, 13–14, line 7) that contain conifer habitat of various types (Perrine 2005, pp. 63–64). These areas occur within the southern portion of the Cascades mountain range from the Columbia River just north of Mt. Hood (Hood River and Wasco Counties, Oregon) south to the Lassen Peak area (roughly the northeast corner of Tehama County and southeast corner of Shasta County, California). At this time, Sierra Nevada red fox are known to reside within a minimum of six locations across the range of the Southern Cascades DPS.

In comparison to the five-factor analysis presented above for the entire taxon, we are not aware of any information to indicate that trapping for research purposes (*Factor B*) is a threat to the Southern Cascades DPS currently or in the future. Other potential stressors identified specifically for the Southern Cascades DPS are discussed below.

#### *Wildfire and Fire Suppression*

Based on the best scientific and commercial information available, the potential effects of wildfire and fire suppression (*Factor A*) on the Southern Cascades DPS are similar to those described previously for the Sierra Nevada red fox. When they occur, wildfires typically burn in a range of intensities, resulting in a mosaic of habitat effects. Intense, stand-replacing wildfire (similar to the 2011 Dollar Lake fire near Mt. Hood) could reduce habitat availability and quality for this DPS by reducing overstory cover. However, even stand-replacing (high severity) fires do not necessarily result in a complete loss of habitat or occupancy by Sierra Nevada red fox, as demonstrated by the 2014 detections of Sierra Nevada red fox in two locations within the Dollar Lake burn area (McFadden-Hiller and Hiller 2015).

There is uncertainty concerning the potential for population-level effects of wildfire on the Southern Cascades DPS (and we note that the number of Sierra Nevada red fox populations within the range of the DPS is unknown), but it is reasonable to assume that wildfires will continue to occur in the Southern Cascades mountains into the future, potentially at a rate similar to what has been occurring in the recent past. The

most recent wildfires recorded for the Southern Cascades DPS (not necessarily overlapping all of the sighting areas) are: (1) Mt. Hood sighting area—the 2,428 ha (6,000 ac), high-intensity (*i.e.*, removed a significant amount of vegetation) Dollar Lake wildfire in 2011 (NWCC 2015, pp. 1–2); (2) Dutchman Flat sighting area—the 10,570 ha (26,119 ac) Pole Creek burn in 2012 (McFadden-Hiller and Hiller 2015); and (3) Lassen sighting area—the 11,331 ha (28,000 ac) Reading wildfire in 2012.

Land management agencies within the range of the Southern Cascades DPS are expected to continue to implement necessary vegetation or fuels management strategies (*e.g.*, fire management plans, LRMPs) to reduce the likelihood of wide-scale, catastrophic fires. The future effectiveness of these treatments is unknown, but the best available information indicates that at least local reductions in fire severity should be achieved.

Overall, a combination of: (1) The beneficial aspects that wildfires may have for the Sierra Nevada red fox (*e.g.*, habitat changes that promote an increase in suitable prey species and fruiting shrubs that are a supplementary food source); (2) no reports of direct impacts from wildfire to Sierra Nevada red fox; and (3) the broad range that Sierra Nevada red foxes occur across the Southern Cascades (thus preventing a single fire from having significant impacts to a significant portion of the DPS's range), leads us to believe that wildfire (and associated wildfire suppression) is not an overall significant impact to the Southern Cascades DPS. Therefore, we conclude that based on the best scientific and commercial information available, wildfire and fire suppression are not a threat to the Southern Cascades DPS now or into the future.

#### *Climate Change*

The similarities in ecology and habitat associations between the Southern Cascades DPS of Sierra Nevada red fox and the rest of the taxon across its entire range, combined with the large scales at which climate change studies are conducted, lead us to conclude that our analysis of the potential effects of climate change (*Factor A*) for the entire taxon similarly applies to the Southern Cascades DPS. The most significant, potential future impact to the Southern Cascades DPS from climate change (likely to manifest itself beyond the 50-year foreseeable future time period) appears to be reduced snowpack levels that would make high-elevation areas more suitable for coyotes, and thus the

fox would shift up in elevation to remain in higher snowpack areas. The DPS could be at an elevated risk at two of the six sighting areas across the DPS's range—the Crater Lake and Lassen sighting areas—because the subspecies currently resides close to the highest elevation possible at those locations. The remaining four sighting areas include suitable habitat at higher elevations than the elevations currently known to be occupied.

Although many climate models generally agree about potential future changes in temperature and a greater proportion of precipitation falling as rain rather than snow, the consequent effects on snowpack levels and vegetation composition are more uncertain, as is the rate at which any such changes might be realized. Therefore, it is not clear how or when changes in snowpack levels, forest type, and plant species composition will affect the distribution of Sierra Nevada red fox habitat within the Southern Cascades DPS. Thus, uncertainty exists regarding the level of impact that climate change may have on Sierra Nevada red fox or their habitat within the Southern Cascades DPS. Overall, we conclude that, based on the best scientific and commercial information available at this time, the expected future (*i.e.*, next 50 years) conditions are not expected to change to a degree that would be considered significant. Thus, based on the best scientific and commercial information available at this time, climate change is not a threat to the Southern Cascades DPS now or into the future.

#### *Trapping or Hunting for Fur*

As described earlier in this document, historical unregulated fur trapping (prior to the 1940s) of Sierra Nevada red fox is considered by researchers as the likely cause of the marked contraction in Sierra Nevada red fox's distribution. Until recently, Sierra Nevada red fox in Oregon were considered to be Cascade foxes—of the same subspecies that occupied the Cascades in Washington (Sacks *et al.* 2010, p. 1536). Fur trapping is regulated and remains legal throughout Oregon, although information is not available regarding historical hunting and trapping pressures on Sierra Nevada red foxes in the Oregon Cascades.

Due to regulatory protections, hunting and trapping do not constitute a current or likely future stressor to Sierra Nevada red fox that occur on National Park Service lands at Crater Lake National Park and the entire Lassen sighting area (as discussed above). In the counties where the other four Oregon sighting

areas occur, low numbers of red foxes are harvested, some of which may be Sierra Nevada red fox. The Oregon Department of Fish and Wildlife (ODFW) maintains trapping records by county, without recording exact location or elevation, so harvest of Sierra Nevada red fox in Oregon cannot be distinguished from harvest of lowland fox subspecies (Turner 2015). Records of fox numbers taken from 1989 to 2009 are not separated by year, preventing inferences regarding trends over time. The best available information indicates that numbers of red fox harvested were highest in Lane County (Willamette Pass sighting area) and second highest in Linn County (overlaps part of the Mt. Washington sighting area). The average harvest of red fox has dropped since 1989 across all eight Oregon counties that contain a Sierra Nevada red fox sighting area; however, information is not available to determine whether the harvest decline is due to reduced hunting and trapping effort or reduced numbers of red fox.

In the absence of more definite information regarding the number of Sierra Nevada red fox individuals and populations in Oregon, we do not consider the current harvest levels likely to produce detrimental impact to the DPS, as a whole, across its range. The best available information also does not indicate that the current harvest levels would increase into the future. These activities therefore constitute a stressor that is not impacting the DPS to the degree that the subspecies in the Oregon Cascades is in decline as a consequence of fur trapping. We consider the legal fur trapping within the Oregon Cascades DPS as having no impact to Sierra Nevada red fox at the Crater Lake and Lassen sighting areas, and a low-level impact at the remaining sighting areas in Oregon where relatively few red fox (some of which may be Sierra Nevada red fox) may be harvested. Therefore, because there is no overall significant impact across the DPS's range both currently and into the future, based on the best scientific and commercial information available at this time, trapping or hunting for fur does not rise to the level of a threat.

#### *Disease*

We believe that the potential effects of disease (*Factor C*) on the Southern Cascades DPS are the same as those previously described for the entire range of the Sierra Nevada red fox. This conclusion is based on both our understanding of the biology/habits of the subspecies, as well as the presence (or lack thereof) of the various diseases (*i.e.*, SPD, EFF, sarcoptic mange, canine

distemper, and rabies) within the DPS's range. To avoid redundancy, these effects are described in detail above for the entire taxon under *Disease*. Given there is no evidence to suggest that disease has impacted the Southern Cascades DPS population in the past, nor is there evidence to suggest that disease currently affects the DPS or is likely to in the future, we conclude that disease is not a threat to the Southern Cascades DPS now or in the future.

#### *Predation by Domestic Dogs or Coyotes, and Competition With Coyotes*

Based on the best scientific and commercial information available, the potential effects of predation by either domestic dogs or coyotes (*Factor C*), as well as competition with coyotes (*Factor E*), on the Sierra Nevada DPS are similar to those described previously for the entire taxon. Given recreational opportunities and regulations, domestic dogs within Sierra Nevada red fox's home range territories within the DPS are most likely to occur in the Willamette Pass, Crater Lake, and Lassen sighting areas, but domestic dogs could also potentially be found along many other roads or recreational areas (e.g., hiking trails) within the DPS's range. To date, predation by a domestic dog has been documented once within the range of the Southern Cascades DPS—one radio-collared Sierra Nevada red fox died in 2000 at the Lassen sighting area. See *Predation by Domestic Dogs or Coyotes*, above, for additional discussion.

Coyotes are known to occur within the Southern Cascades DPS's range, including the following:

(1) Mt. Hood sighting area—One scat was genetically identified in October 2013, at an elevation higher than the Sierra Nevada red fox sightings (i.e., at 1,879 m (6,165 ft) (Akins 2014, p. 2)).

(2) Mt. Washington, Dutchman Flat, and Willamette sighting areas—Four detections occurred in recent years at camera stations in the Willamette and Deschutes National Forests where Sierra Nevada red fox have also been documented to occur (McFadden-Hiller and Hiller 2014, pp. 3, 5–6). The specific locations within the sighting areas were not identified in McFadden-Hiller and Hiller (2014, p. 3).

(3) Lassen sighting area—Perrine's (2005, pp. 73–74) investigations at the Lassen sighting area found coyotes present at all elevations during the summer months. However, coyote population density was found to be greater at lower elevations, thus producing an elevational separation between most coyotes and the Sierra

Nevada red fox population (Perrine 2005, p. 192).

Overall, Sierra Nevada red foxes are better able than coyotes to live in areas of relatively deep snow, thus tending to remain at higher elevations with snowpack where coyotes are less common during winter months. Coyotes are generally found at lower elevations than Sierra Nevada red fox during winter and early spring when snowpack is high (Service 2015, pp. 48–51). Sierra Nevada red fox may potentially benefit from the presence of coyotes—for example, individuals during winter months could benefit by scavenging deer carcasses killed by coyotes (Perrine 2005, p. 31). Additionally, potential future coyote impacts could be lessened if the two recently established wolf packs (which may control coyote numbers but are unlikely to compete or predate upon Sierra Nevada red fox, as wolves tend to take larger game (ODFW 2015, p. 2)) in the Southern Cascades expand.

Similar to those impacts described above for the entire taxon, we do not have information on associated coyote impacts to the Southern Cascades DPS (i.e., no information to indicate that coyotes are causing a decline or that coyotes are increasing in number) either currently nor are they likely to increase into the future. This could change if climate change-related impacts become realized with significantly lowered snowpack levels; alternatively, potential future coyote impacts could be lessened if wolf packs expand within the DPS's range.

#### *Hybridization With Nonnative Red Fox*

As described above under the *Hybridization with Nonnative Red Fox* discussion for the entire taxon, hybridization of Sierra Nevada red fox with other nonnative red fox (*Factor E*) could result in outbreeding depression or genetic swamping (Quinn and Sacks 2014, pp. 16–17). The only indication of hybridization within the Southern Cascades DPS is based on genetic testing of mtDNA from two Sierra Nevada red fox individuals at the Mt. Hood sighting area that show evidence of past (not recent) hybridization with nonnative red foxes (Akins and Sacks 2015, p. 1). Although these data indicate that nonnative red fox have bred with the Sierra Nevada red fox at one of the six sighting areas within the DPS's range at some time in the past, the best available data do not indicate current hybridization impacts to any of the sighting areas within the DPS. Therefore, this stressor does not currently rise to the level of a threat. As discussed earlier in this document,

there do not appear to be any geographical barriers separating nonnative red fox from Sierra Nevada red fox, so it is possible that hybridization could take place in other sighting areas in the future. However, we have no information that indicates that hybridization, should it occur, would rise to the level of a threat to the DPS. Therefore, the best available scientific and commercial information available does not suggest that hybridization within the DPS's range is a threat now or in the foreseeable future.

#### *Vehicles*

Based on the best scientific and commercial information available, the potential effects of vehicles (i.e., potential road kill and noise disturbance) (*Factor E*) are similar to those described previously for the entire taxon. To date, there are two confirmed reports of Sierra Nevada red fox road kills within the Southern Cascades DPS along Oregon State Highway 20 approximately 80 km (50 mi) west of the Mt. Washington sighting area and two unconfirmed reports near the Crater Lake sighting area. There may also be noise disturbance activity in the portion of the DPS that overlaps with the Willamette Pass Ski Area or the snowparks near the Dutchman Flat sighting area. However, snowmobile-related impacts are largely unknown, and the best available data do not indicate any current or future impacts associated with increases in vehicular activity or noise levels. At this time, information indicates that individual Sierra Nevada red foxes within the range of the Oregon Cascades DPS may be impacted by vehicle activity or noise as opposed to significant impacts across the range of the DPS. Therefore, based on the best scientific and commercial information available at this time, we conclude that vehicles are not a threat to the Oregon Cascades DPS now or in the future.

#### *Small and Isolated Population Effects*

Based on the best scientific information available, we believe the potential negative effects associated with small and isolated populations within the Southern Cascades DPS are similar to those presented above for the entire taxon. We recognize that the smaller a population becomes, the more likely it is that one or more stressors could impact a population, potentially reducing its overall size, or resulting in impacts associated with genetic diversity, inbreeding, and reproduction deficiency, all of which can increase a species risk of extinction. Within the Southern Cascades DPS of Sierra Nevada red fox, the number and size of

Sierra Nevada red fox populations in Oregon are not yet known, in large part due the recent discovery that the montane red fox thought to have been the Cascades subspecies were in fact the Sierra Nevada red fox subspecies (see additional discussion for the Sierra Nevada red fox under the *Small and Isolated Population Effects* section, above). Surveys are ongoing at the time of publication of this document. Of the information available for the five Oregon sighting areas, there is no indication that the Oregon populations or sighting areas are being negatively impacted by reduced genetic diversity, inbreeding depression, or reproduction deficiency.

Information is available on the population size of the Lassen sighting area that occurs on the southern end of the DPS's range. Specifically, this population is considered small and represented by 21 breeding and 21 nonbreeding individuals (see Table 1, above). Sacks *et al.* (2010, p. 1536) and Sacks (2015, p. 1) state that the actual size of the Lassen population is likely to be somewhere between 21 and 63 individuals, depending on the number of nonbreeding individuals present. Although suitable habitat is limited between the Lassen and next closest sighting area in the DPS (*i.e.*, Crater Lake), suitable habitat is present, and the best available information suggests that dispersal could potentially occur between sighting areas. We also note that researchers indicate that the Sierra Nevada red fox populations are likely represented by relatively small numbers (Grinnell *et al.* 1937, p. 396) or low population densities (Perrine *et al.* 2010, p. 9).

Given the presence of suitable habitat conditions and the numbers of Sierra Nevada red fox observed to date without comprehensive surveys across the DPS's range, it is reasonable to conclude that additional Sierra Nevada red foxes likely occur throughout the range of the DPS. At this time, despite the relatively geographically disjunct nature of the known sighting areas across the Southern Cascades DPS, there is no evidence to suggest that the sighting areas (and unknown number of populations) are entirely isolated from one another to the degree that we would expect the manifestation of significant negative effects that could potentially arise in small, isolated populations. Additionally, although the Lassen population is considered small at this time, we believe the number of sighting areas and extent of geographic area covered by the subspecies within the DPS contribute to the overall low likelihood of a catastrophic event

potentially impacting the entire DPS's range.

Overall across the Southern Cascades DPS's range at this time, the best available information indicates at least one small population at the southern end of its range, and an unknown number of populations of unknown size throughout the remainder of the DPS's range. Additionally, the best available data do not indicate empirical evidence that the Sierra Nevada red fox is in decline across the DPS. Thus, based on the best scientific and commercial information available at this time, small or isolated population size effects do not rise to the level of a threat within the Southern Cascades DPS either currently or in the future.

#### *Cumulative Effects*

The best scientific and commercial information available at this time does not indicate that potential cumulative effects within the Southern Cascades DPS are different than the potential cumulative impacts described above for the entire taxon. Above, we concluded that two cumulative impact scenarios could potentially occur:

(1) Potential increased competition with coyotes on Sierra Nevada red fox as a result of high-elevation forested areas becoming more suitable for coyotes following potential impacts from climate change (*i.e.*, lowered snowpack levels, increased incidence and extent of wildfires).

(2) A combination of potential stressors (*i.e.*, hunting and trapping, SPD and other diseases, competition and predation from coyotes, hybridization with nonnative red fox, and vehicles) that directly result in death or loss of reproductive ability for the Sierra Nevada red fox.

For the purposes of this analysis for the Southern Cascades DPS, and similar to the discussion and conclusion presented above for the entire taxon, the best available data at this time do not suggest that the cumulative effects of potential increased competition from coyotes associated with possible future climate change impacts rise to the level of a threat to the Southern Cascades DPS. Additionally, although it is possible that all or some of the stressors could potentially act in concert as a cumulative threat to the Southern Cascades DPS, the best available data indicate ambiguity in either the likelihood or level of impacts for the various stressors at the DPS-wide level, or the data indicate only individual-level impacts. Thus, data do not indicate that these stressors are cumulatively causing now or will cause in the future a substantial decline of the

Sierra Nevada red fox across the range of the Southern Cascades DPS. Therefore, we have determined that based on the best scientific and commercial information available at this time, the cumulative impacts of these potential stressors do not rise to the level of a threat for the Southern Cascades DPS.

#### *Existing Regulatory Mechanisms—Southern Cascades DPS*

Existing regulatory mechanisms that affect the Southern Cascades DPS include laws and regulations promulgated by the Federal Government, State of Oregon government, and State of California government (*Factor D*). These include the following mechanisms that are described in detail in the Species Report (Service 2015, pp. 58–63), and summarized in more detail above under the *Existing Regulatory Mechanisms* section for the entire taxon:

(1) Forest Service policy manual (USDA FS 2005, section 2670.22), which allows for designation of sensitive species of management concern, of which the Sierra Nevada red fox is a sensitive species where it occurs on National Forests in California (U.S. Forest Service Region 5) and in Oregon (USDA 2013, p. 1; Chapman 2015, Excel attch., wksht. 2, line 655).

(2) National Forest management is directed by the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528 *et seq.*), and the NFMA (16 U.S.C. 1600 *et seq.*). The NFMA specifies that the Forest Service must have an LRMP to guide and set standards for all natural resource management activities on each National Forest, including the Mt. Hood, Willamette, Deschutes, Umpqua, Winema, Rogue River, and Lassen National Forests that currently harbor suitable habitat or known occurrences of Sierra Nevada red fox within the Southern Cascades DPS, and the Forest Service must implement management actions through their LRMPs that provide a conservation benefit to the DPS.

(3) The NWFP (USDA and USDI 1994, entire) guides management over a portion of the Sierra Nevada red fox habitat within the Southern Cascades DPS, specifically to provide the basis for conservation of the northern spotted owl and other late-successional, old-growth forest associated species on Federal lands. The NWFP is important for the DPS because it creates a network of late-successional and old-growth forests that help meet the Sierra Nevada red fox's habitat requirements, discussed above, at the Mt. Hood, Mt.

Washington, Dutchman Flat, and Willamette Pass sighting areas. Several land allocations exist with differing levels of standards and guidelines for managing forest resources, all of which has had an overall positive impact on the forests/resources by substantially reducing habitat loss from forest management activities on Federal lands.

(4) The National Park Service Organic Act of 1916, as amended (16 U.S.C. 1 *et seq.*) and the National Park Service General Authorities Act of 1970 (16 U.S.C. 1a–1) address natural resources on National Park lands, specifically within Crater Lake National Park within the Southern Cascades DPS. These Acts require the National Park Service to “preserve fundamental physical and biological processes, as well as individual species, features, and plant and animal communities” (USDI NPS 2006, p. 36). Sierra Nevada red fox habitat within park boundaries that are not developed specifically for recreation and camping are managed toward natural processes and species composition, which provides an overall conservation benefit to the subspecies and its habitat.

(5) Although the Sierra Nevada red fox within the Oregon portion of the Southern Cascades DPS may be hunted and trapped (635 Oregon Administrative Rules 050–0045(1), 0045(8)), the best available data do not indicate actual impacts to the Sierra Nevada red fox at this time, nor do the data indicate any impacts to the subspecies into the future.

(6) Within the Lassen sighting area portion of the Southern Cascades DPS, the CESA (CFGC 2050 *et seq.*) prohibits possession, purchase, or “take” of endangered or threatened species without an incidental take permit, issued by CDFW. The Sierra Nevada red fox was designated as a threatened species under CESA in 1980 (CDFW 2014, p. 12). Additionally, the State of California classifies red foxes as a furbearing mammal that is protected from commercial harvest (14 C.C.R. 460).

Overall, existing regulatory mechanisms currently (and into the future) provide substantial protection on Federal lands for the Southern Cascades DPS. Within the Lassen sighting area specifically, the Sierra Nevada red fox’s State-listed status and protection from commercial harvest provide additional, significant protection for the long-term conservation of the subspecies. Although similar protections from hunting and trapping are not available for the remainder of the DPS’s range in Oregon, the best available data do not indicate rangewide impacts to the DPS.

As similarly described above in the *Existing Regulatory Mechanisms* section for the whole taxon, the best available scientific and commercial information indicates that the existing mechanisms are adequate to address impacts to the Southern Cascades DPS from stressors for which governments may have regulatory control (*i.e.*, wildfire, injury or mortality due to fur trapping, and collision with vehicles).

#### *Finding for the Southern Cascades DPS*

We assessed the best available scientific and commercial information regarding threats faced by the Southern Cascades DPS. We have reviewed the petition, information available in our files, and information submitted to us following our 90-day finding (77 FR 45; January 3, 2012). We also consulted with Sierra Nevada red fox researchers and Federal land managers. We do not find support for the petitioners’ claim that the Southern Cascades DPS may warrant listing as a federally endangered or threatened species. The petitioners did not outline the threats that they believe are specific to the Southern Cascades DPS, although based on our analysis, we evaluated all stressors identified for the entire taxon across Oregon and California. Our analysis of the best available information indicates that the Southern Cascades DPS is not warranted for listing based on the same reasons identified above for the Sierra Nevada red fox across its entire range. Overall, we found that the stressors that may impact the Southern Cascades DPS are not significantly impacting the subspecies either currently or in the future (such that listing may be warranted). Specifically, we found that five stressors (*i.e.*, wildfire and fire suppression; trapping or hunting for fur; predation by dogs or coyotes, or competition from coyotes; hybridization with nonnative red fox; and vehicles) may impact individuals at one or more sighting areas currently or in the future, but these five stressors are not causing DPS-wide impacts such that the DPS meets the definition of an endangered or threatened species at this time.

Currently, the best available data indicate that the only known population in the Southern Cascades DPS (*i.e.*, the Lassen sighting area) may be experiencing elevated impacts due to its small population size. In addition, both the Lassen and Crater Lake sighting areas may experience (in the future beyond the 50-year time period) combined pressures from coyote predation and competition, as well as climate change-related impacts that could reduce snowpack levels, thereby creating habitat conditions at high

elevations that are more favorable to coyotes. However, the best available data indicate coyotes are not increasing in numbers currently nor are they likely to increase into the future, and thus are not impacting this portion of the DPS’s range to the degree that any more than individuals might be affected both currently and into the future.

Additionally, there is no indication that potential future changes in lowered snowpack levels at high elevations (as suggested by climate models) would occur within the next 50 years to such a degree that coyote numbers would increase throughout the subspecies’ range causing coyote predation or competition to rise to the level of a threat.

In conclusion, and similar to that described above for the Sierra Nevada red fox across its entire range, we believe the Southern Cascades DPS harbors significant suitable habitat throughout its range. These lands are being managed by Federal agencies that are providing management and protections to the DPS and its habitat to benefit the Sierra Nevada red fox. Additionally, the best available data do not indicate any population-level declines from any of the stressors (individually or cumulatively) within any portion of the DPS’s range. Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting upon the Southern Cascades DPS are not of sufficient imminence, intensity, or magnitude to indicate that the DPS is in danger of extinction now (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range.

#### *Significant Portion of the Range—Southern Cascades DPS*

Having determined that the Southern Cascades DPS of the Sierra Nevada red fox does not meet the definition of an endangered or threatened species throughout all of its range, we must next consider whether there are any significant portions of the DPS’s range where the DPS is in danger of extinction or is likely to become endangered in the foreseeable future. If we identify any portions that may be both (1) significant and (2) endangered or threatened, we would engage in a more detailed analysis to determine whether these standards are indeed met. Please see the Significant Portion of the Range discussion, above, for the entire taxon for an explanation of relevance of this analysis.

We consider the historical range of the Southern Cascades DPS of Sierra

Nevada red fox to include the mountainous areas from the Columbia River at Mt. Hood south into California, including the area of Mt. Shasta and slightly into the Trinity Mountains, and continuing south to the Lassen Peak area. This range includes those mountainous areas that exceed 1,219 m (4,000 ft) in Oregon (Aubry *et al.* 2015, pp. 1–2; Doerr 2015, pp. 2–3, 13–14, line 7) and 1,200 m (3,937 ft) in California (Perrine *et al.* 2010, p. 8). Based on the best available information at this time, these sighting areas account for the current distribution of the subspecies within the Southern Cascades DPS.

In considering any significant portion of the Southern Cascades DPS, we considered whether the stressors facing the DPS might be different at the six sighting areas where the Sierra Nevada red fox have been found within the Cascades Mountain Range and, thus, geographically concentrated in some portion of the DPS's range. We are unable to find a concentration of stressors in the Lassen area as compared to the remainder of the DPS's range.

Given the extensive coverage of the Southern Cascades DPS compared to the entire range of the subspecies, we believe that the significant portion of the range analysis for this DPS is the same as that presented above for the entire taxon. We are unable to provide any greater level of detail for the Oregon portion of the Southern Cascades DPS range given the limited amount of information available for the Sierra Nevada red fox in Oregon.

In summary, our evaluation of the best available information indicates that the overall level of stressors is not geographically concentrated in one portion of the Southern Cascades DPS range, and the stressors that have the potential to impact the DPS are relatively consistent across its range (Service 2015, entire). Our review of the best available scientific and commercial information indicates that the Southern Cascades DPS of the Sierra Nevada red fox is not in danger of extinction (endangered) nor likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing the Southern Cascades DPS of Sierra Nevada red fox as an endangered or threatened species under the Act is not warranted at this time.

#### **Sierra Nevada Distinct Population Segment (DPS) of Sierra Nevada Red Fox**

As described above, section 4 of the Act (16 U.S.C. 1533) and implementing

regulations (50 CFR part 424) describe procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a), we may list a species on the basis of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

An endangered species is defined by the Act, with exception, as “any species which is in danger of extinction throughout all or a significant portion of its range.” A threatened species is defined as “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” A species is defined by the Act to include any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

An analysis of the potential threats for the Sierra Nevada red fox is included in the Species Report (Service 2015, entire) associated with this document (and available at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2011–0103). All potential threats of which we are aware that may act upon the Sierra Nevada DPS of Sierra Nevada red fox (hereafter referred to as Sierra Nevada DPS) currently or in the future are captured within the Summary of Information Pertaining to the Five Factors section, above, and stepped down in the following paragraphs as they pertain specifically to the Sierra Nevada DPS. The range of the Sierra Nevada DPS includes high-elevation (roughly greater than 1,200 m (3,937 ft)) conifer habitat of various types (Perrine *et al.* 2010, p. 8) within the Sierra Nevada mountain range from Sierra to Tulare Counties. However, at this time, Sierra Nevada red fox are only known to reside within the Sonora Pass sighting area.

Similar to the five-factor analysis presented above for the entire taxon, we are not aware of any information to indicate that the following are threats to the Sierra Nevada DPS currently or in the future: Overutilization for commercial, recreational, scientific, or educational purposes, including trapping for fur (*Factor B*); SPD or EFF diseases (*Factor C*); or predation by domestic dogs (*Factor C*). Other potential stressors identified specifically

for the Sierra Nevada DPS are discussed below.

#### *Wildfire and Fire Suppression*

Based on the best scientific and commercial information available, the potential effects of wildfire and fire suppression (*Factor A*) on the Sierra Nevada DPS are similar to those described previously for the Sierra Nevada red fox. When they occur, wildfires typically burn in a range of intensities, resulting in a mosaic of habitat effects. Intense, stand-replacing wildfire (similar to the 2013 Rim fire that burned near the Sonora Pass sighting area) could reduce habitat availability and quality for this DPS by reducing overstory cover. Given this DPS currently consists of a single population in the Sonora Pass area, one stand-replacing fire could have significant impacts on this remaining population. However, beneficial aspects of wildfire would also be expected, including improving habitat conditions that promote an increased abundance of preferred prey for the Sierra Nevada red fox. There is uncertainty concerning the potential for population-level effects of wildfire on the Sierra Nevada DPS, but it is reasonable to assume that wildfires will continue to occur in the Sierra Nevada mountains into the future, at least at a rate similar to what has occurred in the recent past. Land management agencies within the range of the Sierra Nevada DPS are also expected to continue to conduct necessary vegetation or fuel management strategies (*e.g.*, fire management plans, LRMPs, SNFPA) to reduce the likelihood of wide-scale, catastrophic fires. The future effectiveness of these treatments is unknown, but the best available information indicates that at least local reductions in fire severity should be achieved. Overall, we conclude that based on the best scientific and commercial information available at this time, wildfire and fire suppression are not a threat to the Sierra Nevada DPS now or into the future.

#### *Climate Change*

The similarities in ecology and habitat associations between the Sierra Nevada DPS of Sierra Nevada red fox and the rest of the taxon across its entire range, combined with the large scales at which climate change studies are conducted, lead us to conclude that our analysis of the potential effects of climate change (*Factor A*) for the entire taxon similarly applies to the Sierra Nevada DPS. The most significant, potential future impact to the Sierra Nevada DPS from climate change (likely to manifest itself beyond

the 50-year foreseeable future time period) appears to be reduced snowpack levels that would make high-elevation areas more suitable for coyotes, and thus the fox would shift up in elevation to remain in higher snowpack areas. If the current population does not expand throughout other portions of the Sierra Nevada DPS's range in the future, this impact will likely affect the population, given it currently occurs within a narrow elevational range where the subspecies already occupies the highest elevations in the area.

Although many climate models generally agree about potential future changes in temperature and a greater proportion of precipitation falling as rain rather than snow, the consequent effects on vegetation and snowpack levels are more uncertain, as is the rate at which any such changes might be realized. Therefore, it is not clear how or when changes in snowpack levels, forest type, and plant species composition will affect the distribution of Sierra Nevada red fox habitat within the Sierra Nevada DPS. Thus, uncertainty exists regarding the level of impact that climate change may have on Sierra Nevada red fox or their habitat within the Sierra Nevada DPS. Overall, we conclude that, based on the best scientific and commercial information available at this time, the expected future (*i.e.*, next 50 years) conditions are not expected to change to a degree that would be considered significant. Thus, based on the best scientific and commercial information available at this time, climate change is not a threat to the Sierra Nevada DPS now or into the future.

#### Disease

As described for the Sierra Nevada red fox subspecies as a whole, numerous pathogens are known to cause severe disease (*Factor C*) in canids. The diseases most likely to affect the Sierra Nevada DPS are sarcoptic mange, canine distemper, and rabies. Although SPD and EFF are diseases that may impact Sierra Nevada red fox in the Southern Cascades DPS (see *Disease* sections, above, for both the taxon as a whole and the Southern Cascades DPS), neither SPD or EFF have been reported within or near the current population at the Sonora Pass sighting area. Additionally, the Sonora Pass sighting area is unlikely to be exposed to these diseases because CDFW does not stock fish from Northern California south of the Feather River (Plumas County) to help prevent transmittal of diseases (including SPD and EFF) (Beale 2011, p. 1).

The best available data indicate that no diseases are affecting the Sierra

Nevada DPS, and given the isolation and low population numbers in this area, transmission of a disease into the population would be less likely, except within family groups (Perrine *et al.* 2010, p. 9). Given there is no evidence to suggest that disease has impacted the Sierra Nevada DPS in the past, nor is there evidence to suggest that disease currently affects the DPS or is likely to in the future, we conclude that disease is not a threat to the Sierra Nevada DPS now or in the future.

#### Predation and Competition From Coyotes

Based on the best scientific and commercial information available, the potential effects of predation or competition from coyotes (*Factors C and E*) on the Sierra Nevada DPS are similar to those described previously for the entire taxon. Coyotes are present in the Sonora Pass sighting area at the same elevation as Sierra Nevada red fox during the summer months (although the average elevation for coyotes appears to be lower than average elevation for the fox (Quinn and Sacks 2014, pp. 11, 35)), and they appear to outnumber Sierra Nevada red fox in the area (Quinn and Sacks 2014, p. 12). However, Rich (2014, p.1) notes that deep snows in the Sonora Pass sighting area tend to keep coyotes below 2,743 m (9,000 ft).

At this time, the best available information indicates the presence of coyotes within the range of the Sierra Nevada DPS, but we do not have information to indicate associated impacts to the Sierra Nevada red fox (*i.e.*, no information to indicate that coyotes are causing a decline or that coyotes are increasing in number such that they constitute a threat to the DPS) either currently or in the future. This could change if climate change-related impacts become realized with significantly lowered snowpack levels; alternatively, a potential future coyote impact could be lessened if wolf packs continue to expand outside of Oregon and into the Sierra Nevada mountain range. Restoration of wolves in California in sustainable populations would likely lower coyote population numbers or exclude them from higher elevation forested areas, thereby facilitating the persistence of Sierra Nevada red fox populations (Levi and Wilmers 2012, p. 926); wolves are unlikely to compete heavily with Sierra Nevada red fox because they tend to take larger game (ODFW 2015, p. 8).

#### Hybridization With Nonnative Red Fox

Hybridization can result in outbreeding depression or genetic

swamping (Quinn and Sacks 2014, pp. 16–17; Sacks *et al.* 2015, p. 2). Hybridization is a recently described impact within the Sierra Nevada DPS. In a study conducted from October 2011 through September 2014, researchers documented interbreeding between female Sierra Nevada red fox and two male nonnative red foxes in 2013, resulting in 10 hybrid pups (Quinn and Sacks 2014, pp. 2, 10). This interbreeding was followed by documented inbreeding (breeding between related foxes) between the nonnative male and one of his hybrid female offspring resulting in an additional backcross hybrid pup in 2014 (Quinn and Sacks 2014, pp. 16, 30). This breeding of native Sierra Nevada red fox with nonnative red foxes is the only indication of successful reproduction in the study area during the last 3 years (Quinn and Sacks 2014, pp. 9–10); this study covered 20 to 50 percent of the high-quality habitat present in the Sonora Pass sighting area. The two nonnative male adults that entered the Sierra Nevada DPS and bred with Sierra Nevada red fox individuals were not closely related, but both showed a combination of fur-farm stock and Rocky Mountain red fox ancestry and likely originated from a population somewhere in the Great Basin of Nevada (Quinn and Sacks 2014, p. 16). Additionally, a third nonnative male of unknown origin was detected at the Sonora Pass sighting area in 2014, but it is not known to have bred (Sacks *et al.* 2015, pp. 16, 22).

Overall, this documented hybridization is likely resulting in a reduction in reproduction of native Sierra Nevada red fox within the DPS. Sacks *et al.* (2015, p. 14) report reduced genetic diversity in the Sierra Nevada red fox at Sonora Pass; specifically, genetic diversity has declined to two-thirds of its historical estimate in this area. In addition, Sacks *et al.* (2015, p. 3) state that lack of breeding among native individuals in the Sierra Nevada DPS over recent years is potentially indicative of inbreeding depression. Overall, inbreeding depression and the potential for outbreeding depression and genomic replacement from the nonnatives represent issues of concern for the Sonora Pass population (Sacks *et al.* 2015, p. 3). We have no information to indicate that nonnative red fox will cease inhabiting and interbreeding with Sierra Nevada red fox within the Sierra Nevada DPS into the future. Therefore, based on the best scientific and commercial information available at this time, we conclude that hybridization with nonnative foxes is a threat to the

Sierra Nevada DPS (currently represented by a single population in the Sonora Pass sighting area) both currently and into the future.

#### Vehicles

Based on the best scientific and commercial information available, the potential effects of vehicles (*i.e.*, road kill and noise disturbance) (*Factor E*) are similar to those described previously for the entire taxon. To date, there has been a single report of a Sierra Nevada red fox road kill within the Sierra Nevada DPS (prior to 2010 along California State Highway 395), and there may be noise disturbance activity in the portion of the DPS that overlaps with the Bridgeport Winter Recreation Area within the Humboldt-Toiyabe National Forest or the Marine's Corps' Marine Warfare Training Center (MWTC). However, snowmobile-related impacts are largely unknown, as demonstrated by the Forest Service's current investigation in accordance with Standard 32 of the SNFPA, results of which are not yet available. Additionally, no known impacts to Sierra Nevada red fox have been reported at the MWTC. At this time, information indicates that individual Sierra Nevada red fox within the range of the Sierra Nevada DPS may be impacted by vehicle activity or noise as opposed to significant impacts across the range of the DPS. Therefore, based on the best scientific and commercial information available at this time, we conclude that vehicles are not a threat to the Sierra Nevada DPS now or in the future.

#### Small Population Effects

The best available genetic data for the taxon are indicative of a decline in the Sierra Nevada DPS over time. Regarding genetic diversity and the small population of the Sierra Nevada DPS, current heterozygosity levels in nuclear DNA (*i.e.*, a measure of genetic diversity) are considerably lower (average = 0.44) than heterozygosity levels historically (0.64), thus indicating a recent negative trend in population size (Quinn and Sacks 2014, pp. 13–14). Reductions in the diversity of mtDNA since historical times also indicate a recent decline in population numbers (Quinn and Sacks 2014, p. 14). Consistent with reductions in genetic diversity, there has also been recent documented inbreeding in this population. As described in the *Hybridization With Nonnative Red Fox* section, above, two nonnative male red fox are documented to have entered the population, bred with native individuals, and produced a minimum of 11 hybrid pups between 2012 and

2014 (Sacks *et al.* 2015, pp. 3, 16, 30). During that same time, no surviving native pups were successfully produced in the study area. Only two adult native males were known from the area, and one of those was apparently either killed or driven off by one of the incoming nonnative males. A third nonnative male was documented in the study area in 2014, but did not successfully interbreed (Sacks *et al.* 2015, p. 16).

Overall, the best available scientific and commercial information suggests a single, extant population of Sierra Nevada red fox currently exists in the Sierra Nevada DPS, and the population is small, declining, and isolated. There has been no indication of native fox reproduction since 2011. Therefore, based on the best scientific and commercial information available at this time, we conclude the negative effects of reduced genetic diversity and reproduction deficiency are a threat to the Sierra Nevada DPS currently and into the future. In addition, these negative effects are associated with isolation and can also be influenced by hybridization. At this point in time, however, we do not have information to determine how hybridization will influence genetic diversity and reproduction.

#### Cumulative Effects

We are not aware of any information to indicate that potential cumulative effects within the Sierra Nevada DPS are different than the potential cumulative impacts described above for the entire taxon and for the Southern Cascades DPS. Above, we concluded that two cumulative impact scenarios could potentially occur:

(1) Potential increased competition with and predation from coyotes on Sierra Nevada red fox as a result of high-elevation forested areas becoming more suitable for coyotes following potential impacts from climate change (*i.e.*, lowered snowpack levels, increased incidence and extent of wildfires).

(2) A combination of potential stressors (*i.e.*, hunting and trapping, disease, competition and predation from coyotes, hybridization with nonnative red fox, and vehicles) that directly result in death or loss of reproductive ability for the Sierra Nevada red fox.

To avoid redundancy, these effects are described in detail above for the entire taxon and the Southern Cascades DPS under *Cumulative Effects*. Similar to those discussions above, the best available data at this time do not suggest that the cumulative effects of increased coyote numbers and climate change rise to the level of a threat to the Sierra

Nevada DPS overall. Additionally, the best available data indicate ambiguity in either the likelihood or level of impacts for the various stressors at the DPS-wide level, or the data indicate only individual-level impacts. Thus, data do not indicate that these stressors are cumulatively causing now or will cause in the future a substantial decline of the Sierra Nevada red fox across the range of the Sierra Nevada DPS. Therefore, based on the best scientific and commercial information available at this time, we have determined that the cumulative impacts of these potential stressors do not rise to the level of a threat for the Sierra Nevada DPS.

#### Existing Regulatory Mechanisms—*Sierra Nevada DPS*

Existing regulatory mechanisms that affect the Sierra Nevada DPS include laws and regulations promulgated by the Federal Government and State of California governments (*Factor D*). These include the following mechanisms that are described in detail in the Species Report (Service 2015, pp. 58–63) and summarized in more detail above under the *Existing Regulatory Mechanisms* section for the entire taxon:

(1) Forest Service policy manual (USDA FS 2005, section 2670.22), which allows for designation of sensitive species of management concern, of which the Sierra Nevada red fox is a sensitive species where it occurs on National Forests in California (U.S. Forest Service Region 5).

(2) National Forest management is directed by the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528 *et seq.*), and the NFMA (16 U.S.C. 1600 *et seq.*). The NFMA specifies that the Forest Service must have an LRMP to guide and set standards for all natural resource management activities on each National Forest, including the Humboldt-Toiyabe and Stanislaus National Forests that currently harbor suitable habitat or known occurrences of Sierra Nevada red fox within the Sierra Nevada DPS. In addition, the Forest Service must implement management actions through their LRMPs that provide a conservation benefit to the DPS.

(3) The SNFPA requires fire and fuels management projects in most areas to retain at least 40 percent (preferably 50 percent) canopy cover within a treatment unit and effectively requires retention of trees 63.5 cm (25 in) dbh in most treated areas (USDA 2004, pp. 3, 50), which is close to the preferred winter habitat characteristics likely preferred by the subspecies. Additionally, SNFPA requires the Forest Service to: (a) Conduct an analysis to



determine whether activities within 8 km (5 mi) of a verified Sierra Nevada red fox sighting have the potential to affect the species (USDA 2004, p. 54), (b) mandate a limited operating period of January 1 to June 30 as necessary to avoid adverse impacts to potential breeding, and (c) require 2 years of evaluations for activities near sightings that are not associated with a den site.

(4) The OPLMA (Pub. L. 111–11, p. 1059) established the Bridgeport Winter Recreation Area to control winter vehicles on Forest Service land, consisting of about 2,833 ha (7,000 ac) in the northern portion of the Sonora Pass sighting area (USDA 2010, p. 4). The OPLMA states that the winter use of snowmobiles is allowed in the Recreation Area, but is subject to terms and conditions, which can minimize potential impacts to sensitive resources. The Forest Service has completed a management plan that calls for monitoring of impacts to wildlife (USDA 2010, p. 9) and is proceeding with evaluations of impacts to Sierra Nevada red fox (see *Vehicles*, above).

(5) The National Park Service Organic Act of 1916, as amended (16 U.S.C. 1 *et seq.*) and the National Park Service General Authorities Act of 1970 (16 U.S.C. 1a–1) address natural resources on National Park lands, specifically within Yosemite National Park within the Sierra Nevada DPS. These Acts require the National Park Service to “preserve fundamental physical and biological processes, as well as individual species, features, and plant and animal communities” (USDI NPS 2006, p. 36). Yosemite National Park’s land management plan (USDI NPS 1980, pp. 10–11) does not contain specific measures to protect the Sierra Nevada red fox or its habitat, but does characterize the portion of the Park in the Sonora Pass sighting area as a “wilderness subzone,” wherein “natural systems and processes will be permitted to follow their minimum intrusion by man.”

(6) The CESA (CFGC 2050 *et seq.*) prohibits possession, purchase, or “take” of endangered or threatened species without an incidental take permit issued by CDFW. The Sierra Nevada red fox was designated as a threatened species under CESA in 1980 (CDFW 2014, p. 12). In addition, the State of California classifies red foxes as a furbearing mammal that is protected from commercial harvest (14 C.C.R. 460).

Additionally, we note that the U.S. Marine Corps’ MWTC has lands within a portion of the Sonora Pass sighting area. The U.S. Marine Corps has initiated preparation of an INRMP

(Norquist 2014, p. 2) consistent with requirements outlined in the Sikes Act (16 U.S.C. 670a), which would address potential impacts to natural resources, presumably to include the Sierra Nevada red fox. Because an INRMP is not yet finalized, we cannot evaluate its adequacy as a regulatory mechanism.

Overall, existing regulatory mechanisms currently (and into the future) provide substantial protection on Federal lands for the Sierra Nevada DPS. Within the Sonora Pass sighting area specifically, the Sierra Nevada red fox’s State-listed status and protection from commercial harvest provide additional significant protection for the long-term conservation of the subspecies. As similarly described above in the *Existing Regulatory Mechanisms* section for the whole taxon, the best available scientific and commercial information indicates that the existing mechanisms are adequate to address impacts to the Sierra Nevada DPS from stressors for which governments may have regulatory control (*i.e.*, wildfire, injury or mortality due to harvest, and injury or mortality due to collision with vehicles).

#### *Finding for the Sierra Nevada DPS*

We assessed the best available scientific and commercial information regarding threats faced by the Sierra Nevada DPS. We have reviewed the petition, information available in our files, and information submitted to us following our 90-day finding (77 FR 45; January 3, 2012). We also consulted with Sierra Nevada red fox researchers and Federal land managers. We find support for the petitioners’ claim that the Sierra Nevada DPS may warrant listing as a federally endangered or threatened species. Although the petitioners did not outline the threats that they believe are specific to the Sierra Nevada DPS, we have identified threats from hybridization with nonnative red fox and negative effects of reduced genetic diversity, inbreeding (breeding between related foxes), and reproduction deficiency as the significant factors for this DPS. Overall, we believe the Sierra Nevada DPS is warranted for listing based on the following information:

(1) *Range contraction*—The Sierra Nevada red fox has experienced a range contraction of greater than 90 percent from its historical range (based on our visual comparison of the historical range (Grinnell *et al.* 1937, p. 382; Perrine *et al.* 2010, p. 4) to the current extent of the Sonora Pass sighting area) within the Sierra Nevada mountain range. We note a reduction of Sierra Nevada red fox observations based on:

- 1920s to the 1940s/1950s: Reduced harvest of pelts recorded within California.

- 1940s to 1980: Increasingly rare sightings in California that led to the State prohibition on red fox trapping in 1974, and the State listing of the subspecies as a threatened species in 1980 (Statham *et al.* 2012, p. 123).

- 1996 to 2002: Extensive carnivore surveys throughout the Sierra Nevada (Zielinski *et al.*, 2005, entire); no Sierra Nevada red fox were observed.

- 2010: Discovery of Sierra Nevada red fox at what is described herein as the Sonora Pass sighting area.

- 2011 to 2015: Occupancy information from a study near Sonora Pass (Quinn and Sacks 2014, entire; Sacks *et al.* 2015, entire) and from additional camera stations in Yosemite National Park maintained by the National Park Service. This best available and most recent information indicates a single population in the Sonora Pass sighting area as opposed to its much more extensive historically occupied area within the Sierra Nevada mountain range. The Sonora Pass sighting area extends along the crest of the Sierra Nevada Mountains from north of State Route 108 south into Yosemite National Park (Sacks *et al.* 2015, pp. 10–11), overlapping Tuolumne, Mono, and Alpine Counties, and including a recent sighting documented at the north end of Yosemite National Park during 2015 (Lindelof 2015, pp. 1–2).

(2) *Declining population and inbreeding depression*—Comparisons of historical and current population estimates indicate that the Sierra Nevada DPS, as currently represented solely by the Sonora Pass population, is in decline (Sacks *et al.* 2010, p. 1532; Sacks *et al.* 2015, p. 14). The Sierra Nevada red fox within the Sierra Nevada DPS is comprised of an estimated 14 breeding individuals, with a total adult population size estimate of 10 to 50 (Quinn and Sacks 2014, pp. 3, 10, 11, 14; Sacks *et al.* 2015, p. 14). Repeated resampling of individuals over the 3-year study period (October 2011 through September 2014) suggests that most adults with territories overlapping the study area were found (Quinn and Sacks 2014, p. 14).

The low population size estimate for the single extant population known within the Sierra Nevada DPS is supported by analyses of genetic diversity (Quinn and Sacks 2014, pp. 13–14). For instance, the current average heterozygosity (a measure of genetic diversity) in nuclear DNA for Sierra Nevada red fox at the Sonora Pass sighting area (0.44) is considerably lower than heterozygosity levels present

historically (0.64), indicating a relatively recent negative trend in population size (Quinn and Sacks 2014, pp. 13–14). Reductions in the diversity of mtDNA since historical times also indicate a decline in population numbers (Quinn and Sacks 2014, p. 14).

Associated with a known small population is the high apparent isolation of the Sonora Pass population, which has likely resulted in inbreeding depression. The Sonora Pass population is approximately 250 km (155 mi) from the nearest population to the north (Lassen sighting area), with no known Sierra Nevada red fox populations to the south. Genetic testing also shows a lack of migration between the Lassen and Sonora Pass populations (Statham *et al.* 2012, p. 129) (see *Discreteness* discussion, above).

We recognize that the Sierra Nevada red fox, in general across its entire range, has likely always been a relatively rare species. Grinnell *et al.* (1937, p. 396) described Sierra Nevada red fox population numbers as “relatively small, even in the most favorable territory,” and reported that the subspecies likely occurred at densities of 1 per 2.6 square km (1 per square mi). Perrine *et al.* (2010, p. 9) concluded that, based on this information, Sierra Nevada red fox likely occur at low population densities even within areas of high relative abundance. The most recent information for the Sierra Nevada DPS indicates a small current population that is likely the remnant of a much larger population and likely a remnant of multiple populations within the DPS’s range.

(3) *Hybridization with nonnative red fox*—The arrival and documented breeding of nonnative red fox into the Sierra Nevada DPS, as documented between 2011 and 2014 (Quinn and Sacks 2014, pp. 2, 10) will bring alleles that are otherwise rare or missing from the population, which in turn may help alleviate inbreeding depression. However, continued breeding of nonnative red fox with the native Sierra Nevada DPS could lead to outbreeding depression, genetic swamping, and potentially the eventual extirpation of the Sierra Nevada DPS. The recent study documented interbreeding between female Sierra Nevada red fox and two male nonnative red foxes, resulting in seven hybrid pups in 2013, and another four hybrid pups in 2014 (Sacks *et al.* 2015, pp. 3, 15–17, 30). One of the four hybrids produced in 2014 resulted from the pairing of a nonnative male and one of his hybrid female offspring (Sacks *et al.* 2015, pp. 15–17, 30). The pup was thus 75 percent nonnative.

(4) *No evidence of recent “native” Sierra Nevada red fox reproduction*—The 11 nonnative hybridized pups produced (as described above) are the only clear indication of successful reproduction in the study area (Sacks *et al.* 2015, pp. 3, 10–11) between 2011 and 2014, which covered between 20 and 50 percent of the contiguous high-quality habitat present in the Sonora Pass sighting area. Although unknown, it is possible that Sierra Nevada red fox could have reproduced in portions of the sighting area not covered by the 3-year study.

In summary, we find that the significant threats to the Sierra Nevada DPS both currently and into the future are hybridization with nonnative red fox and the negative effects of reduced genetic diversity, inbreeding, and reproduction deficiency. These threats appear to be having significant impacts on the single remaining population in the DPS at Sonora Pass. These impacts are evident from the best available scientific and commercial information that shows a combination of range contraction of greater than 90 percent from its historical range, an apparent declining population, inbreeding depression, hybridization, and no clear indication of successful native Sierra Nevada red fox reproduction since at least 2011. These stressors cumulatively impact the DPS.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the Sierra Nevada DPS of the Sierra Nevada red fox is warranted. We will make a determination on the status of the DPS as endangered or threatened when we develop a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the Sierra Nevada DPS of Sierra Nevada red fox at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the DPS is not warranted for the DPS at this time because the threats facing the DPS are not of an imminent nature that necessitate emergency listing, and the best available scientific and commercial information do not indicate that the Sonora Pass population is at imminent

risk of extinction. However, if at any time we determine that issuing an emergency regulation temporarily listing the Sierra Nevada DPS of the Sierra Nevada red fox is warranted, we will initiate the action at that time.

#### *Listing Priority Number—Sierra Nevada DPS*

The Service adopted guidelines on September 21, 1983 (48 FR 43098) to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants (Lists). These guidelines, titled “Endangered and Threatened Species Listing and Recovery Priority Guidelines,” address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates). We assigned the Sierra Nevada DPS of the Sierra Nevada red fox a listing priority number (LPN) of 3 based on our finding that the DPS faces threats that are of high magnitude and are imminent. These threats include impacts associated with small population size (*e.g.*, inbreeding depression, insufficient reproduction) and hybridization with nonnative red fox. This is the highest priority that can be provided to a DPS of a subspecies under our guidance. Our rationale for assigning the Sierra Nevada DPS an LPN of 3 is outlined below.

Under the Service’s LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that “species” (defined by the Act to include biological subspecies and distinct vertebrate population segments) with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority.

The threats that the Sierra Nevada DPS of Sierra Nevada red fox are high in magnitude because the major threats (hybridization with nonnative red fox and inbreeding depression and insufficient reproduction associated with small population size) occur throughout the range of the Sierra Nevada DPS. The severity of the effects of these threats and the rapidity with which they have caused impacts is high given that a minimum of 11 hybrid pups have been produced since 2013 in a population with an overall population size of fewer than 50 individuals. In addition, during 2013 and 2014, no successful fully native reproduction was

documented (only hybrid reproduction was documented), suggesting that hybridization is negatively affecting native Sierra Nevada red fox reproduction within the Sierra Nevada DPS. The Sonora Pass population is the only known remaining representative of the Sierra Nevada DPS; thus, threats to the population constitute threats to the DPS as a whole, and loss of the population would constitute permanent loss of the DPS as a whole. There also is no information to indicate that any ongoing conservation efforts are likely to reduce the severity of these threats into the foreseeable future.

Under our LPN guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species that face actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We consider the threats facing the Sierra Nevada DPS to be imminent because we have factual information that the threats are identifiable and that the Sierra Nevada DPS is currently facing them throughout its range. These actual, identifiable threats are covered in detail under the discussion of Factors within this finding for the Sierra Nevada DPS, and currently include hybridization with nonnative red fox, and inbreeding depression and insufficient reproduction associated with small population size. In addition to their current existence, we expect these threats to continue and likely intensify in the foreseeable future as there is no information to indicate that any ongoing conservation efforts are occurring or likely to reduce the imminence of these threats into the future. Because these threats are currently occurring, they are imminent.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The Sierra Nevada DPS is an entity that receives a lower priority than would a species as a whole, particularly if the species were the only one in its genus. The Sierra Nevada DPS of the Sierra Nevada red fox faces high-magnitude and imminent threats, and is a valid taxon at the subspecies (and DPS) level. Thus, in accordance with our LPN guidance, we have assigned the Sierra Nevada DPS an LPN of 3.

We will continue to monitor the threats to the Sierra Nevada DPS, and the DPS's status on an annual basis, and should the magnitude or the imminence

of the threats change, we will revisit our assessment of the LPN.

Work on a proposed listing determination for the Sierra Nevada DPS is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Years 2014 and 2015. This work includes all the actions listed in the tables below under expeditious progress.

#### **Preclusion and Expeditious Progress**

To make a finding that a particular action is warranted-but-precluded, the Service must make two findings: (1) That the immediate proposal and timely promulgation of a final regulation is precluded by pending listing proposals, and (2) that expeditious progress is being made to add qualified species to either of the Lists and to remove species from the Lists (16 U.S.C. 1533(b)(3)(B)(iii)).

#### *Preclusion*

A listing proposal is precluded if the Service does not have sufficient resources available to complete the proposal, because there are competing demands for those resources, and the relative priority of those competing demands is higher. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions—(1) The amount of resources available for completing the listing function, (2) the estimated cost of completing the proposed listing, and (3) the Service's workload and prioritization of the proposed listing in relation to other actions.

#### *Available Resources*

The resources available for listing actions are determined through the annual Congressional appropriations process. In FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program. This spending cap was designed to prevent the listing function from depleting funds needed for other functions under the Act (for example, recovery functions, such as removing species from the Lists), or for other Service programs (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997). The funds within the spending cap are available to support work involving the following listing actions: Proposed and final listing rules; 90-day

and 12-month findings on petitions to add species to the Lists or to change the status of a species from threatened to endangered; annual “resubmitted” petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

We cannot spend more for the Listing Program than the amount of funds within the spending cap without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for completing Listing Program actions other than critical habitat designations (“The critical habitat designation subcap will ensure that some funding is available to address other listing activities” (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds were available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2014, based on the Service's workload, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations.

For FY 2012, Congress also put in place two additional subcaps within the listing cap: One for listing actions for foreign species and one for petition findings. As with the critical habitat subcap, if the Service does not need to use all of the funds within the subcap, we are able to use the remaining funds for completing proposed or final listing determinations. To date, in FY 2015, based on the Service's workload, we

have not yet determined if we are able to use some of the funds within the foreign species subcap and the petitions subcap to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the three subcaps, and the amount of funds needed to complete court-mandated actions within those subcaps, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap—other than those within the subcaps needed to comply with court orders or court-approved settlement agreements requiring critical habitat actions for already-listed species, listing actions for foreign species, and petition findings—set the framework within which we make our determinations of preclusion and expeditious progress.

For FY 2015, on December 16, 2014, Congress passed a Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235), which provides funding through September 30, 2015, at the same level as FY 2014. In particular, it includes an overall spending cap of \$20,515,000 for the listing program. Of that, no more than \$1,504,000 can be used for listing actions for foreign species, and no more than \$1,501,000 can be used to make 90-day or 12-month findings on petitions. The Service thus has \$12,905,000 available to work on proposed and final listing determinations for domestic species. In addition, if the Service has funding available within the critical habitat, foreign species, or petition subcaps after those workloads had been completed, it can use those funds to work on listing actions other than critical habitat designations or foreign species.

**Costs of Listing Actions.** The work involved in preparing various listing documents can be extensive, and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The

median cost for preparing and publishing a 90-day finding is \$39,276; for a 12-month finding, \$100,690; for a proposed rule with critical habitat, \$345,000; and for a final listing rule with critical habitat, \$305,000.

**Prioritizing Listing Actions.** The Service's Listing Program workload is broadly composed of four types of actions, which the Service prioritizes as follows: (1) Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing or critical habitat determinations be completed by a specific date; (2) section 4 (of the Act) listing and critical habitat actions with absolute statutory deadlines; (3) essential litigation-related, administrative, and listing program-management functions; and (4) section 4 listing actions that do not have absolute statutory deadlines. In FY 2010, the Service received many new petitions and a single petition to list 404 species, significantly increasing the number of actions within the second category of our workload—actions that have absolute statutory deadlines. As a result of the petitions to list hundreds of species, we currently have over 460 12-month petition findings yet to be initiated and completed.

To prioritize within each of the four types of actions, we developed guidelines for assigning a listing priority number (LPN) for each candidate species (48 FR 43098, September 21, 1983). Under these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). A species with a higher LPN would generally be precluded from listing by species with lower LPNs, unless work on a proposed rule for the species with the higher LPN can be combined with work on a proposed rule for other high-priority species. This is not the case for Sierra Nevada DPS of the Sierra Nevada red fox. Thus, in addition to being precluded by the lack of available resources, the Sierra Nevada DPS of the Sierra Nevada red fox with an LPN of 3, is also precluded by work on proposed listing determinations for those candidate species with a higher listing priority.

Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

Since before Congress first established the spending cap for the Listing Program in 1998, the Listing Program workload has required considerably more resources than the amount of funds Congress has allowed for the Listing Program. It is therefore important that we be as efficient as possible in our listing process. Therefore, as we implement our listing work plan and work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as one of the highest priority species. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

**Listing Program Workload.** Each FY we determine, based on the amount of funding Congress has made available within the Listing Program spending cap, specifically which actions we will have the resources to work on in that FY. We then prepare Allocation Tables that identify the actions that we are funding for that FY, and how much we estimate it will cost to complete each action; these Allocation Tables are part of our record for this notice and the listing program. Our Allocation Table for FY 2012, which incorporated the Service's approach to prioritizing its workload, was adopted as part of a settlement agreement in a case before the U.S. District Court for the District of Columbia (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (“MDL Litigation”), Document 31–1 (D. D.C. May 10, 2011) (“MDL Settlement Agreement”). The requirements of paragraphs 1 through 7 of that settlement agreement, combined with the work plan attached to the agreement as Exhibit B, reflected the Service's Allocation Tables for FY 2011 and FY 2012. In addition, paragraphs 2 through 7 of the agreement require the Service to take numerous other actions through FY 2017—in particular, complete either a proposed listing rule or a not-

warranted finding for all 251 species designated as “candidates” in the 2010 candidate notice of review (“CNOR”) before the end of FY 2016, and complete final listing determinations within one year of proposing to list any of those species. Paragraph 10 of that settlement agreement sets forth the Service’s conclusion that “fulfilling the commitments set forth in this Agreement, along with other commitments required by court orders or court-approved settlement agreements already in existence at the signing of this Settlement Agreement (listed in Exhibit A), will require substantially all of the resources in the Listing Program.” As part of the same lawsuit, the court also approved a separate settlement agreement with the other plaintiff in the case; that settlement agreement requires the Service to complete additional actions in specific fiscal years—including 12-month petition findings for 11 species, 90-day petition findings for 477 species, and proposed listing determinations or not-warranted findings for 39 species.

These settlement agreements have led to a number of results that affect our preclusion analysis. First, the Service has been, and will continue to be, limited in the extent to which it can undertake additional actions within the Listing Program through FY 2017, beyond what is required by the MDL settlement agreements. Second, because the settlement is court approved, two broad categories of actions now fall within the Service’s highest priority (compliance with a court order): (1) The Service’s entire prioritized workload for FY 2012, as reflected in its Allocation Table; and (2) completion, before the end of FY 2016, of proposed listings or not-warranted findings for those candidate species that were included in the 2010 CNOR where we have not already published a not-warranted finding or proposed rule. Therefore, each year, one of the Service’s highest priorities is to make steady progress towards completing by the end of 2017 proposed and final listing determinations for the 2010 candidate species—based on its LPN prioritization system, preparing multi-species actions when appropriate, and taking into

consideration the availability of staff resources.

The Sierra Nevada DPS of the Sierra Nevada red fox was not listed as a candidate in the 2010 CNOR, nor was the proposed listing for the Sierra Nevada DPS of the Sierra Nevada red fox included in the Allocation Tables that were reflected in the MDL settlement agreement. As we have discussed above, we have assigned an LPN of 3 to the Sierra Nevada DPS of the Sierra Nevada red fox. Therefore, even if the Service has some additional funding after completing all of the work required by court orders and court-approved settlement agreements, we would first fund actions with absolute statutory deadlines for species that have lower LPNs. In light of all of these factors, funding a proposed listing for the Sierra Nevada DPS of the Sierra Nevada red fox is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a lower LPN.

*Expeditious Progress*

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists. As with our “precluded” finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resources available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. Thus far, during FY 2015, we delisted the Oregon chub due to recovery (80 FR 9126–9150). As discussed below, given the limited resources available for listing, we find that we are making expeditious progress in FY 2015 in the Listing Program.

We provide below tables cataloguing the work of the Service’s Listing Program in FY 2015. This work includes all three of the steps necessary for adding species to the Lists: (1) Identifying species that warrant listing; (2) undertaking the evaluation of the best available scientific information about those species and the threats they face, and preparing proposed and final listing rules; and (3) adding species to the Lists by publishing proposed and final listing rules that include a summary of the data on which the rule is based and show the relationship of that data to the rule. After taking into consideration the limited resources available for listing, the competing demands for those funds, and the completed work catalogued in the tables below, we find that we are making expeditious progress to add qualified species to the Lists FY 2015.

In addition to the work the Service has completed towards adding qualified species to the Lists, on May 10, 2011, the Service filed in the MDL litigation a settlement agreement that incorporated the Service’s work plan for FY 2012; the court approved that settlement agreement on September 9, 2011. Paragraph 10 of that settlement agreement provides, “The Parties agree that the timetables for resolving the status of candidate species outlined in this Agreement constitute expeditious progress in adding qualified species to the lists of threatened and endangered species.” The Service also filed a second settlement agreement that required even more work in FY 2012. The Service had already begun in FY 2011 to implement that work required by the work plan, and many of these initial actions in our work plan include work on proposed rules for candidate species with an LPN of 2 or 3. Therefore, both by entering into the first settlement agreement and by completing the listing actions required by both settlement agreements, the Service is making expeditious progress to add qualified species to the lists. As provided for in the settlement agreements and the work plan incorporated into the first agreement, the Service’s progress in FY 2015 include completing and publishing the following determinations:

**FY 2015 COMPLETED LISTING ACTIONS**

Publication date	Title	Actions	FR Pages
10/24/2014 .....	Threatened Species Status for Dakota Skipper and Endangered Species Status for Poweshiek Skipperling.	Final Listing Endangered and Threatened .....	79 FR 6367–63748
11/20/2014 .....	Threatened Species Status for Gunnison sage-grouse.	Final Listing Threatened .....	79 FR 69191–69310

FY 2015 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
12/11/2014 .....	Threatened Species Status for the Rufa Red Knot.	Final Listing Threatened .....	79 FR 73705–73748
12/31/2014 .....	90-day finding on Monarch Butterfly and California Gnatcatcher.	90-day petition finding Substantial .....	79 FR 78775–78778
4/2/2015 .....	Threatened Species Status for the Northern Long-eared Bat with 4(d) Rule.	Final Listing Threatened .....	80 FR 17973–18033
4/7/2015 .....	Endangered Species Status for the Big Sandy Crayfish and the Guyandotte River Crayfish.	12-month petition finding Warranted Proposed Listing Endangered.	80 FR 18710–18739
4/7/2015 .....	12-Month Finding on a Petition To List Humboldt Marten as an Endangered or Threatened Species.	12-month petition finding Not warranted .....	80 FR 18742–18772
4/10/2015 .....	90-Day Findings on Ten Petitions (Clear Lake hitch, Mojave shoulderband snail, Northern spotted owl, Relict dace, San Joaquin Valley giant flower-loving fly, Western pond turtle, Yellow-cedar, Egyptian tortoise, Golden conure, Long-tailed chinchilla).	90-day petition finding Substantial .....	80 FR 19259–19263
4/23/2015 .....	Withdrawal of the Proposed Rule To List the Bi-State Distinct Population Segment of Greater Sage-Grouse and Designate Critical Habitat.	Proposed Rule Withdrawal .....	80 FR 22828–22866
6/23/2015 .....	12-Month Finding on a Petition to List Leona’s Little Blue Butterfly as Endangered or Threatened.	12-month petition finding Not warranted .....	80 FR 35916–35931
6/30/2015 .....	90-day Petition Findings on 31 Species .....	90-day petition finding Substantial and not substantial (not substantial for Gray Wolf, Blue Ridge gray-cheeked salamander, California giant salamander, Caddo Mountain salamander, Colorado checkered whiptail, the DPS of Wild Horse, Olympic torrent salamander, Pigeon Mountain salamander, Weller’s salamander and wingtail crayfish; substantial for alligator snapping turtle, Apalachicola kingsnake, Arizona toad, Blanding’s turtle, Cascade Caverns salamander, Cascades frog, Cedar Key mole skink, foothill yellow-legged frog, gopher frog, green salamander, Illinois chorus frog, Kern Canyon slender salamander, Key ringneck snake, Oregon slender salamander, Relictual slender salamander, Rim Rock crowned snake, Rio Grande cooter, silvery phacelia, spotted turtle, southern hog-nosed snake, and western spadefoot toad).	80 FR 37568–37579
9/15/2015 .....	12-Month Finding on a Petition to List the New England Cottontail as an Endangered or Threatened Species.	12-month petition finding Not warranted Notice Candidate removal.	80 FR 55286–55304
9/15/2015 .....	Threatened Species Status for <i>Platanthera integrilabia</i> (White Fringeless Orchid).	Proposed Listing Threatened .....	80 FR 55304–55321
9/18/2015 .....	90-Day Findings on 25 Petitions .....	90-day petition finding Substantial and not substantial (not substantial for Cahaba pebblesnail and the Stephens’ kangaroo rat; substantial for Blue Calamintha bee, California spotted owl, Cascade torrent salamander, Columbia torrent salamander, Florida pine snake, Inyo Mountains salamander, Kern Plateau salamander, lesser slender salamander, limestone salamander, northern bog lemming, Panamint alligator lizard, Peaks of Otter salamander, rusty-patched bumblebee, Shasta salamander, short-tailed snake, southern rubber boa, regal fritillary, Tinian monarch, tricolored blackbird, tufted puffin, Virgin River spinedace, wood turtle, and the Yuman desert fringe-toed lizard).	80 FR 56423–56432

FY 2015 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
9/29/2015	Endangered Species Status for <i>Chamaecrista lineata</i> var. <i>keyensis</i> (Big Pine Partridge Pea), <i>Chamaesyce deltoidea</i> ssp. <i>serpyllum</i> (Wedge Spurge), and <i>Linum arenicola</i> (Sand Flax), and Threatened Species Status for <i>Argythamnia blodgettii</i> (Blodgett's Silverbush).	Proposed Listing Endangered and Threatened.	80 FR 58535–58567
9/30/15	Endangered Status for 49 Species from the Hawaiian Islands.	Proposed Listing Endangered	80 FR 58820–58909
9/30/15	Threatened Species Status for Elfin-woods warbler.	Proposed listing Threatened	80 FR 58674–58688
9/30/15	Threatened Species Status for Eastern massasauga rattlesnake.	Proposed listing Threatened	80 FR 58688–58701

Our expeditious progress also included work on listing actions that we funded in previous fiscal years, and in FY 2015, but have not yet been completed to date. For these species, we have completed the first step, and have

been working on the second step, necessary for adding species to the Lists. Some of these actions have been submitted to the **Federal Register**; however, they have not yet published in the **Federal Register**. These actions are

listed below. Actions in the table are being conducted under a deadline set by a court through a court order or settlement agreement.

FY15 ACTIONS SUBMITTED TO THE FEDERAL REGISTER BUT NOT YET PUBLISHED

Species	Action
12-Month Finding on a Petition to List Greater Sage-grouse ( <i>Centrocercus urophasianus</i> ) as an Endangered or Threatened Species.	12-month petition finding Not warranted Notice Candidate removal.
Endangered Species Status for <i>Chamaecrista lineata</i> var. <i>keyensis</i> (Big Pine Partridge Pea), <i>Chamaesyce deltoidea</i> ssp. <i>serpyllum</i> (Wedge Spurge), and <i>Linum arenicola</i> (Sand Flax), and Threatened Species Status for <i>Argythamnia blodgettii</i> (Blodgett's Silverbush).	Proposed Listing Endangered and Threatened.
Endangered Status for 16 Species and Threatened Status for 7 Species in Guam and the Commonwealth of the Northern Mariana Islands.	Final Listing Endangered and Threatened.
Columbia spotted frog—Great Basin DPS	12-month petition finding Not warranted Notice Candidate removal.
Sequatchie caddisfly	12-month petition finding Not warranted Notice Candidate removal.
Four florida plants (Florida pineland crabgrass, Florida prairie clover, pineland sandmat, and Everglades bully).	Proposed listing.
Kentucky arrow darter	Proposed listing.
Cumberland arrow darter	12-month petition finding Not warranted Notice Candidate removal.
6 Cave beetles (Nobletons, Baker Station, Fowler's, Indian Grave Point, inquirer, and Coleman).	12-month petition finding Not warranted Notice Candidate removal.
Headwater chub	Proposed listing.
Roundtail chub DPS	Proposed listing.
Page springsnail	12-month petition finding Not warranted Notice Candidate removal.
Sonoran desert tortoise	12-month petition finding Not warranted Notice Candidate removal.
Goose Creek milkvetch	12-month petition finding Not warranted Notice Candidate removal.
Sleeping Ute milkvetch	12-month petition finding Not warranted Notice Candidate removal
Suwannee moccasinshell	12-month petition finding.
American eel	12-month petition finding Not warranted.

ACTIONS FUNDED IN PREVIOUS FYs AND FY 2015 BUT NOT YET COMPLETED

Species	Action
<b>Actions Subject to Court Order/Settlement Agreement</b>	
Washington ground squirrel	Proposed listing.
Xantus's murrelet	Proposed listing.
Black warrior waterdog	Proposed listing.
Black mudalia	Proposed listing.
Highlands tiger beetle	Proposed listing.
Sicklefin redhorse	Proposed listing.
Texas hornshell	Proposed listing.
Guadalupe fescue	Proposed listing.

ACTIONS FUNDED IN PREVIOUS FYs AND FY 2015 BUT NOT YET COMPLETED—Continued

Species	Action
<b>Actions Subject to Statutory Deadline</b>	
Miami Tiger Beetle .....	90-day petition finding.

Another way that we have been expeditious in making progress to add qualified species to the Lists is that we have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these efforts also contribute towards finding that we are making expeditious progress to add qualified species to the Lists.

The Sierra Nevada DPS of the Sierra Nevada red fox will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this DPS as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the Sierra Nevada DPS of the Sierra Nevada red fox will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

We request that you submit any new information concerning the status of, or threats to, the Sierra Nevada DPS, the Southern Cascades DPS, or the Sierra Nevada red fox (in general) to our Sacramento Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor Sierra Nevada red fox throughout the subspecies' range, and encourage its conservation. If an emergency situation develops for the Sierra Nevada DPS, Southern Cascades DPS, or the subspecies in general, we will act to provide immediate protection.

**References Cited**

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

**Authors**

The primary authors of this document are the staff members of the Pacific Southwest Regional Office.

**Authority**

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 2015.

Signed:

**James W. Kurth,**

*Acting Director, U.S. Fish and Wildlife Service.*

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Part IV

Department of the Interior

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical  
Habitat for Kentucky Arrow Darter; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R4-ES-2015-0133;  
4500030113]

RIN 1018-BB05

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Kentucky Arrow Darter**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Kentucky arrow darter (*Etheostoma spilotum*) under the Endangered Species Act (Act). In total, approximately 395 stream kilometers (skm) (246 stream miles (smi)) are being proposed for designation of critical habitat for the Kentucky arrow darter in Breathitt, Clay, Harlan, Jackson, Knott, Lee, Leslie, Owsley, Perry, and Wolfe Counties, Kentucky. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. We also announce the availability of our draft economic analysis of the proposed designation.

**DATES:** We will accept comments on the proposed rule or draft economic analysis that are received or postmarked on or before December 7, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 23, 2015.

**ADDRESSES:** *Written comments:* You may submit comments on the proposed rule or draft economic analysis by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter Docket No. FWS-R4-ES-2015-0133, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R4-ES-2015-0133; U.S. Fish and Wildlife Service,

MS; BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

*Document availability:* The draft economic analysis is available at <http://www.fws.gov/frankfort/>, at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2015-0133, and at the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates, plot points, or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at <http://www.fws.gov/frankfort/>, at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2015-0133, and at the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in this rule or at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Virgil Lee Andrews, Jr., Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, 330 West Broadway, Suite 265, Frankfort, KY 04601; telephone 502-695-0468, x108; facsimile 502-695-1024. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Why we need to publish a rule.* Under the Endangered Species Act, when we determine that a species is threatened or endangered, we must designate critical habitat to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule.

*This document consists of a proposed rule to designate critical habitat for the Kentucky arrow darter.* Elsewhere in today's **Federal Register**, we propose to list the Kentucky arrow darter as a threatened species under the Act.

*The basis for our action.* Section 4(a)(3) of the Act requires the Secretary to designate critical habitat, to the maximum extent prudent and determinable, for an endangered or

threatened species at the time it is listed. Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. We have determined that designating critical habitat is both prudent and determinable, and we propose a total of approximately 395 skm (246 smi) of critical habitat in eastern Kentucky.

*We prepared a draft economic analysis of the proposed designation of critical habitat.* In order to consider economic impacts, we have prepared a draft economic analysis of the proposed critical habitat designation and related factors.

*We will seek peer review.* We are seeking comments from independent specialists to ensure that this critical habitat proposal is based on scientifically sound data and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this proposal to designate critical habitat. Because we will consider all comments and information we receive during the comment period, our final designation may differ from this proposal.

**Information Requested**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and effective as possible. Therefore, we request comments or information from other concerned government agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Kentucky arrow darter habitat;

(b) What areas, that were occupied at the time of listing (*i.e.*, are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

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

(4) Information on the projected and reasonably likely impacts of climate change on the Kentucky arrow darter and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the draft economic analysis (DEA) is a reasonable estimate of the likely economic impacts.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

All comments submitted electronically via <http://www.regulations.gov> will be presented

on the Web site in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Previous Federal Actions

All previous Federal actions are described in the proposal to list the Kentucky arrow darter as a threatened species under the Act, which is published elsewhere in today's **Federal Register**.

### Critical Habitat

#### Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population

pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied

by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential for the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the listed species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented

under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. If we list the Kentucky arrow darter, these protections and conservation tools would continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

#### Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species.

As discussed in the proposed listing rule, there is currently no imminent threat of take attributed to collection or vandalism (listing factor B) for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation

activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) reducing the potential for people to cause inadvertent harm to the species. Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Kentucky arrow darter.

#### Critical Habitat Determinability

Having determined that designation is prudent under section 4(a)(3) of the Act, we must find whether critical habitat for the Kentucky arrow darter is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We have reviewed the available information pertaining to the biological needs of the species and characteristics of the species' habitat. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Kentucky arrow darter.

#### Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Kentucky arrow darter from studies of its habitat, ecology, and life history as described below. Additional information can be found in the proposed listing rule published elsewhere in today's **Federal Register**. To identify the physical or biological features essential to the conservation of the species, we have relied on current conditions at locations where the species survives, the limited information available on the species and its closest relatives, and factors associated with the decline of other fishes that occupy similar habitats in the Southeast. We have determined that the following physical or biological features are essential to the Kentucky arrow darter.

#### Space for Individual and Population Growth and for Normal Behavior

Little is known about the specific space requirements of the Kentucky arrow darter; however, the species is typically observed in moderate- to high-gradient, first- to third-order, geomorphically stable streams (Lotrich 1973, p. 382; Thomas 2008, p. 6). Geomorphically stable streams transport sediment while maintaining their horizontal and vertical dimensions (width to depth ratio and cross-sectional area), pattern (sinuosity), and longitudinal profile (riffles, runs, and pools), thereby conserving the physical characteristics of the stream, including bottom features such as riffles, runs, and pools and the transition zones between these features (Rosgen 1996, p. 1–3). The protection and maintenance of these habitat features accommodate spawning, rearing, growth, migration, and other normal behaviors of the species.

During most of the year (late spring through winter), Kentucky arrow darters occupy shallow pools between 10–45 centimeters (cm) (4–18 inches (in)) or transitional areas between riffles and pools (runs and glides) with cobble and boulder substrates that are interspersed with clean (relatively silt free) sand and gravel (Lotrich 1973, p. 382; Thomas 2008, p. 6). Most individuals are encountered near some type of instream cover: Large cobble, boulders, bedrock ledges, or woody debris piles (Thomas 2008, p. 6). During the spawning period (April through June), Kentucky arrow darters utilize riffle habitats with relatively silt free, gravel, cobble, and sand substrates (Kuehne and Barbour

1983, p. 71). Streams inhabited by Kentucky arrow darters tend to be clear and cool (generally less than or equal to 24 degrees Celsius (°C) (72 degrees Fahrenheit (°F))), with shaded corridors and naturally vegetated, intact riparian zones (Lotrich 1973, p. 378; Thomas 2008, pp. 7, 23).

Limited information exists about upstream or downstream movements of Kentucky arrow darters; however, there is evidence that the species can utilize relatively long stream reaches. Observations by Lowe (1979, pp. 26–27) of potential dispersal behavior for a related species (the Cumberland arrow darter (*Etheostoma sagitta*)) in Tennessee, preliminary findings from a movement study at Eastern Kentucky University (EKU), and recent survey results by Kentucky Department of Fish and Wildlife Resources (KDFWR) suggest that Kentucky arrow darters can utilize stream reaches of over 4 skm (2.5 smi) and disperse to other tributaries (Baxter 2014, pers. comm.; Thomas 2015, pers. comm.) (see “Habitat and Life History” section of our proposed listing rule published elsewhere in today's **Federal Register**).

The current range of the Kentucky arrow darter has been reduced from 74 historically occupied streams to 47 currently occupied streams due to destruction, modification, and fragmentation of habitat. Fragmentation of the species' habitat has subjected these small populations to genetic isolation, reduced space for rearing and reproduction, reduced adaptive capabilities, and an increased likelihood of local extinctions (Burkhead *et al.* 1997, pp. 397–399; Hallerman 2003, pp. 363–364). Genetic variation and diversity within a species are essential to recovery, adaptation to environmental change, and long-term viability (capability to live, reproduce, and develop) (Noss and Cooperrider 1994, pp. 282–297; Harris 1984, pp. 93–107; Fluker *et al.* 2007, p. 2). The long-term viability of a species is founded on the conservation of numerous local populations throughout its geographic range (Harris 1984, pp. 93–104). Connectivity of these habitats is essential in preventing further fragmentation and isolation of Kentucky arrow darter populations and promoting species movement and genetic flow between populations.

Therefore, based on the information above, we identify shallow pools, runs, glides, and riffles and associated stream segments of geomorphically stable, first- to third-order streams to be physical or biological features essential to the conservation of the Kentucky arrow darter. The maintenance of these

habitats is essential in accommodating feeding, breeding, growth, and other normal behaviors of the Kentucky arrow darter and in promoting gene flow within the species.

#### Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Feeding habits of the Kentucky arrow darter were documented by Lotrich (1973, pp. 380–382) in the Clemons Fork system, Breathitt County, Kentucky. The primary prey item was mayflies (Order Ephemeroptera), which comprised 77 percent of identifiable food items (420 of 542 items) in 57 Kentucky arrow darter stomachs (Lotrich 1973, p. 381). Large Kentucky arrow darters (greater than 70 millimeters (mm) (2.8 in) total length (TL)) utilized small crayfishes, as 7 of 8 stomachs examined by Lotrich (1973, p. 381) contained crayfishes ranging in size from 11 to 24 mm (0.4 to 0.9 in). Lotrich (1973, p. 381) considered this to be noteworthy because stomachs of small Kentucky arrow darters (less than 70 mm (2.8 in) TL) and stomachs of other darter species did not contain crayfishes. Other food items reported by Lotrich (1973, p. 381) and Etnier and Starnes (1993, p. 523) included larval blackflies (family Simuliidae) and midges (Chironomidae), with lesser amounts of caddisfly larvae, stonefly nymphs, and beetle larvae. Etnier and Starnes (1993, p. 523) reported that juvenile arrow darters feed on microcrustaceans and dipteran larvae.

Like most other darters, the Kentucky arrow darter depends on perennial stream flows that create suitable habitat conditions needed for successful completion of its life cycle. An ample supply of flowing water provides a means of transporting nutrients and food items, moderating water temperatures and dissolved oxygen levels, removing fine sediments that could damage spawning or foraging habitats, and diluting nonpoint-source pollutants. Water withdrawals do not represent a significant threat to the species, but the species is faced with occasional low-flow conditions that occur during periods of drought.

Water quality is also important to the persistence of the Kentucky arrow darter. The species requires relatively clean, cool, flowing water to successfully complete its life cycle. Specific water quality requirements, such as temperature, dissolved oxygen, pH (a measure of the acidity or alkalinity of water), and conductivity (a measure of electrical conductance in the water column that increases as the concentration of dissolved solids

increases), that define suitable habitat conditions for the Kentucky arrow darter have not been determined; however, the species appears to be sensitive to the elevated conductivity and is generally absent when levels exceed 350 microsiemens ( $\mu\text{S}$ )/cm. In general, optimal water quality conditions for fishes and other aquatic organisms are characterized by (1) moderate stream temperatures (generally less than or equal to 24 °C (72 °F) for the Kentucky arrow darter); (2) acceptable dissolved oxygen concentrations; and (3) the lack of harmful levels of pollutants, such as inorganic contaminants like iron, manganese, selenium, and cadmium; organic contaminants such as human and animal waste products; pesticides and herbicides; nitrogen, potassium, and phosphorus fertilizers; and petroleum distillates.

Therefore, based on the information above, we identify aquatic macroinvertebrate prey items, which are typically dominated by mayflies; permanent surface flows, as measured during average rainfall years; and adequate water quality to be physical or biological features essential to the conservation of the Kentucky arrow darter.

#### Cover or Shelter

Kentucky arrow darters depend on specific habitats and bottom substrates for normal life processes such as spawning, rearing, resting, and foraging. As described above, the species typically inhabits shallow pools, riffles, runs, and glides dominated by cobble and boulder substrates and interspersed with clean sand and gravel and low levels of siltation (Thomas 2008, p. 6; Service unpublished data). Kentucky arrow darters are typically observed near some type of cover (boulders, rock ledges, large cobble, or woody debris piles) and at depths ranging from 10 to 91 cm (4 to 36 in) (Thomas 2008, p. 6; Service unpublished data).

Sedimentation (siltation) has been listed repeatedly as a threat to the Kentucky arrow darter (Kuehne and Barbour 1983, p. 71; Etnier and Starnes 1993, p. 523; Thomas 2008, pp. 3–7), and the species has suffered population declines and extirpations where sedimentation has been severe (Etnier and Starnes 1993, p. 524; Thomas 2008, p. 7; Service 2012, p. 1). Substrates with low levels of siltation are essential in accommodating the species' feeding, breeding, growth, and other normal behaviors. The term "low levels of siltation" is defined for the purpose of this rule as silt or fine sand within interstitial spaces of substrates in amounts low enough to have minimal impact (*i.e.*, that would

have no appreciable reduction in spawning, breeding, growth, and feeding) to the species.

Therefore, based on the information above, we identify stable, shallow pools, runs, and glides with boulder and cobble substrates, ample cover (*e.g.*, slab rocks, bedrock ledges, woody debris piles), to be physical or biological features essential to the conservation of the Kentucky arrow darter.

#### Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Prior to spawning, male Kentucky arrow darters establish territories over riffles from March to May, when they are quite conspicuous in water 5 to 15 cm (2 to 6 in) deep (Kuehne and Barbour 1983, p. 71). Males fan out a depression in the substrate (typically a mixture of cobble, gravel, and sand) and defend these sites vigorously. Initial courtship behavior involves rapid dashes, fin-flaring, nudging, and quivering motions by the male followed by similar quivering responses of the female, who then precedes the male to the nest. The female partially buries herself in the gravel substrate, is mounted by the male, and spawning occurs (Etnier and Starnes 1993, p. 523). It is assumed that the male continues to defend the nest until the eggs have hatched. The spawning period extends from April to June, but peak activity occurs when water temperatures reach 13 °C (55 °F), typically in mid-April (Bailey 1948, pp. 82–84; Lowe 1979, p. 44). Females produce between 200 and 600 eggs per season, with tremendous variation resulting from size, age, condition of females, and stream temperature (Rakes 2014, pers. comm.). As mentioned above, substrates with low levels of siltation are essential in accommodating the species' normal behaviors, including breeding, reproduction, and rearing. The species has suffered population declines and extirpations where sedimentation has been severe (Etnier and Starnes 1993, p. 524; Thomas 2008, p. 7; Service 2012, p. 1).

Juvenile arrow darters can exceed 25 mm (1 in) TL by mid-June and grow up to 50 mm (2 in) TL during the first year (Kuehne and Barbour 1983, p. 71; Etnier and Starnes 1993, p. 523). Juvenile arrow darters can be found throughout the channel but are often observed in shallow water along stream margins near roots mats, rock ledges, or some other cover. One-year olds are generally sexually mature and participate in spawning along with older classes (Etnier and Starnes 1993, p. 523). As stream flow lessens and riffles begin to shrink, most arrow darters move into

pools and tend to remain there even when summer and autumn rains restore stream flow (Kuehne and Barbour 1983, p. 71).

Therefore, based on the information above, we identify first- to third-order streams containing moderately flowing riffle, pool, run, and glide habitats with gravel and cobble substrates, root mats along the bank, undercut banks, and low levels of siltation to be physical or biological features essential to the conservation of the Kentucky arrow darter.

#### *Habitats Protected From Disturbance or Representative of the Historic, Geographical, and Ecological Distributions of the Species*

As described above, stable substrates with low levels of siltation, adequate water quality, and healthy aquatic insect populations are habitat features essential to the Kentucky arrow darter. Historically, first- to third-order streams across the species' range would have contained these habitat features.

All current and historical capture locations of the Kentucky arrow darter are from first- to third-order order, warmwater streams within the upper Kentucky River drainage (Gilbert 1887, pp. 53–54; Woolman 1892, pp. 275–281; Kuehne and Bailey 1961, pp. 3–4; Kuehne 1962, pp. 608–609; Thomas 2008, entire; Service 2012, entire). The species was historically distributed in at least six sub-basins of the Kentucky River, but it is now extirpated from at least 36 historical streams within those sub-basins. Forty-four percent of the species' extirpations (16 streams) have occurred since the mid-1990s, and the species appears to have disappeared completely from several minor watersheds (*e.g.*, Sexton Creek, South Fork Quicksand Creek, Troublesome Creek headwaters). Most remaining populations are highly fragmented and restricted to short stream reaches. Given the species' reduced range and fragmented distribution, it is vulnerable to extirpation from intentional or accidental toxic chemical spills, habitat modification, progressive degradation from runoff (nonpoint-source pollutants), natural catastrophic changes to their habitat (*e.g.*, flood scour, drought), and other stochastic disturbances, such as loss of genetic variation and inbreeding (Soulé 1980, pp. 157–158; Hunter 2002, pp. 97–101; Allendorf and Luikart 2007, pp. 117–146). In addition, the level of isolation seen in this species makes natural repopulation following localized extirpations virtually impossible without human intervention. Greater connectivity within extant populations

is needed to provide some protection against these threats and would be more representative of the historic, geographical distribution of the species.

Based on the biological information and needs discussed above, we identify stable, undisturbed stream beds and banks, and ability for populations to be distributed in multiple first- to third-order streams throughout the upper Kentucky River drainage that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of the species to be physical or biological features essential to the conservation of the Kentucky arrow darter.

#### Primary Constituent Elements for the Kentucky Arrow Darter

According to 50 CFR 424.12(b), we are required to identify the physical or biological features essential to the conservation of the Kentucky arrow darter in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Kentucky arrow darter are:

(1) Primary Constituent Element 1—Riffle-pool complexes and transitional areas (glides and runs) of geomorphically stable, first- to third-order streams with connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(2) Primary Constituent Element 2—Stable bottom substrates composed of gravel, cobble, boulders, bedrock ledges, and woody debris piles with low levels of siltation.

(3) Primary Constituent Element 3—An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and to maintain benthic habitats utilized by the species.

(4) Primary Constituent Element 4—Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this

rule as the quality necessary for normal behavior, growth, and viability of all life stages of the Kentucky arrow darter.

(5) Primary Constituent Element 5—A prey base of aquatic macroinvertebrates, including mayfly nymphs, midge larvae, caddisfly larvae, stonefly nymphs, and small crayfishes.

#### Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The 38 units we are proposing to designate as critical habitat for the Kentucky arrow darter will require some level of management to address the current and future threats to the physical or biological features of the species. Due to their location on the Daniel Boone National Forest (DBNF), at least a portion of 20 proposed critical habitat units (Units 15–16, 18–32, and 36–38) are being managed and protected under DBNF's land and resource management plan (LRMP) (United States Forest Service (USFS) 2004, pp. 1–14), and additional conservation measures will be provided upon completion of a candidate conservation agreement between DBNF and the Service (see Available Conservation Measures section of the proposed listing rule published elsewhere in today's **Federal Register**).

Two of the 38 proposed critical habitat units (Units 3 and 4) are located wholly (Unit 3) or partially (Unit 4) on State property, specifically Robinson Forest, a 4,047-hectare (10,000-acre) research, education, and extension forest in Breathitt and Knott Counties owned by the University of Kentucky (UK) and managed by the Department of Forestry in the College of Agriculture, Food, and Environment. Management guidelines approved by the University of Kentucky's Board of Trustees in 2004 provide general land use allocations, sustainable allowances for active research and demonstration projects involving overstory manipulation, allocations of net revenues from research and demonstration activities, and management and oversight responsibilities (Stringer 2015, pers. comm.). Activities within Robinson Forest may require special management considerations or protection to address minor siltation associated with timber management research, stormwater runoff from unpaved roads, and limited off-road vehicle use. These threats are in

addition to random effects of drought, floods, or other natural phenomena.

At least portions of 32 proposed critical habitat units are located on private property (16 are located entirely on private property) and are not presently under the protection provided by the management plan or candidate conservation agreement for the species. Activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical or biological features essential to the Kentucky arrow darter. For example, features in this proposed critical habitat designation may require special management due to threats associated with resource extraction (coal surface mining, logging, natural gas and oil exploration), agricultural runoff (livestock, row crops), lack of adequate riparian buffers, construction and maintenance of State and county roads, land development, off-road vehicle use, and other nonpoint-source pollution. These threats are in addition to adverse effects of drought, floods, or other natural phenomena. Other activities that may affect physical and biological features in the proposed critical habitat units include those listed in the Effects of Critical Habitat Designation section, below.

Management activities that could ameliorate these threats include, but are not limited to, the use of best management practices (BMPs) designed to reduce sedimentation, erosion, and stream bank destruction; development of alternatives that avoid and minimize stream bed disturbances; an increase of stormwater management and reduction of stormwater flows into stream systems; preservation of headwater springs and streams; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the areas we are proposing as critical habitat for the Kentucky arrow darter that are occupied at the time of listing contain the physical or biological features for the species, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the physical or biological features of each unit. Additional discussion of threats facing individual units is provided in the individual unit descriptions below.

### Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If after identifying occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e), we then consider whether designating additional areas—outside those occupied at the time of listing—are essential for the conservation of the species. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we believe that occupied areas (a total of 47 streams) are adequate to ensure the conservation of the species. The following discussion describes how we identified and delineated those occupied areas.

We began our analysis by considering the historical and current ranges of the Kentucky arrow darter. We used various sources including published literature, museum collection databases, surveys, reports, and collection records obtained from the KDFWR, Kentucky State Nature Preserves Commission, Kentucky Division of Water, and our own files (see “Historical Range and Distribution” and “Current Range and Distribution” sections of our proposed listing rule published elsewhere in today’s **Federal Register**). We then identified the specific areas that are occupied by the species and that contain one or more of the physical or biological features essential to the species’ conservation. We defined occupied habitat as those stream reaches known to be currently occupied by the species. To identify the currently occupied stream reaches, we used post-2006 survey data that provided information on distribution and habitat condition (Thomas 2008, entire; Service 2012, entire; Service unpublished data). Generally, if the species was collected or observed in a particular stream during our recent rangewide surveys (2007–2014), the stream reach was considered to be occupied. A few transient individuals were observed in streams with unsuitable habitat conditions (*e.g.*, elevated conductivity), but these streams were not considered to be

occupied due to the poor habitat conditions and the high likelihood that these individuals had simply migrated from a nearby source stream. To identify the unoccupied stream reaches, we evaluated historical data (late 1880s–2006) and the results of our recent surveys (2007–2014) (Thomas 2008, entire; Service 2012, entire; Service unpublished data). If the species was known to occur in a stream prior to 2007, but was not observed during our recent rangewide survey, the stream reach was considered to be unoccupied.

Based on our review, we made a determination to not propose to designate as critical habitat any unoccupied stream reaches. We concluded that the proposed units occupied by the species at the time of listing are representative of the species’ historical range and include both the core population areas of Kentucky arrow darters, as well as remaining peripheral population areas. We determined that there was sufficient area for the conservation of the species within the occupied areas.

Following the identification of occupied stream reaches, the next step was to delineate the probable upstream and downstream extent of the species’ distribution. We used U.S. Geological Survey (USGS) 1:100,000 digital stream maps to delineate these boundaries of proposed critical habitat units according to the criteria explained below. We set the upstream and downstream limits of each critical habitat unit by identifying landmarks (bridges, confluences, and road crossings), and in some instances latitude and longitude coordinates and section lines, above and below the upper and lowermost reported locations of the Kentucky arrow darter in each stream reach to ensure incorporation of all potential sites of occurrence. We considered stream order and watershed size to select the upstream terminus. The species can occur in small, first-order reaches (Thomas 2008, entire; Service 2012, entire), but recent surveys have also demonstrated that the species is typically absent in these reaches once the watershed size (the upstream basin or catchment) falls below 1.3 square kilometers (km<sup>2</sup>) (0.5 square miles (mi<sup>2</sup>)). Consequently, we searched for this point within the watershed and selected the nearest tributary confluence as the upstream terminus. When a tributary was not available, a road-crossing (bridge or ford) or dam was used to mark the boundary. For the downstream boundary of a unit, we typically selected a stream confluence of a named tributary below the downstream-most occurrence record and within a third-order or smaller

stream reach. In the unit descriptions, distances between landmarks used to identify the upstream or downstream extent of a stream segment are given in stream kilometers and equivalent miles, as measured tracing the course of the stream, not straight-line distance. The proposed critical habitat areas were then mapped using ArcGIS software to produce the critical habitat unit maps.

Because fishes are naturally restricted by certain physical conditions within a stream reach (*i.e.*, flow, substrate, cover), they may be unevenly distributed within these habitat units. Uncertainty on some downstream distributional limits for some populations (*e.g.*, Frozen Creek) may have resulted in small areas of occupied habitat not being included in, or areas of unoccupied habitat included in, the designation. We recognize that both historical and recent collection records upon which we relied are incomplete, and that there may be stream segments or small tributaries not included in this proposed designation that harbor small, limited populations of the species considered in this proposed designation, or that others may become suitable in the future. The omission of such areas does not diminish their potential individual or cumulative importance to the conservation of the Kentucky arrow darter. The habitat areas contained within the proposed units described below constitute our best evaluation of areas needed for the conservation of this species at this time.

The areas proposed for critical habitat below include only stream channels within the ordinary high-water line and do not contain any developed areas or structures. When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such areas usually lack physical and biological features essential to the conservation of the species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such areas inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the



adjacent critical habitat. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the species.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the proposed critical habitat designation in the individual unit descriptions below. We will make the coordinates, plot points, or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No.

FWS-R4-ES-2015-0133, on our Internet site at <http://www.fws.gov/frankfort/>, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

**Proposed Critical Habitat Designation**

We are proposing to designate approximately 395 skm (246 smi) in 38 units as critical habitat in Kentucky for the Kentucky arrow darter. These stream reaches comprise the entire currently known range of the species (and all extant populations). All proposed units are considered to be occupied at the time of listing and contain the physical or biological features in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life-

history processes for the Kentucky arrow darter. The 38 areas we propose as critical habitat are listed in Table 1 below.

Critical habitat units are either in private, Federal (DBNF), or State (UK) ownership. In Kentucky, adjacent landowners also own the land under streams (e.g., the stream channel or bottom), but the water is under State jurisdiction. Portions of the public-to-private boundary for Units 16, 18, 19, 21, 22, 24, 32, and 36 were located along the mid-line of the stream channel; lengths for these segments were divided equally between public and private ownership. Ownership and lengths of proposed Kentucky arrow darter critical habitat units are provided in Table 1.

TABLE 1—LOCATION, OWNERSHIP, AND LENGTHS FOR PROPOSED KENTUCKY ARROW DARTER CRITICAL HABITAT UNITS

Unit	Stream	County	Ownership—skm (smi)			Total length skm (smi)
			Private	Federal	State	
1	Buckhorn Creek and Prince Fork	Knott	1.1 (0.7)	0	0	1.1 (0.7)
2	Eli Fork	Knott	1.0 (0.6)	0	0	1.0 (0.6)
3	Coles Fork and Snag Ridge Fork	Breathitt, Knott	0	0	11.0 (6.8)	11.0 (6.8)
4	Clemons Fork	Breathitt	0.1 (0.1)	0	6.9 (4.3)	7.0 (4.4)
5	Laurel Fork Quicksand Creek and Tributaries.	Knott	19.8 (12.4)	0	0	19.8 (12.4)
6	Middle Fork Quicksand Creek and Tributaries.	Knott	22.5 (13.9)	0	0	22.5 (13.9)
7	Spring Fork Quicksand Creek	Breathitt	2.2 (1.4)	0	0	2.2 (1.4)
8	Hunting Creek and Tributaries	Breathitt	15.6 (9.7)	0	0	15.6 (9.7)
9	Frozen Creek and Tributaries	Breathitt	26.4 (16.4)	0	0	26.4 (16.4)
10	Holly Creek and Tributaries	Wolfe	18.3 (11.5)	0	0	18.3 (11.5)
11	Little Fork	Lee, Wolfe	3.8 (2.3)	0	0	3.8 (2.3)
12	Walker Creek and Tributaries	Lee, Wolfe	25.0 (15.5)	0	0	25.0 (15.5)
13	Hell Creek and Tributaries	Lee	12.0 (7.4)	0	0	12.0 (7.4)
14	Big Laurel Creek	Harlan	9.1 (5.7)	0	0	9.1 (5.7)
15	Laurel Creek	Leslie	0.7 (0.5)	3.4 (2.1)	0	4.1 (2.6)
16	Hell For Certain Creek and Tributaries.	Leslie	11.4 (7.0)	4.4 (2.8)	0	15.8 (9.8)
17	Squabble Creek	Perry	12.0 (7.5)	0	0	12.0 (7.5)
18	Blue Hole Creek and Left Fork Blue Hole Creek.	Clay	0	5.7 (3.5)	0	5.7 (3.5)
19	Upper Bear Creek and Tributaries	Clay	0.2 (0.1)	6.6 (4.2)	0	6.8 (4.3)
20	Katies Creek	Clay	1.7 (1.0)	4.0 (2.5)	0	5.7 (3.5)
21	Spring Creek and Little Spring Creek	Clay	3.6 (2.2)	5.6 (3.5)	0	9.2 (5.7)
22	Bowen Creek and Tributaries	Leslie	2.0 (1.2)	11.6 (7.3)	0	13.6 (8.5)
23	Elisha Creek and Tributaries	Leslie	3.0 (1.9)	6.6 (4.0)	0	9.6 (5.9)
24	Gilberts Big Creek	Clay, Leslie	2.0 (1.2)	5.2 (3.3)	0	7.2 (4.5)
25	Sugar Creek	Clay, Leslie	1.1 (0.7)	6.1 (3.8)	0	7.2 (4.5)
26	Big Double Creek and Tributaries	Clay	0	10.3 (6.4)	0	10.3 (6.4)
27	Little Double Creek	Clay	0	3.4 (2.1)	0	3.4 (2.1)
28	Jacks Creek	Clay	5.4 (3.4)	0.5 (0.3)	0	5.9 (3.7)
29	Long Fork	Clay	0	2.2 (1.4)	0	2.2 (1.4)
30	Horse Creek	Clay	3.0 (1.9)	2.0 (1.2)	0	5.0 (3.1)
31	Bullskin Creek	Clay, Leslie	21.3 (13.3)	0.4 (0.2)	0	21.7 (13.5)
32	Buffalo Creek and Tributaries	Owsley	23.2 (14.5)	14.9 (9.3)	0	38.1 (23.8)
33	Lower Buffalo Creek	Lee, Owsley	7.3 (4.6)	0	0	7.3 (4.6)
34	Silver Creek	Lee	6.2 (3.9)	0	0	6.2 (3.9)
35	Travis Creek	Jackson	4.1 (2.5)	0	0	4.1 (2.5)
36	Wild Dog Creek	Jackson, Owsley	4.3 (2.7)	3.8 (2.4)	0	8.1 (5.1)
37	Granny Dismal Creek	Lee, Owsley	4.4 (2.7)	2.5 (1.6)	0	6.9 (4.3)
38	Rockbridge Fork	Wolfe	0	4.5 (2.8)	0	4.5 (2.8)
Total			273.8 (170.3)	103.7 (64.7)	17.9 (11.1)	395.4 (246.1)

We present brief descriptions of all units below. We consider each proposed unit to contain all the physical or biological features and primary constituent elements (PCEs) identified above that are essential to the conservation of the species. In general, stream channels within these units are stable, with ample pool, glide, riffle, and run habitats (PCE 1) that maintain surface flows year round (PCE 3) and contain gravel, cobble, and boulder substrates with low levels of siltation (PCE 2). Such characteristics are necessary for reproductive, foraging, and sheltering requirements of Kentucky arrow darters. We consider water quality in each of these units to be characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4). These conditions support abundant populations of aquatic macroinvertebrates that serve as prey items for Kentucky arrow darters (PCE 5).

The proposed critical habitat units include the stream channels of the creek within the ordinary high water line. As defined at 33 CFR 329.11, the ordinary high water mark on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. For each stream reach proposed as a critical habitat unit, the upstream and downstream boundaries are described generally below. More precise definitions are provided in the Proposed Regulation Promulgation at the end of this proposed rule.

*Unit 1: Buckhorn Creek and Prince Fork, Knott County, Kentucky*

Proposed Unit 1 is located off Buckhorn Road in the headwaters of the Buckhorn Creek drainage and between Kentucky Highway 1098 (KY 1098) and KY 1087. It includes 0.7 skm (0.4 smi) of Prince Fork from its confluence with Mart Branch downstream to its confluence with Buckhorn Creek and 0.4 skm (0.3 smi) of Buckhorn Creek from its confluence with Prince Fork downstream to its confluence with Emory Branch. Live Kentucky arrow darters have been collected from proposed Unit 1 in Prince Fork and just upstream of the confluence of Buckhorn Creek and Emory Branch (ATS 2011, p. 6; Service 2012, pp. 1–4). This unit is located almost entirely on private land,

except for any small amount that is publicly owned in the form of bridge crossings and road easements. The watershed surrounding proposed Unit 1 is dominated by forest and remains relatively undisturbed; however, downstream reaches of Buckhorn Creek have been degraded by siltation and nonpoint-source pollutants associated with surface coal mining, oil and gas exploration, logging, and runoff from unpaved roads (Service 2012, pp. 1–4). This unit helps to maintain the geographical range of the species (adds population redundancy) and provides opportunity for population growth.

Within proposed Unit 1, the Kentucky arrow darter and its habitat may require special management considerations or protection to address potential adverse effects (e.g., water pollution, siltation) associated with surface coal mining, logging (timber harvests on private land), natural gas and oil exploration, construction and maintenance of county roads (Buckhorn Road), the lack of adequate riparian buffers (near the confluence with Emory Branch), and off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 2: Eli Fork, Knott County, Kentucky*

This proposed unit is located in the headwaters of the Buckhorn Creek drainage between KY 1098 and KY 1087. It includes 1.0 skm (0.6 smi) of Eli Fork from its confluence with Stonecoal Branch downstream to its confluence with Boughcamp Branch (of Buckhorn Creek). Live Kentucky arrow darters have been collected from proposed Unit 2 near the confluence of Eli Fork and Boughcamp Branch (ATS 2011, p. 6). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The watershed surrounding proposed Unit 2 is dominated by forest and remains relatively undisturbed; however, its receiving stream, Boughcamp Branch, and adjacent watersheds have been degraded by siltation and nonpoint-source pollutants associated with surface coal mining and logging (Service 2012, pp. 1–4). This unit helps to maintain the geographical range of the species (adds population redundancy) and provides opportunity for population growth.

Within proposed Unit 2, the Kentucky arrow darter and its habitat may require special management considerations or protection to address potential adverse effects (e.g., water pollution, siltation) associated with surface coal mining, logging, natural gas and oil exploration, off-road vehicle use, and construction

and maintenance of county roads. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 3: Coles Fork and Snag Ridge Fork, Breathitt and Knott Counties, Kentucky*

This proposed unit is located entirely within Robinson Forest, a 4,047-hectare (10,000-acre) research, education, and extension forest in Breathitt and Knott Counties owned by UK and managed by the Department of Forestry in the College of Agriculture, Food, and Environment. Unit 3 includes 2.1 skm (1.3 smi) of Snag Ridge Fork from its headwaters downstream to its confluence with Coles Fork and 8.9 skm (5.5 smi) of Coles Fork from its confluence with Saddle Branch downstream to its confluence with Buckhorn Creek. Live Kentucky arrow darters have been observed throughout proposed Unit 3 (Thomas 2008, p. 5; Service 2012, pp. 1–4), and Coles Fork continues to be one of the species' best remaining habitats. This unit is located entirely on lands owned by UK. The watershed surrounding proposed Unit 3 is intact and densely forested, water quality conditions are excellent (very close to baseline levels), and instream habitats are ideal for the species. This unit represents a stronghold for the species (core population) and likely contributes to range expansion (source population).

Within proposed Unit 3, the Kentucky arrow darter and its habitat may require special management considerations or protection to address siltation associated with timber management (on Robinson Forest), stormwater runoff from unpaved roads, and limited off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 4: Clemons Fork, Breathitt County, Kentucky*

Proposed Unit 4 is located along Clemons Fork Road in southeastern Breathitt County. This unit includes 7.0 skm (4.4 smi) of Clemons Fork from its confluence with Maple Hollow downstream to its confluence with Buckhorn Creek. Live Kentucky arrow darters have been observed throughout proposed Unit 4 (Lotrich 1973, p. 380; Thomas 2008, p. 5; Service 2012, pp. 1–4). A portion of this unit near the mouth of Clemons Fork is privately owned (0.1 skm (0.1 smi)), but the majority is located on lands owned by UK (see description for Unit 3). The watershed surrounding proposed Unit 4 is intact and densely forested, water quality conditions are excellent (very close to baseline levels), and instream habitats

are ideal for the species. Clemons Fork continues to be one of the species' best remaining habitats. This unit represents a stronghold for the species (core population) and likely contributes to range expansion (source population).

Within proposed Unit 4, the Kentucky arrow darter and its habitat may require special management considerations or protection to address siltation associated with timber management (on Robinson Forest), stormwater runoff from unpaved roads, and limited off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 5: Laurel Fork Quicksand Creek and Tributaries, Knott County, Kentucky*

Proposed Unit 5 generally runs parallel to KY 1098 and Laurel Fork Road in northern Knott County. This unit includes 1.2 skm (0.8 smi) of Fitch Branch from its headwaters downstream to its confluence with Laurel Fork Quicksand Creek, 2.7 skm (1.7 smi) of Newman Branch from its headwaters downstream to its confluence with Laurel Fork Quicksand Creek, 2.1 skm (1.3 smi) of Combs Branch from its headwaters downstream to its confluence with Laurel Fork Quicksand Creek, and 13.8 skm (8.6 smi) of Laurel Fork Quicksand Creek from KY 80 downstream to its confluence with Patten Fork. Live Kentucky arrow darters have been captured within proposed Unit 5 just upstream of the Laurel Fork and Patten Fork confluence and farther upstream at the first Laurel Fork Road crossing (Thomas 2008, p. 5; Service 2012, pp. 1–4). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. Hillsides and ridgetops above proposed Unit 5 are forested, but the valley is more developed with scattered residences along Laurel Fork Road. This unit helps to maintain the geographical range of the species (adds population redundancy) and likely serves as a source population within the Quicksand Creek watershed.

Within proposed Unit 5, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with logging, inadequate sewage treatment, surface coal mining, natural gas and oil exploration activities, inadequate riparian buffers, construction and maintenance of county roads, and off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 6: Middle Fork Quicksand Creek and Tributaries, Knott County, Kentucky*

Proposed Unit 6 is located along Middle Fork of Quicksand Creek Road in northeastern Knott County. This unit includes 0.8 skm (0.5 smi) of Big Firecoal Branch from its headwaters downstream to its confluence with Middle Fork Quicksand Creek, 2.1 skm (1.3 smi) of Bradley Branch from its headwaters downstream to its confluence with Middle Fork Quicksand Creek, 2.0 skm (1.2 smi) of Lynn Log Branch from its headwaters downstream to its confluence with Middle Fork Quicksand Creek, and 17.6 skm (10.9 smi) of Middle Fork Quicksand Creek from its headwaters downstream to its confluence with Big Branch. Live Kentucky arrow darters have been captured within proposed Unit 6 near the confluence of Middle Fork and Jack Branch and the confluence of Middle Fork and Upper Bear Pen Branch (Thomas 2008, p. 5; Service 2012, pp. 1–4). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The watershed surrounding proposed Unit 6 is dominated by forest and continues to be relatively undisturbed. An unpaved, road traverses the length of the unit, but the rough condition of the road limits its use to off-road vehicles. This unit helps to maintain the geographical range of the species (adds population redundancy) and likely serves as a source population within the Quicksand Creek watershed.

Within proposed Unit 6, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with natural gas and oil exploration activities, logging, surface coal mining, inadequate riparian buffers, construction and maintenance of county roads, and off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 7: Spring Fork Quicksand Creek, Breathitt County, Kentucky*

Proposed Unit 7 is located of KY 2465 in southeastern Breathitt County and includes 2.2 skm (1.4 smi) of Spring Fork Quicksand Creek from its headwaters downstream to its confluence with an unnamed tributary. Live Kentucky arrow darters have been captured within proposed Unit 7 (Service unpublished data). This unit is located almost entirely on private land, except for any small amount that is

publicly owned in the form of bridge crossings and road easements. Most of the watershed surrounding proposed Unit 7 is forested, but mine reclamation activities have created open, pasture-like habitats along ridgetops and slopes to the north. This unit helps to maintain the geographical range of the species within the Quicksand Creek watershed (adds population redundancy) and provides opportunity for population growth.

Within proposed Unit 7, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with surface coal mining, natural gas and oil exploration activities, logging, and off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 8: Hunting Creek and Tributaries, Breathitt County, Kentucky*

Proposed Unit 8 is located along KY 1094 in eastern Breathitt County and includes 0.9 skm (0.5 smi) of Wolf Pen Branch from its headwaters downstream to its confluence with Hunting Creek, 2.3 skm (1.4 smi) of Fletcher Fork from its headwaters downstream to its confluence with Hunting Creek, 1.6 skm (1.0 smi) of Negro Fork from its headwaters downstream to its confluence with Hunting Creek, 3.1 skm (1.9 smi) of Licking Fork from its headwaters downstream to its confluence with Hunting Creek, and 7.7 skm (4.8 smi) of Hunting Creek from its confluence with Wells Fork downstream to its confluence with Quicksand Creek. Live Kentucky arrow darters have been captured within proposed Unit 8 near the confluence with Winnie Branch (Service unpublished data). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The narrow valley surrounding proposed Unit 8 contains a few scattered residences and fields along Hunting Creek Road, but the majority of the watershed is relatively intact and dominated by forest. This unit helps to maintain the geographical range of the species within the Quicksand Creek watershed (adds population redundancy) and provides opportunity for population growth.

Within proposed Unit 8, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with natural gas and oil exploration activities, logging, surface

coal mining, inadequate sewage treatment, inadequate riparian buffers, construction and maintenance of county roads, and off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 9: Frozen Creek and Tributaries, Breathitt County, Kentucky*

Proposed Unit 9 is located along KY 378 in northern Breathitt County. This unit includes 4.7 skm (2.9 smi) of Clear Fork from its headwaters downstream to its confluence with Frozen Creek, 3.6 skm (2.3 smi) of Negro Branch from its headwaters downstream to its confluence with Frozen Creek, 4.2 skm (2.6 smi) of Davis Creek from its headwaters downstream to its confluence with Frozen Creek, and 13.9 skm (8.6 smi) of Frozen Creek from its headwaters downstream to its confluence with Morgue Fork. Live Kentucky arrow darters have been captured within proposed Unit 9 upstream of Rock Lick in the headwaters of Frozen Creek (Thomas 2008, p. 5; Service unpublished data). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. The individual valleys surrounding proposed Unit 9 are relatively narrow (approximately 100–160 meters (m) (328–525 feet (ft)) at their widest) and comprised of small farms and scattered residences. The ridgetops and hillsides are relatively undisturbed and dominated by forest. This unit helps to maintain the geographical range of the species (adds population redundancy), contributes to genetic exchange between several streams in the Frozen Creek watershed, and likely serves as an important source population in the northern limits of the species' range.

Within proposed Unit 9, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with inadequate sewage treatment, canopy loss, agricultural runoff, inadequate riparian buffers, construction and maintenance of county roads, logging, natural gas and oil exploration activities, surface coal mining (legacy effects), and off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 10: Holly Creek and Tributaries, Wolfe County, Kentucky*

Proposed Unit 10 is located along KY 1261 in southern Wolfe County and

includes 2.8 skm (1.8 smi) of Spring Branch from its headwaters downstream to its confluence with Holly Creek, 2.0 skm (1.3 smi) of Pence Branch from its headwaters downstream to its confluence with Holly Creek, 4.0 skm (2.5 smi) of Cave Branch from its headwaters downstream to its confluence with Holly Creek, and 9.5 skm (5.9 smi) of Holly Creek from KY 1261 (first bridge crossing north of KY 15) downstream to its confluence with the North Fork Kentucky River. Live Kentucky arrow darters have been captured within proposed Unit 10 near the confluence of Holly Creek and Spring Branch (Thomas 2008, p. 5). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. This unit helps to maintain the geographical range of the species and provides opportunity for population growth.

The valley bottom surrounding proposed Unit 10 is consistently wider (approximately 320 m (1050 ft) at its widest) than other occupied stream valleys (e.g., Frozen Creek), and agricultural land use is more extensive. Multiple small farms (e.g., pasture, row crops, hayfields) and residences are scattered along KY 1261, while the ridgetops and hillsides are dominated by forest. We are not designating critical habitat in upstream reaches of the drainage (e.g., Kelse Holland Fork, Mandy Holland Fork, Terrell Fork) because these streams do not contain the PCEs essential to the species' conservation. Habitat conditions in these upstream reaches are poor, as characterized by straightened, incised channels; a lack of canopy cover; and unstable substrates.

Within proposed Unit 10, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with agricultural runoff, canopy loss, inadequate riparian buffers, construction and maintenance of county roads, inadequate sewage treatment, logging, surface coal mining (legacy effects), and off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 11: Little Fork, Lee and Wolfe County, Kentucky*

This proposed unit is located between KY 2016 and Booth Ridge Road in southern Wolfe County and includes 3.8 skm (2.3 smi) of Little Fork from its headwaters downstream to its confluence with Lower Devil Creek. Live Kentucky arrow darters have been

captured within proposed Unit 11 just upstream of the confluence of Little Fork and Lower Devil Creek (Thomas 2008, p. 5; Service 2012, pp. 1–4). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. This unit helps to maintain the geographical range of the species (population redundancy) and provides opportunity for population growth.

The valley bottom surrounding this proposed unit is densely forested, but a network of unpaved roads and oil and gas well sites are located along the ridgetops to the east and west of the stream. Within proposed Unit 11, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with oil and gas exploration activities, off-road vehicle use, road runoff, canopy loss, logging, and surface coal mining (legacy effects). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 12: Walker Creek and Tributaries, Lee and Wolfe Counties, Kentucky*

Proposed Unit 12 is located between KY 11 and Shumaker Road to the west and KY 2016 to the east in northern Lee County and southwestern Wolfe County. This unit includes 3.9 skm (2.4 smi) of an unnamed tributary of Walker Creek from its headwaters downstream to its confluence with Walker Creek, 2.4 skm (1.5 smi) of Cowan Fork from its headwaters downstream to its confluence with Hell for Certain Creek, 2.0 skm (1.2 smi) of Hell for Certain Creek from the outflow of an unnamed reservoir downstream to its confluence with Walker Creek, 0.8 skm (0.5 smi) of Boonesboro Fork from its headwaters downstream to its confluence with Walker Creek, 2.2 skm (1.4 smi) of Peddler Creek from its headwaters downstream to its confluence with Walker Creek, 1.1 skm (0.7 smi) of Huff Cave Branch from its headwaters downstream to its confluence with Walker Creek, and 12.6 skm (7.8 smi) of Walker Creek from its headwaters (reservoir) downstream to its confluence with North Fork Kentucky River. Live Kentucky arrow darters have been captured at several locations within proposed Unit 12 (Thomas 2008, p. 5; Service 2012, pp. 1–4), including the Old Fincastle Road low-water crossing, a site upstream near the confluence with Boonesboro Fork, and in the headwaters just upstream of the confluence of Walker Creek with Hell For Certain Creek. This unit is located almost

entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

Land use surrounding this proposed unit is similar to that of Little Fork (proposed Unit 11) and Hell Creek (proposed Unit 13). The valley bottom is densely forested, but numerous unpaved roads, oil and gas well sites, and scattered residences occur along the ridgetops to the east and west of the stream. A narrow, unmaintained dirt road (Walker Creek Road) runs parallel to and east of this unit for its entire length; off-road vehicle use is common. This unit helps to maintain the geographical range of the species (adds population redundancy), contributes to genetic exchange between several streams in the Walker Creek watershed, and likely serves as an important source population in the northern limits of the species' range.

Within proposed Unit 12, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (*e.g.*, siltation, water pollution) associated with oil and gas exploration activities, off-road vehicle use, road runoff, canopy loss, and legacy effects of previous oil and gas well development. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 13: Hell Creek and Tributaries, Lee County, Kentucky*

Proposed Unit 13 is located between KY 11 and Shumaker Road in northern Lee County. This unit includes 2.3 skm (1.4 smi) of Miller Fork from its headwaters downstream to its confluence with Hell Creek, 0.7 skm (0.4 smi) of Bowman Fork from its headwaters downstream to its confluence with Hell Creek, 1.9 skm (1.2 smi) of an unnamed tributary of Hell Creek from its headwaters downstream to its confluence with Hell Creek, and 7.1 skm (4.4 smi) of Hell Creek from the outflow of an unnamed reservoir downstream to its confluence with North Fork Kentucky River. Live Kentucky arrow darters have been captured within proposed Unit 13 from the Hell Creek mainstem near the Hell Creek Road low-water crossing and from an unnamed tributary of Hell Creek near the Hell Creek Road low-water crossing (Thomas 2008, p. 5; Service 2012, pp. 1–4). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements.

Land use surrounding this proposed unit is similar to that of Little Fork

(proposed Unit 11) and Walker Creek (proposed Unit 12). The valley bottom surrounding this proposed unit is forested, but numerous unpaved roads, oil and gas well sites, and scattered residences occur along the ridgetops to the east and west of the stream. A narrow, unmaintained dirt road runs parallel to and east of proposed Unit 13 upstream of the Hell Creek Road crossing; off-road vehicle use is common. This unit helps to maintain the geographical range of the species (population redundancy) and provides opportunity for population growth.

Within proposed Unit 13, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (*e.g.*, siltation, water pollution) associated with oil and gas exploration activities, off-road vehicle use, road runoff, canopy loss, and legacy effects of previous oil and gas well development. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 14: Big Laurel Creek, Harlan County, Kentucky*

Proposed Unit 14 is located off KY 221 and Big Laurel Creek Road in northern Harlan County and includes 9.1 skm (5.7 smi) of Big Laurel Creek from its confluence with Combs Fork downstream to its confluence with Greasy Creek. Live Kentucky arrow darters have been captured from this unit near its confluence with White Oak Branch (Thomas 2008, p. 5; Service 2012, pp. 1–4). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. This unit adds population redundancy at the southeastern edge of the species' range.

The valley bottom and hillsides surrounding proposed Unit 14 are densely forested, but extensive surface coal mining within the watershed has created clearings along the ridgetops and has resulted in five valley (hollow) fills that are located within tributaries of Big Laurel Creek. Within proposed Unit 14, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (*e.g.*, siltation, water pollution) associated with historical surface coal mining, off-road vehicle use, road runoff, logging, and canopy loss. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 15: Laurel Creek, Leslie County, Kentucky*

Proposed Unit 15 is located south of US 421/KY 80 in western Leslie County and includes 4.1 skm (2.6 smi) of Laurel Creek from its confluence with Sandlick Branch downstream to its confluence with Left Fork Rockhouse Creek. A single live Kentucky arrow darter has been captured from this unit, approximately 0.48 skm (0.3 smi) from the confluence with Left Fork Rockhouse Creek (Thomas 2013, pers. comm.). A small portion of this proposed unit is privately owned (0.7 skm (0.5 smi)), but the remainder of the unit is in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit adds population redundancy and provides opportunity for population growth.

The watershed surrounding proposed Unit 15 is entirely forested, with no private residences or other structures. Within proposed Unit 15, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (*e.g.*, siltation, water pollution) associated with illegal off-road vehicle use, road runoff, and timber management. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 16: Hell For Certain Creek and Tributaries, Leslie County, Kentucky*

Proposed Unit 16 is located off Hell For Certain Road between KY 1482 and KY 257 in northern Leslie County. This unit includes 1.3 skm (0.8 smi) of Cucumber Branch from its headwaters downstream to its confluence with Hell For Certain Creek, 3.1 skm (1.9 smi) of Big Fork from its headwaters downstream to its confluence with Hell For Certain Creek, and 11.4 skm (7.1 smi) of Hell For Certain Creek from its headwaters downstream to its confluence with Middle Fork Kentucky River. Live Kentucky arrow darters have been captured from proposed Unit 16 at multiple locations upstream of its confluence with Big Fork (Thomas 2008, p. 4; Service unpublished data). A portion of this proposed unit is in Federal ownership (administered by DBNF) (4.4 skm (2.8 smi)), but the majority of the unit is in private ownership. For the portion of the unit in Federal ownership, land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit represents a stronghold for the species

within the Middle Fork Kentucky River sub-basin and likely acts a source population. This unit is also important for maintaining the distribution and genetic diversity of the species within the Middle Fork sub-basin.

The valley bottom surrounding proposed Unit 16 is narrow (approximately 100 m (328 ft) at its widest) and comprised of a mixture of small farms (e.g., pasture, hayfields) and scattered residences along Hell For Certain Road. The ridgetops and hillsides are relatively undisturbed and dominated by forest. Within proposed Unit 16, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, inadequate sewage treatment, inadequate riparian buffers, construction and maintenance of county roads, agricultural runoff, illegal off-road vehicle use, logging, and timber management (on DBNF). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 17: Squabble Creek, Perry County, Kentucky*

This proposed unit is located south of KY 28, just downstream of Buckhorn Lake Dam and near the community of Buckhorn in northwestern Perry County. Proposed Unit 17 includes 12.0 skm (7.5 smi) of Squabble Creek from its confluence with Long Fork downstream to its confluence with Middle Fork Kentucky River. Live Kentucky arrow darters have been captured from this unit near its confluence with Big Branch (Service unpublished data). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. This unit helps to maintain the geographical range of the species and provides opportunity for population growth.

The valley surrounding proposed Unit 17 is narrow (approximately 113 m (370 ft) at its widest) and comprised of a mixture of residences (many in clusters) and small farms (e.g., pasture, hayfields) scattered along KY 2022, which parallels Squabble Creek for much of its length. Ridgetops and hillsides in most of the Squabble Creek valley are relatively undisturbed and dominated by forest; however, surface coal mining has occurred along ridgetops (to the north and south of Squabble Creek) in the downstream half of the drainage.

Within proposed Unit 17, the Kentucky arrow darter and its habitat may require special management considerations or protection to address

adverse effects (e.g., siltation, water pollution) associated with road runoff, inadequate sewage treatment, agricultural runoff, inadequate riparian buffers, construction and maintenance of county roads, illegal off-road vehicle use, logging, and historical surface coal mining. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 18: Blue Hole Creek and Left Fork Blue Hole Creek, Clay County, Kentucky*

Proposed Unit 18 is located along KY 1524 in southeastern Clay County. This unit includes 1.8 skm (1.1 smi) of Left Fork from its headwaters downstream to its confluence with Blue Hole Creek and 3.9 skm (2.4 smi) of Blue Hole Creek from its confluence with Dry Branch downstream to its confluence with the Red Bird River. Live Kentucky arrow darters have been captured from Unit 18 near the mouth of Cow Hollow (Thomas 2008, p. 4). This unit is entirely in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 18 is entirely forested, with no private residences or other structures. The only interruption in the canopy is the KY 1525 corridor, which traverses most of the valley. One additional road, Blue Hole School Road, is located at the headwaters of Blue Hole Creek, leading to a small cemetery site. Blue Hole Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). Collectively, these streams represent the largest, most significant cluster of occupied streams and are characterized by intact riparian zones with negligible residential development, high gradients with abundant riffles, cool temperatures, low conductivities (less than 100  $\mu\text{S}/\text{cm}$ ), and stable channels with clean cobble and boulder substrates (Thomas 2008, p. 4; Service 2014, p. 6).

Within proposed Unit 18, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, illegal off-road vehicle use, and timber management (on DBNF). These threats are in addition to random effects of

drought, floods, or other natural phenomena.

*Unit 19: Upper Bear Creek and Tributaries, Clay County, Kentucky*

Proposed Unit 19 is located along KY 1524 and Upper Bear Creek Road in southeastern Clay County. This unit includes 1.5 skm (1.0 smi) of Left Fork Upper Bear Creek from its headwaters downstream to its confluence with Upper Bear Creek, 0.8 skm (0.5 smi) of Right Fork Upper Bear Creek from its headwaters downstream to its confluence with Upper Bear Creek, and 4.5 skm (2.8 smi) of Upper Bear Creek from its confluence with Left Fork and Right Fork Upper Bear Creek downstream to its confluence with the Red Bird River. Live Kentucky arrow darters have been captured from proposed Unit 19 in two locations downstream of the Left and Right Forks (Thomas 2008, p. 4). A small portion of this unit is privately owned (0.2 skm (0.1 smi)), but the majority of the unit is in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 19 is primarily forested, but a few scattered residences and small farms are located along KY 1524 in the upstream (western) half of the watershed. Upper Bear Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 19, the Kentucky arrow darter and its habitats may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, illegal off-road vehicle use, agricultural runoff, and timber management (on DBNF). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 20: Katies Creek, Clay County, Kentucky*

Proposed Unit 20 is located along Katies Creek Road in southeastern Clay County and includes 5.7 skm (3.5 smi) of Katies Creek from its confluence with Cave Branch downstream to its confluence with the Red Bird River.

Live Kentucky arrow darters have been captured from this unit approximately 0.2 skm (0.12 smi) upstream of the mouth of Katics Creek (Thomas 2008, p. 4). A small portion of this unit is privately owned (1.7 skm (1 smi)), but the majority of the unit is in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 20 is entirely forested, with no private residences or other structures. The only interruption in the canopy is the Katics Creek Road corridor, which traverses the valley. Katics Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 20, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, illegal off-road vehicle use, logging (on private land), and timber management (on DBNF). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 21: Spring Creek and Little Spring Creek, Clay County, Kentucky*

Proposed Unit 21 is located west of KY 66 in southeastern Clay County. This unit includes 1.0 skm (0.6 smi) of Little Spring Creek from its headwaters downstream to its confluence with Spring Creek and 8.2 skm (5.1 smi) of Spring Creek from its headwaters downstream to its confluence with the Red Bird River. Live Kentucky arrow darters have been captured within proposed Unit 21 approximately 0.2 skm (0.1 smi) upstream of the mouth of Spring Creek (Thomas 2008, p. 4). A portion of this unit is privately owned (3.6 skm (2.2 smi)), but the majority of the unit is in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to

connectivity of streams within the watershed.

The watershed surrounding proposed Unit 21 is relatively undisturbed and dominated by forest; however, a few scattered residences are located along a short segment (approximately 0.8 skm (0.5 smi)) of Lower Spring Creek Road near its junction with KY 66 and along Sand Hill Road and Spring Creek Road at the western (upstream) end of the drainage. The stream corridor between these two areas, an approximate 6.4-skm (4-smi) segment, is inaccessible except by off-road vehicle. About 10 oil wells are located along ridgetops and hillsides near the mouth of Spring Creek, and these sites are connected by a network of unpaved roads. Spring Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 21, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, off-road vehicle use, inadequate sewage treatment, logging (on private land), timber management (on DBNF), and oil and gas exploration activities. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 22: Bowen Creek and Tributaries, Leslie County, Kentucky*

Proposed Unit 22 is located east of KY 66 and adjacent to Bowen Creek Road in western Leslie County. This unit includes 2.2 skm (1.4 smi) of Laurel Fork from its headwaters downstream to its confluence with Bowen Creek, 1.8 skm (1.1 smi) of Amy Branch from its headwaters downstream to its confluence with Bowen Creek, and 9.6 skm (6.0 smi) of Bowen Creek from its headwaters downstream to the Red Bird River. Live Kentucky arrow darters have been captured from proposed Unit 22 near its confluence with Blevins Branch and Hurricane Branch (Service unpublished data). A portion of this unit is privately owned (2.0 skm (1.2 smi)), but the majority of the unit is in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to

connectivity of streams within the watershed.

The watershed surrounding this unit is relatively undisturbed and dominated by forest. A few scattered residences are located along Bowen Creek Road near the mid-point of the valley, and others are located further upstream along KY 406. Bowen Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within Unit 22, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, illegal off-road vehicle use, inadequate sewage treatment, logging (on private land), and timber management (on DBNF). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 23: Elisha Creek and Tributaries, Leslie County, Kentucky*

Proposed Unit 23 is located east of KY 66 and adjacent to Elisha Creek Road in western Leslie County. This unit includes 4.4 skm (2.7 smi) of Right Fork Elisha Creek from its headwaters downstream to its confluence with Elisha Creek, 2.3 skm (1.4 smi) of Left Fork Elisha Creek from its headwaters downstream to its confluence with Elisha Creek, and 2.9 skm (1.8 smi) of Elisha Creek from its confluence with Right Fork Elisha Creek downstream to its confluence with the Red Bird River. Live Kentucky arrow darters have been captured throughout proposed Unit 23 (Service unpublished data). A portion of this proposed unit is privately owned (3.0 skm (1.9 smi)), but the majority of the unit is in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 23 is relatively undisturbed and dominated by forest. A few scattered residences are located along Elisha Creek Road at the downstream end of the Elisha Creek valley (near the mouth of Elisha Creek). A few oil and gas wells are scattered throughout the drainage. Elisha Creek is 1 of 11 Red Bird River

tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 23, the Kentucky arrow darter and its habitats may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, illegal off-road vehicle use, logging (on private land), timber management (on DBNF), inadequate sewage treatment, and natural gas and oil exploration activities. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 24: Gilberts Big Creek, Clay and Leslie Counties, Kentucky*

Proposed Unit 24 is located east of KY 66 and generally parallel to Gilberts Creek Road in southeastern Clay County and western Leslie County. This proposed unit includes 7.2 skm (4.5 smi) of Gilberts Big Creek from its headwaters downstream to its confluence with the Red Bird River.

Live Kentucky arrow darters have been captured throughout this unit. A portion of this unit is privately owned (2.0 skm (1.2 smi)), but the majority of the unit is in Federal ownership (administered by DNBf). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 24 is relatively undisturbed and dominated by forest. A few scattered residences and small farms are located along Gilberts Creek Road at the downstream end of the valley near the mouth of Gilberts Big Creek. Several gas and oil wells are also scattered throughout the valley. Gilberts Big Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 24, the Kentucky arrow darter and its habitats may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, off-road vehicle use, logging (on private

land), timber management (on DBNF), inadequate sewage treatment, agricultural runoff, and natural gas and oil exploration activities. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 25: Sugar Creek, Clay and Leslie Counties, Kentucky*

Proposed Unit 25 is located off Sugar Creek Road in southeastern Clay County and western Leslie County and includes 7.2 skm (4.5 smi) of Sugar Creek from its headwaters downstream to its confluence with the Red Bird River. Live Kentucky arrow darters have been captured throughout this unit (Thomas 2008, p. 4; Thomas *et al.* 2014, p. 23). A portion of this unit is privately owned (1.1 skm (0.7 smi)), but the majority of the unit is in Federal ownership (administered by DNBf). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 25 is relatively undisturbed and dominated by forest. A few scattered residences and small farms are located along Sugar Creek Road at the downstream end of the valley near the mouth of Sugar Creek. Several gas and oil wells are also scattered throughout the valley. Sugar Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 25, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, off-road vehicle use, logging (on private land), timber management (on DBNF), inadequate sewage treatment, agricultural runoff, and natural gas and oil exploration activities. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 26: Big Double Creek and Tributaries, Clay County, Kentucky*

Proposed Unit 26 is located adjacent to Big Double Creek Road in southeastern Clay County. This unit includes 1.4 skm (0.9 smi) of Left Fork

Big Double Creek from its headwaters downstream to its confluence with Big Double Creek, 1.8 skm (1.1 smi) of Right Fork Big Double Creek from its headwaters downstream to its confluence with Big Double Creek, and 7.1 skm (4.4 smi) of Big Double Creek from its headwaters downstream to its confluence with the Red Bird River. Live Kentucky arrow darters have been captured from numerous localities in proposed Unit 26, which has been surveyed regularly by KDFWR and Service personnel (Thomas 2008, p. 4; Thomas *et al.* 2014, p. 23; Service unpublished data). This unit is entirely in Federal ownership (administered by DNBf). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 26 is relatively undisturbed and dominated by forest, with about 90 percent in Federal ownership (administered by DNBf). The only residential development is concentrated along Arnett Fork Road, which parallels Arnett Fork, a first order tributary of Big Double Creek. A USFS public use area (Big Double Creek Recreational Area) is located adjacent to Unit 26, approximately 1.6 skm (1.0 smi) upstream of Arnett Fork. This area consists of a gravel road and parking lot, a bathroom facility, several picnic tables, and two maintained fields connected by a pedestrian bridge over Big Double Creek. Upstream of the public use area, Big Double Creek can be accessed via USFS Road 1501, which extends upstream to the confluence of the Left and Right Forks. Big Double Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 26, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation) associated with road runoff, off-road vehicle use, and timber management (on DNBf). These threats are in addition to random effects of drought, floods, or other natural phenomena.



*Unit 27: Little Double Creek, Clay County, Kentucky*

Proposed Unit 27 is located adjacent to Little Double Creek Road in southeastern Clay County. This unit includes 3.4 skm (2.1 smi) of Little Double Creek from its headwaters downstream to its confluence with the Red Bird River. Live Kentucky arrow darters have been captured from two localities in proposed Unit 27 (Thomas 2008, p. 4; Service unpublished data). One hundred percent of this unit is in Federal ownership (administered by DBNF), and the DBNF's Redbird Ranger District headquarters is located off KY 66 at the mouth of Little Double Creek. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 27 is entirely forested, with no private residences or other structures. The only interruption in the canopy of the watershed is the Little Double Creek Road corridor, which traverses the length of the valley. Little Double Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 27, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation) associated with road runoff, illegal off-road vehicle use, and timber management (on DBNF). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 28: Jacks Creek, Clay County, Kentucky*

This proposed unit is located along Jacks Creek Road, north of Hal Rogers Parkway and east of KY 66 in eastern Clay County. Unit 28 includes 5.9 skm (3.7 smi) of Jacks Creek from its headwaters downstream to its confluence with the Red Bird River. Live Kentucky arrow darters have been captured from proposed Unit 28 just downstream of the Crib Branch confluence (Service 2012, entire). A small portion of this unit is in Federal ownership (0.5 skm (0.3 smi)), but the majority of the unit is privately owned.

For the portion of the unit in Federal ownership (administered by DBNF), land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The valley bottom surrounding proposed Unit 28 is comprised of a mixture of residences (many in clusters) and small farms (e.g., pasture, hayfields) scattered along Jacks Creek Road, which parallels Jacks Creek for most of its length. Ridgetops and hillsides in most of the valley are relatively undisturbed and dominated by forest. Jacks Creek is 1 of 11 Red Bird River tributaries (proposed Units 18–28) that support Kentucky arrow populations (Thomas 2008, entire; Service 2012, entire). See the description of proposed Unit 18 for more information regarding the characterization of the streams within this drainage.

Within proposed Unit 28, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, inadequate sewage treatment, agricultural runoff, inadequate riparian buffers, construction and maintenance of county roads, illegal off-road vehicle use, logging (on private land), and timber management (on DBNF). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 29: Long Fork, Clay County, Kentucky*

Proposed Unit 29 is located along USFS Road 1633, which is west of KY 149 and the Hal Rogers Parkway in eastern Clay County. Unit 29 includes 2.2 skm (1.4 smi) of Long Fork from its headwaters downstream to its confluence with Hector Branch. Live Kentucky arrow darters have been captured throughout proposed Unit 29 as a result of a reintroduction effort by KDFWR and Conservation Fisheries, Inc. (CFI) of Knoxville, Tennessee (Thomas et al. 2014, p. 23) (see Available Conservation Measures section of our proposed listing rule published elsewhere in today's **Federal Register**). One hundred percent of this unit is in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit comprises a portion of the

species' core population within the Red Bird River watershed and contributes to connectivity of streams within the watershed.

The watershed surrounding proposed Unit 29 is entirely forested, with no private residences or other structures. The only minor interruption in the canopy of the watershed is the USFS Road 1633 corridor, which parallels Long Fork for part of its length. Habitats in Long Fork are similar to other occupied streams (proposed Units 18–28) in the Red Bird River drainage. See the description of proposed Unit 18 for more information regarding the characterization of the streams within the Red Bird drainage.

Within proposed Unit 29, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation) associated with road runoff, illegal off-road vehicle use, and timber management (on DBNF). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 30: Horse Creek, Clay County, Kentucky*

Proposed Unit 30 is located adjacent to Reynolds Road and Elijah Feltner Road in southwestern Clay County. It includes 5.0 skm (3.1 smi) of Horse Creek from its headwaters downstream to its confluence with Pigeon Roost Branch. Live Kentucky arrow darters have been captured within this unit approximately 1.9 skm (1.2 smi) downstream of the confluence of Horse Creek and Tuttle Branch (Service unpublished data). A portion of proposed Unit 30 is in Federal ownership (2.0 skm (1.2 smi)), but the majority of the unit is privately owned. For the portion of the basin in Federal ownership (administered by DBNF), land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit helps to maintain the geographical range of the species and represents the only occupied habitat within the Goose Creek watershed.

The valley bottom surrounding proposed Unit 30 is comprised of a mixture of forest, small farms, and residences. Ridgetops and hillsides in most of the valley are relatively undisturbed and dominated by forest. Within proposed Unit 30, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, agricultural runoff, inadequate sewage treatment,

lack of riparian buffers, construction and maintenance of county roads, illegal off-road vehicle use, and logging on private land and timber management on DBNF. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 31: Bullskin Creek, Clay and Leslie Counties, Kentucky*

Proposed Unit 31 is located along KY 1482, east of the town of Oneida, Kentucky, in eastern Clay County and northwestern Leslie County. It includes 21.7 skm (13.5 smi) of Bullskin Creek from its confluence with Old House Branch downstream to its confluence with the South Fork Kentucky River. Live Kentucky arrow darters have been captured from Unit 31 at the confluence of Long Branch and just upstream of the confluence of Barger Branch (Thomas 2008, p. 4; Service 2012, entire). A small portion of this unit is in Federal ownership (0.4 skm (0.2 smi)), but the majority of the unit is privately owned. For the portion of the basin in Federal ownership (administered by DBNF), land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit helps to maintain the geographical range of the species and provides opportunity for population growth.

The valley bottom surrounding proposed Unit 31 is comprised of a mixture of residences (many in clusters) and small farms (e.g., pasture, hayfields) scattered along KY 1482, which parallels Bullskin Creek for its entire length. Ridgetops and hillsides in most of the valley are relatively undisturbed and dominated by forest, but a few watersheds show signs of active or recent disturbance. Surface coal mining is currently ongoing in the watersheds of Wiles Branch (Permit #826–0649), Barger Branch (Permit #826–0664), and a few unnamed tributaries of Bullskin Creek (Permit #826–0664). Recent logging activities have occurred in the watershed of Panco Branch.

Within proposed Unit 31, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, surface coal mining, inadequate sewage treatment, agricultural runoff, lack of riparian buffers, construction and maintenance of county roads, illegal off-road vehicle use, and logging. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 32: Buffalo Creek and Tributaries, Owsley County, Kentucky*

Proposed Unit 32 is located north of Oneida, Kentucky, and east of KY 11 in southeastern Owsley County. This unit includes 2.0 skm (1.2 smi) of Cortland Fork from its headwaters downstream to its confluence with Laurel Fork, 6.4 skm (4.0 smi) of Laurel Fork from its headwaters downstream to its confluence with Left Fork Buffalo Creek, 4.6 skm (2.9 smi) of Lucky Fork from its headwaters downstream to its confluence with Left Fork Buffalo Creek, 5.1 skm (3.2 smi) of Left Fork Buffalo Creek from its headwaters downstream to its confluence with Buffalo Creek, 17.3 skm (10.8 smi) of Right Fork Buffalo Creek from its headwaters downstream to its confluence with Buffalo Creek, and 2.7 skm (1.7 smi) of Buffalo Creek from its confluence with Left Fork Buffalo Creek and Right Fork Buffalo Creek downstream to its confluence with the South Fork Kentucky River. Live Kentucky arrow darters have been captured from multiple locations throughout proposed Unit 32 (Thomas 2008, p. 4; Service 2012, entire). A portion of this unit is in Federal ownership (administered by DBNF) (14.9 skm (9.3 smi)), but the majority of the unit is in private ownership. For the portion in Federal ownership, land and resource management decisions and activities are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit represents a stronghold for the species within the lower half of the South Fork Kentucky River sub-basin and likely acts a source population.

Ridgetops and hillsides in most of the valley surrounding proposed Unit 32 are relatively undisturbed and dominated by forest, but portions of the valley bottom surrounding Unit 32 have been cleared and consist of a mixture of residences (many in clusters) and small farms (e.g., pasture, hayfields, row crops) scattered along roadways. Surface coal mining has been conducted recently or is currently ongoing in the headwaters of Left Fork Buffalo Creek, specifically Stamper Branch of Lucky Fork (Permit #895–0175), Cortland Fork of Laurel Fork (Permit #813–0271), and Joyce Fork of Laurel Fork (Permit #895–0175).

Within proposed Unit 32, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, surface coal mining, inadequate sewage treatment, inadequate riparian buffers, agricultural runoff, construction and

maintenance of roads, illegal off-road vehicle use, logging (on private land), and timber management (on DBNF). These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 33: Lower Buffalo Creek, Lee and Owsley Counties, Kentucky*

Proposed Unit 33 is located along KY 1411 and Straight Fork-Zeke Branch Road in southern Lee and northern Owsley Counties. This unit includes 2.2 skm (1.4 smi) of Straight Fork from its headwaters downstream to its confluence with Lower Buffalo Creek and 5.1 skm (3.2 smi) of Lower Buffalo Creek from its confluence with Straight Fork downstream to its confluence with the South Fork Kentucky River. Live Kentucky arrow darters have been captured within proposed Unit 33 at the confluence of Lower Buffalo Creek and Straight Fork (Thomas 2008, p. 4). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. This unit helps to maintain the geographical range of the species and provides opportunity for population growth.

Ridgetops and hillsides in most of the valley surrounding proposed Unit 33 are relatively undisturbed and dominated by forest, but large portions of the valley bottom surrounding proposed Unit 33 have been cleared and consist of a mixture of residences (many in clusters) and small farms (e.g., pasture, hayfields, row crops). Extensive logging has occurred recently (within the last 7 years) within Jerushia Branch, a first order tributary of Lower Buffalo Creek.

Within this unit, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, construction and maintenance of roads, inadequate sewage treatment, inadequate riparian buffers, agricultural runoff, illegal off-road vehicle use, and logging. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 34: Silver Creek, Lee County, Kentucky*

Proposed Unit 34 is located along Silver Creek Road, partially within the city limits of Beattyville in central Lee County. This unit includes 6.2 skm (3.9 smi) of Silver Creek from its headwaters downstream to its confluence with the Kentucky River. Live Kentucky arrow darters have been captured within proposed Unit 34 approximately 1.4 skm (0.9 smi)

upstream of the mouth of Silver Creek (Thomas 2008, p. 5). This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. This unit helps to maintain the geographical range of the species and provides opportunity for population growth.

The valley surrounding proposed Unit 34 is unusual among occupied watersheds because it is not located in a rural area. The mouth of Silver Creek (downstream terminus of Unit 34) is located within the city limits of Beattyville, and the downstream half of the watershed is moderately developed, with numerous residences along Silver Creek Road. The upstream half of the watershed is less developed and dominated by forest. Within this unit, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, construction and maintenance of roads, inadequate sewage treatment, inadequate riparian buffers, and illegal off-road vehicle use. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 35: Travis Creek, Jackson County, Kentucky*

Proposed Unit 35 is located along Travis Creek Road in eastern Jackson County. This unit includes 4.1 skm (2.5 smi) of Travis Creek from its headwaters downstream to its confluence with Hector Branch. Live Kentucky arrow darters have been captured within proposed Unit 35 approximately 1.8 skm (1.1 smi) upstream of the mouth of Travis Creek. This unit is located almost entirely on private land, except for any small amount that is publicly owned in the form of bridge crossings and road easements. This unit represents the western extent of the species' range and increases population redundancy within the species' range.

A few agricultural fields are located near the mouth of Travis Creek, but most of the watershed surrounding proposed Unit 35 is forested, with no private residences or other structures. Some of the forest is early successional due to recent logging in the watershed. Within proposed Unit 35, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, off-road vehicle use, inadequate riparian buffers, construction and maintenance of county roads, agricultural runoff, and logging. These threats are in addition to random

effects of drought, floods, or other natural phenomena.

*Unit 36: Wild Dog Creek, Jackson and Owsley Counties, Kentucky*

Proposed Unit 36 is located west of Sturgeon Creek in eastern Jackson and northwestern Owsley Counties. This unit includes 8.1 skm (5.1 smi) of Wild Dog Creek from its headwaters downstream to its confluence with Sturgeon Creek. Live Kentucky arrow darters have been captured within proposed Unit 36 just upstream of the mouth of Wild Dog Creek. A portion of this unit is in Federal ownership (3.8 skm (2.4 smi)), but the majority of the unit is in private ownership. For the portion of the unit in Federal ownership (administered by DBNF), land and resource management decisions and activities are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit represents the western extent of the species' range and increases population redundancy within the species' range.

The watershed surrounding proposed Unit 36 is relatively undisturbed and dominated by forest, but a few scattered residences and small farms occur in the headwaters just east of KY 587. Within proposed Unit 36, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, construction and maintenance of roads, illegal off-road vehicle use, inadequate riparian buffers, agricultural runoff, logging (on private land), timber management (on DBNF), and inadequate sewage treatment. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 37: Granny Dismal Creek, Lee and Owsley Counties, Kentucky*

Proposed Unit 37 is located west of Sturgeon Creek in western Lee and eastern Owsley Counties. This unit includes 6.9 skm (4.3 smi) of Granny Dismal Creek from its confluence with Harris Branch downstream to its confluence with Sturgeon Creek. Live Kentucky arrow darters have been captured within proposed Unit 37 approximately 1.1 skm (0.7 smi) upstream of the mouth of Granny Dismal Creek. A portion (2.5 skm (1.6 smi)) of this unit is in Federal ownership (administered by DBNF), but the majority of the unit is privately owned. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit represents the western extent of the

species' range and increases population redundancy within the species' range.

The watershed surrounding proposed Unit 37 is relatively undisturbed and dominated by forest, but a few scattered residences and small farms occur in the headwaters just east of KY 587. Within proposed Unit 37, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, construction and maintenance of roads, illegal off-road vehicle use, inadequate riparian buffers, agricultural runoff, logging (on private land), timber management (on DBNF), and inadequate sewage treatment. These threats are in addition to random effects of drought, floods, or other natural phenomena.

*Unit 38: Rockbridge Fork, Wolfe County, Kentucky*

Proposed Unit 38 is located within the Red River Gorge region in northwestern Wolfe County and represents the only occupied habitat within the Red River drainage. This unit includes 4.5 skm (2.8 smi) of Rockbridge Fork from its confluence with Harris Branch downstream to its confluence with Sturgeon Creek. Live Kentucky arrow darters have been captured within proposed Unit 38 approximately 0.2 skm (0.1 smi) upstream of the mouth of Rockbridge Fork. This unit is entirely in Federal ownership (administered by DBNF). Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). This unit represents the northern extent of the species' range and increases population redundancy within the species' range.

The watershed surrounding proposed Unit 38 is relatively undisturbed and dominated by forest, but a few scattered residences and small farms occur in the headwaters of Rockbridge Fork near the Mountain Parkway (KY 402). Within proposed Unit 38, the Kentucky arrow darter and its habitat may require special management considerations or protection to address adverse effects (e.g., siltation, water pollution) associated with road runoff, illegal off-road vehicle use, agricultural runoff, timber management (on DBNF), and inadequate sewage treatment. These threats are in addition to random effects of drought, floods, or other natural phenomena.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service,

to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of “destruction or adverse modification” (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect and are likely to

adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

- (1) Can be implemented in a manner consistent with the intended purpose of the action,
- (2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,
- (3) Are economically and technologically feasible, and
- (4) Would, in the Director’s opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

#### *Application of the “Adverse Modification” Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that

appreciably reduces the conservation value of critical habitat for the Kentucky arrow darter. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Kentucky arrow darter. These activities include, but are not limited to:

- (1) Actions that would alter the geomorphology of stream habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, road and bridge construction, surface coal mining, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion that would degrade or eliminate habitats necessary for growth and reproduction of the Kentucky arrow darter.

(2) Actions that would significantly alter the existing flow regime or water quantity. Such activities could include, but are not limited to, impoundment, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of this species.

(3) Actions that would significantly alter water quality (for example, temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the Kentucky arrow darter (*e.g.*, elevated conductivity) and result in direct or cumulative adverse effects to the species and its life cycle.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects, channel alteration, livestock grazing, timber harvests, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or

nutrients into the water. These activities could eliminate or degrade habitats necessary for the growth and reproduction of the Kentucky arrow darter by increasing the sediment deposition to levels that would adversely affect its ability to complete its life cycle.

### Exemptions

#### *Application of Section 4(a)(3) of the Act*

Section 4(a)(3)(B)(i) of the Act provides that: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

#### **Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Kentucky arrow darter, the benefits of critical habitat include public awareness of the presence of the Kentucky arrow darter and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Kentucky

arrow darter due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period.

#### *Consideration of Economic Impacts*

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.*, under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.*, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the

species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this proposed designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Kentucky arrow darter (Abt Associates 2015, p. 1). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.*, absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are therefore unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the Kentucky arrow darter and is summarized in the narrative below.

Executive Orders (E.O.) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess to the extent

practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Kentucky arrow darter, first we identified, in the IEM dated July 23, 2015, probable projects associated with the following land use sectors: (1) Agriculture; (2) conservation/restoration; (3) development; (4) forest management; (5) grazing; (6) mining; (7) oil and gas; (8) recreation; (9) silviculture/timber; (10) transportation; and (11) water quality. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement, but rather only activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Kentucky arrow darter is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Kentucky arrow darter's critical habitat. Because the designation of critical habitat for the Kentucky arrow darter is proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Kentucky arrow darter would also likely adversely affect the

essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Kentucky arrow consists of 38 units, encompassing approximately 395 skm (246 smi) in eastern Kentucky. Included lands (*i.e.*, stream bottoms; as noted previously, waters are owned by the State) are under Federal, State, and private ownership, and all are within the area occupied by the Kentucky arrow darter at the time of listing. Federal land is predominant in Units 15, 19–27, and 38. In these units, Federal lands make up over 50 percent of the acreage, which accounts for 26.3 percent of the total proposed critical habitat acreage. State-owned lands are located in two units (proposed Units 3 and 4) and make up 4.5 percent of the total proposed critical habitat acreage. Privately owned land is present in all but six units, ranging from 0 to 100 percent. Private lands account for 69.2 percent of the total proposed critical habitat acreage.

Because all of the units proposed as critical habitat for the Kentucky arrow darter are currently occupied by the species, any actions that may affect the species or its habitat would also affect critical habitat and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Kentucky arrow darter. Any anticipated incremental costs of the critical habitat designation will predominantly be administrative in nature and would not be significant. Critical habitat may impact property values indirectly if developers assume the designation will limit the potential use of that land. However, the designation of critical habitat is not likely to result in an increase of consultations, but rather only the additional administrative effort within each consultation to address the effects of each proposed agency action on critical habitat.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and required determinations. We may revise the proposed rule or supporting documents to incorporate or address information

we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

#### *Exclusion Based on Economic Impacts*

Our DEA did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from this proposed designation of critical habitat for the Kentucky arrow darter based on economic impacts.

During the development of a final designation, we will consider any additional economic impact information received through the public comment period, and as such areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

#### *Exclusions Based on National Security Impacts*

Under section 4(b)(2) of the Act, we must consider whether there are areas where designation of critical habitat might have an impact on national security. In preparing this proposal, we have determined that the areas within the proposed designation of critical habitat for the Kentucky arrow darter are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not intending to exercise her discretion to exclude any areas from the final designation based on impacts on national security.

#### *Exclusions Based on Other Relevant Impacts*

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no

HCPs or other management plans for the Kentucky arrow darter, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not intend to exercise her discretion to exclude any areas from the final designation based on other relevant impacts.

#### Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

#### Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

#### Required Determinations

##### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to

consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 et seq.), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (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. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

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

small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

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

##### *Energy Supply, Distribution, or Use—* *Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat will significantly affect energy supplies, distribution, or use. Natural gas and oil exploration and development activities occur or could potentially occur in all proposed units for the Kentucky arrow darter; however, compliance with State regulatory requirements or voluntary BMPs would

be expected to minimize impacts of natural gas and oil exploration and development in the areas of proposed critical habitat for the species. The measures for natural gas and oil exploration and development are generally not considered a substantial cost compared with overall project costs and are already being implemented by oil and gas companies.

Surface coal mining occurs or could potentially occur in all proposed critical habitat units for the Kentucky arrow darter. Incidental take for listed species associated with surface coal mining activities is currently covered under a programmatic, non-jeopardy biological opinion between the Office of Surface Mining Reclamation and Enforcement and the Service completed in 1996 (Service 1996, entire). The biological opinion covers existing, proposed, and future endangered and threatened species that may be affected by the implementation and administration of surface coal mining programs under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). Through its analysis, the Service concluded that the proposed action (surface coal mining and reclamation activities) was not likely to jeopardize the continued existence of any endangered or threatened species, or any species proposed for listing as an endangered or threatened species, or result in adverse modification of designated or proposed critical habitat. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue and review and revise this assessment as warranted.

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

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

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates

to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because this species occurs primarily in Federally-owned river channels or in remote privately owned stream channels. Also, this rule would not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not

required. We will, however, further evaluate this issue through the public review and comment period and revise this assessment if appropriate.

#### *Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Kentucky arrow darter in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for Kentucky arrow darter does not pose significant takings implications for lands within or affected by the designation.

#### *Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we request information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Kentucky. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas



that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

#### *Civil Justice Reform—Executive Order 12988*

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

#### *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 the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We are not proposing to designate critical habitat for the Kentucky arrow darter on tribal lands.

#### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES**

section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### **References Cited**

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### **Authors**

The primary authors of this proposed rulemaking are the staff members of the Kentucky Ecological Services Field Office.

#### **List of Subjects in 50 CFR Part 17**

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

#### **Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### **PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

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

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. In § 17.95, amend paragraph (e) by adding an entry for “Kentucky Arrow Darter (*Etheostoma spilotum*)” in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

#### **§ 17.95 Critical habitat—fish and wildlife.**

*	*	*	*	*
(e) <i>Fishes.</i>				
*	*	*	*	*

#### *Kentucky Arrow Darter (*Etheostoma spilotum*)*

(1) Critical habitat units are depicted on the maps below for Breathitt, Clay, Harlan, Jackson, Knott, Lee, Leslie, Owsley, Perry, and Wolfe Counties, Kentucky.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Kentucky arrow darter consist of five components:

- (i) Riffle-pool complexes and transitional areas (glides and runs) of

geomorphically stable, first- to third-order streams with connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(ii) Stable bottom substrates composed of gravel, cobble, boulders, bedrock ledges, and woody debris piles with low levels of siltation.

(iii) An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and to maintain benthic habitats utilized by the species.

(iv) Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this entry as the quality necessary for normal behavior, growth, and viability of all life stages of the Kentucky arrow darter.

(v) A prey base of aquatic macroinvertebrates, including mayfly nymphs, midge larvae, caddisfly larvae, stonefly nymphs, and small crayfishes.

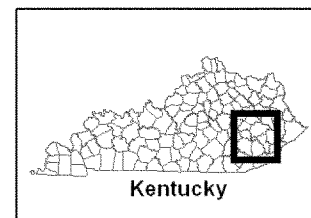
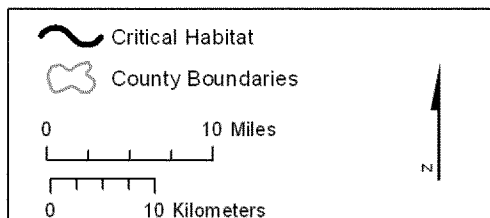
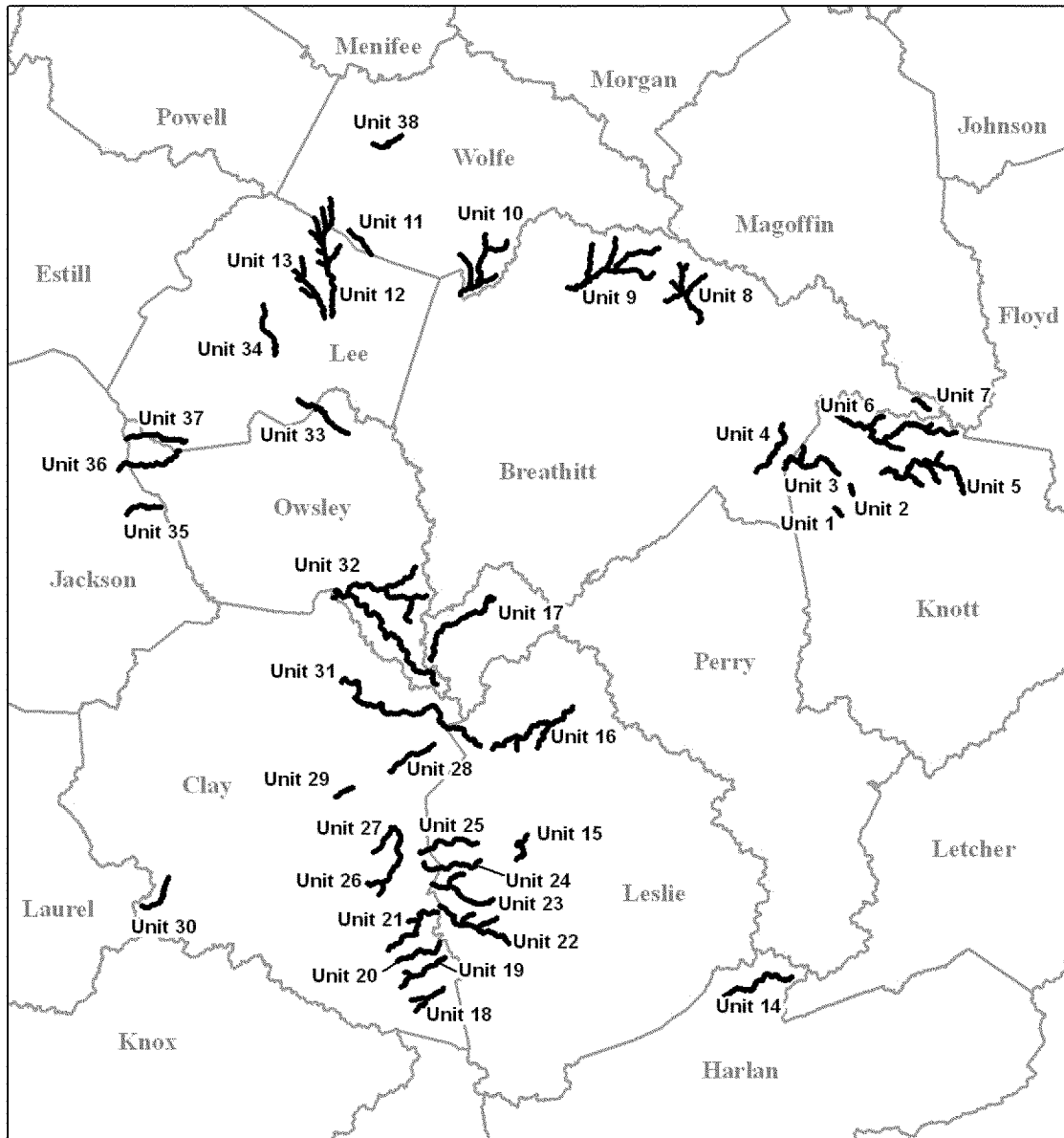
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [INSERT EFFECTIVE DATE OF FINAL RULE].

(4) *Critical habitat map units.* Data layers defining map units were created on a base of U.S. Geological Survey (USGS) National Hydrography Dataset (NHD+) GIS data. The 1:100,000 river reach (route) files were used to calculate river kilometers and miles. ESRI ArcGIS 10.0 software was used to determine longitude and latitude coordinates using decimal degrees. The projection used in mapping all units was USA Contiguous Albers Equal Area Conic USGS version, NAD 83, meters. The following data sources were referenced to identify features (like

roads and streams) used to delineate the upstream and downstream extents of critical habitat units: NHD+ flowline and waterbody data, 2011 Navteq roads data, USA Topo ESRI online basemap service, DeLorme Atlas and Gazetteers, and USGS 7.5 minute topographic maps. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates, plot points, or both on which each map is based are available to the public at the Service's Internet site, (<http://fws.gov/frankfort/www.regulations.gov>) at Docket No. FWS-R4-ES-2015-0133, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Note: Index map follows:

**Index Map: Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)**



(6) Unit 1: Buckhorn Creek and Prince Fork, and Unit 2: Eli Fork, Knott County, Kentucky.

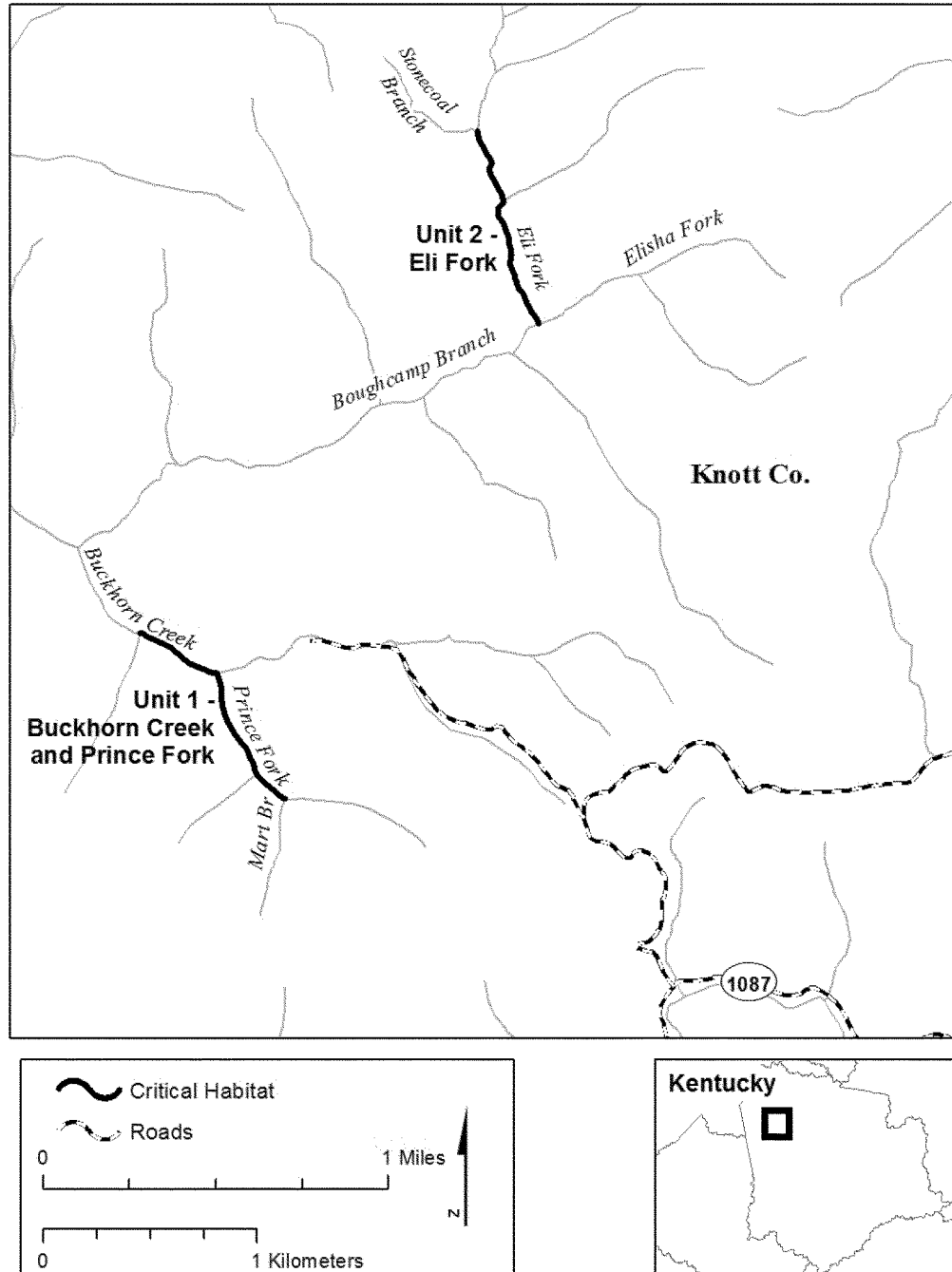
(i) Unit 1 includes 0.7 skm (0.4 smi) of Prince Fork from Mart Branch (37.41291, -83.07000) downstream to its confluence with Buckhorn Creek

(37.41825, -83.07341), and 0.4 skm (0.3 smi) of Buckhorn Creek from its headwaters at (37.41825, -83.07341) downstream to its confluence with Emory Branch (37.42006, -83.07738) in Knott County, Kentucky.

(ii) Unit 2 includes 1.0 skm (0.6 smi) of Eli Fork from its headwaters at (37.44078, -83.05884), downstream to its confluence with Boughcamp Branch (37.43259, -83.05591) in Knott County, Kentucky.

(iii) Map of Units 1 and 2 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)**  
**Unit 1 - Buckhorn Creek and Prince Fork: Knott County, Kentucky**  
**Unit 2 - Eli Fork: Knott County, Kentucky**



(7) Unit 3: Coles Fork and Snag Ridge Fork, Breathitt and Knott Counties, Kentucky.

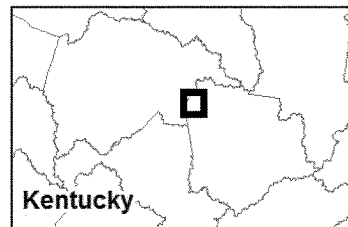
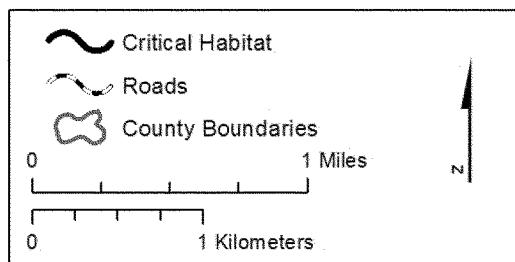
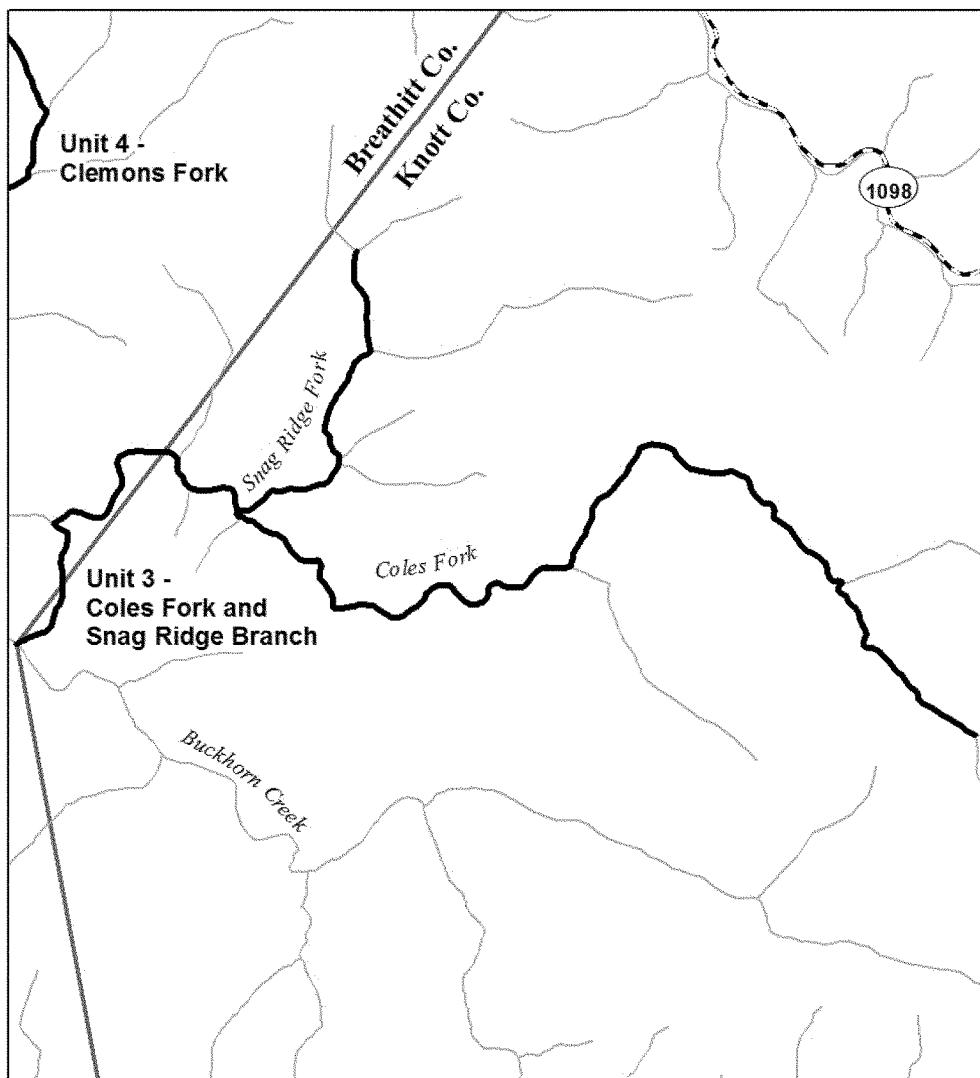
(i) Unit 3 includes 2.1 skm (1.3 smi) of Snag Ridge Fork from its headwaters

at (37.47746, -83.11139), downstream to its confluence with Coles Fork (37.46391, -83.13468) in Knott County; and 8.9 skm (5.5 smi) of Coles Fork from its headwaters at (37.45096,

-83.07124), downstream to its confluence with Buckhorn Creek (37.45720, -83.13468) in Knott County, Kentucky.

(ii) Map of Unit 3 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 3 - Coles Fork and Snag Ridge Branch: Knott and Breathitt Counties,  
Kentucky**



(8) Unit 4: Clemons Fork, Breathitt County, Kentucky.

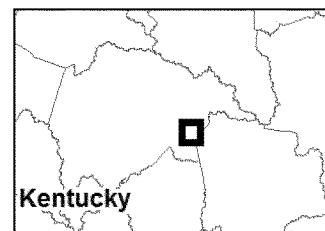
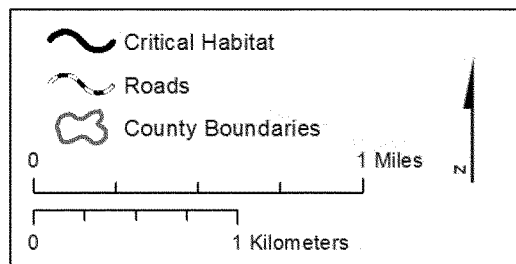
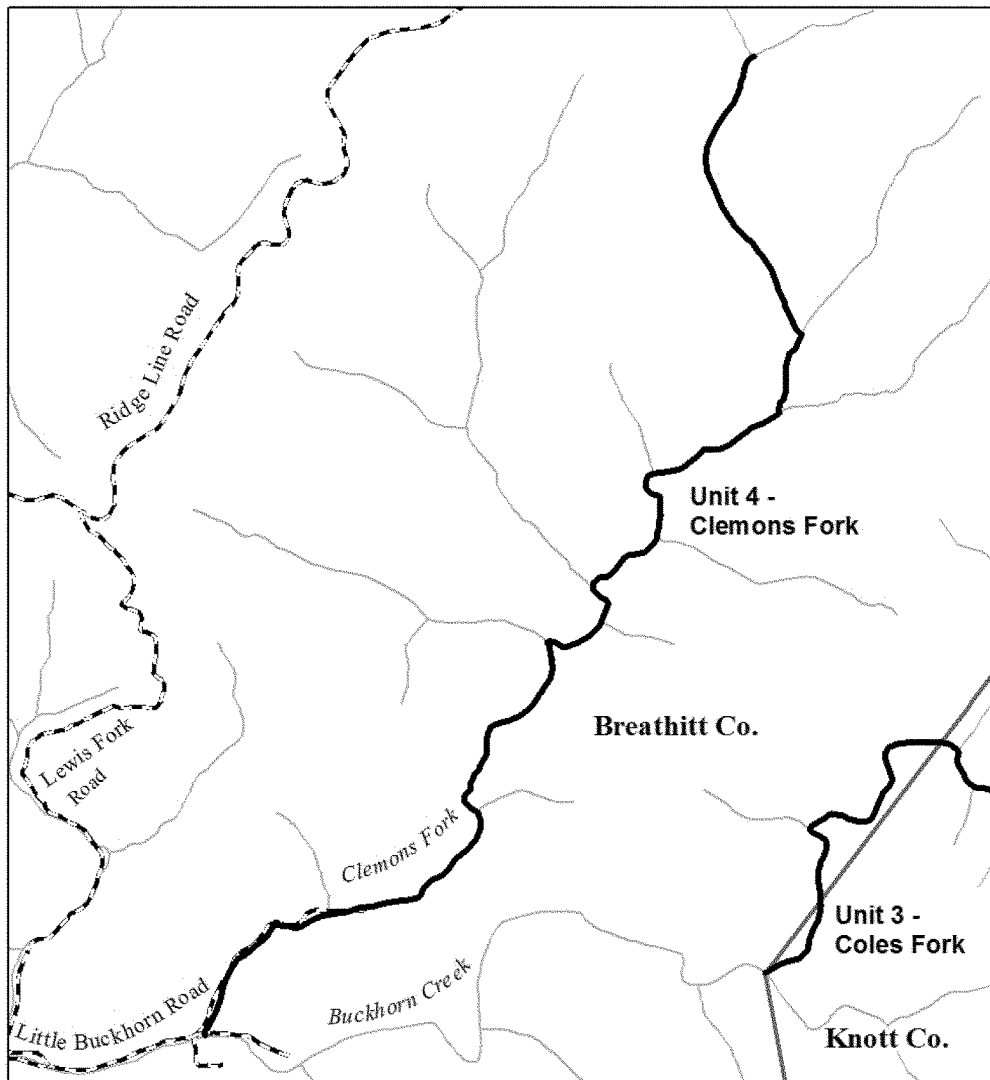
(i) Unit 4 includes 7.0 skm (4.4 smi) of Clemons Fork from its headwaters at

(37.49772, -83.13390), downstream to its confluence with Buckhorn Creek

(37.45511, -83.16582) in Breathitt County, Kentucky.

(ii) Map of Unit 4 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 4 - Clemons Fork: Breathitt County, Kentucky**



(9) Unit 5: Laurel Fork Quicksand Creek and Tributaries, Knott County, Kentucky.

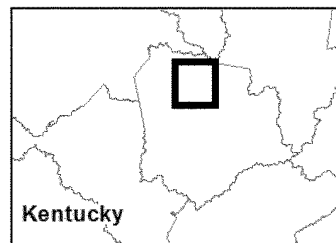
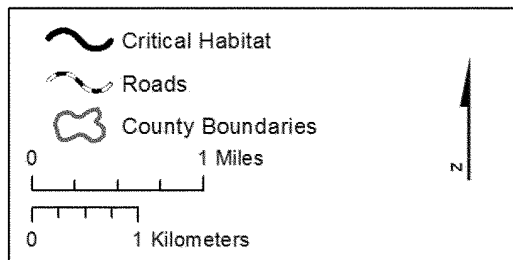
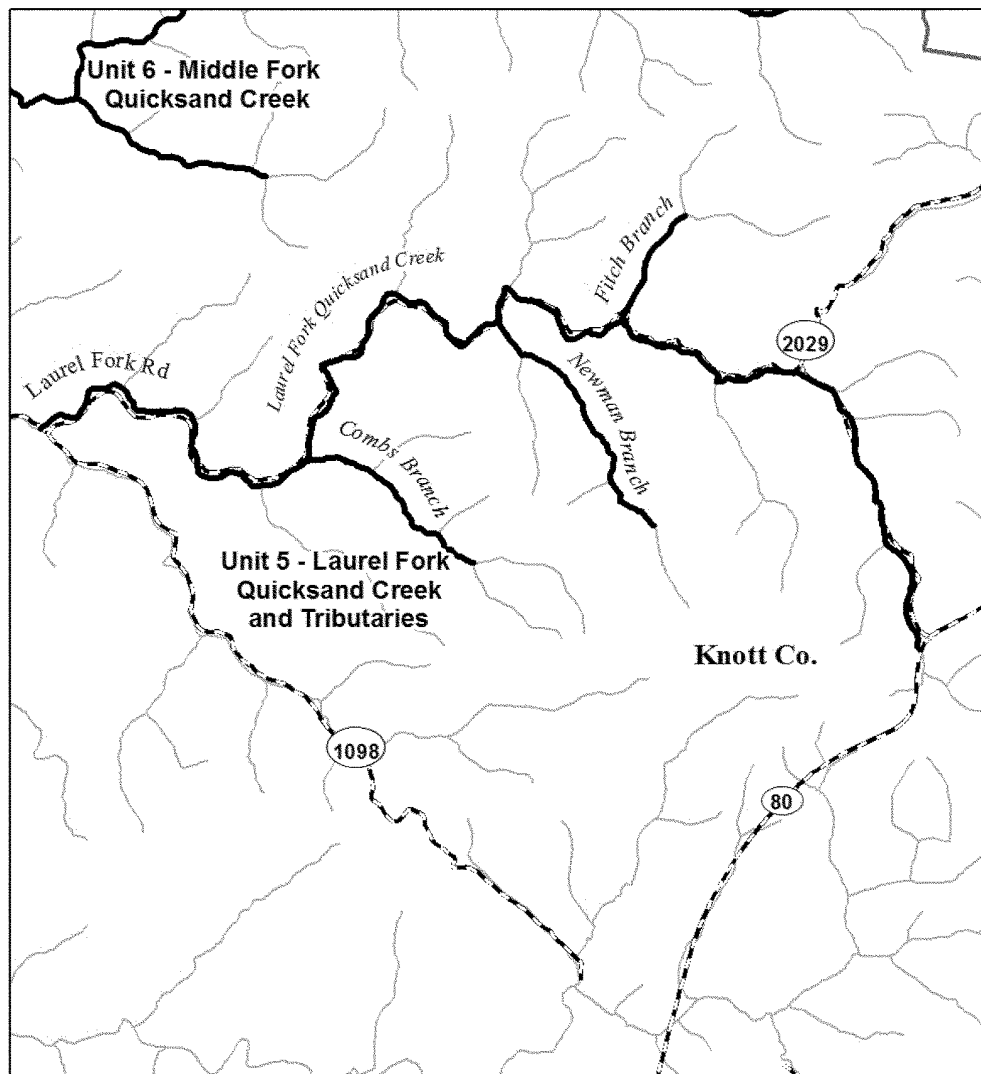
(i) Unit 5 includes 1.2 skm (0.8 smi) of Fitch Branch from its headwaters at (37.46745, -82.95373), downstream to its confluence with Laurel Fork Quicksand Creek (37.45855, -82.96089); 2.7 skm (1.7 smi) of

Newman Branch from its headwaters at (37.44120, -82.95810), downstream to its confluence with Laurel Fork Quicksand Creek (37.45893, -82.97417); 2.1 skm (1.3 smi) of Combs Branch from its headwaters at (37.43848, -82.97731), downstream to its confluence with Laurel Fork

Quicksand Creek (37.44758, -82.99476); and 13.8 skm (8.6 smi) of Laurel Fork Quicksand Creek from its headwaters at (37.43001, -82.93016), downstream to its confluence with Quicksand Creek (37.45100, -83.02303) in Knott County, Kentucky.

(ii) Map of Unit 5 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 5 - Laurel Fork Quicksand Creek and Tributaries: Knott County,  
Kentucky**



(10) Unit 6: Middle Fork Quicksand Creek and Tributaries, Knott County, and Unit 7: Spring Fork Quicksand Creek, Breathitt County, Kentucky.

(i) Unit 6 includes 0.8 skm (0.5 smi) of Big Firecoal Branch from its headwaters at (37.49363, -82.96426), downstream to its confluence with

Middle Fork Quicksand Creek (37.48990, -82.97148); 2.1 skm (1.3 smi) of Bradley Branch from its headwaters at (37.47180, -82.99819), downstream to its confluence with Middle Fork Quicksand Creek (37.47899, -83.01823); 2.0 skm (1.2 smi) of Lynn Log Branch from its

headwaters at (37.50190, -83.01921), downstream to its confluence with Middle Fork Quicksand Creek (37.49286, -83.03524); and 17.6 skm (10.9 smi) of Middle Fork Quicksand Creek from its headwaters at (37.48562, -82.93667), downstream to its confluence with Quicksand Creek

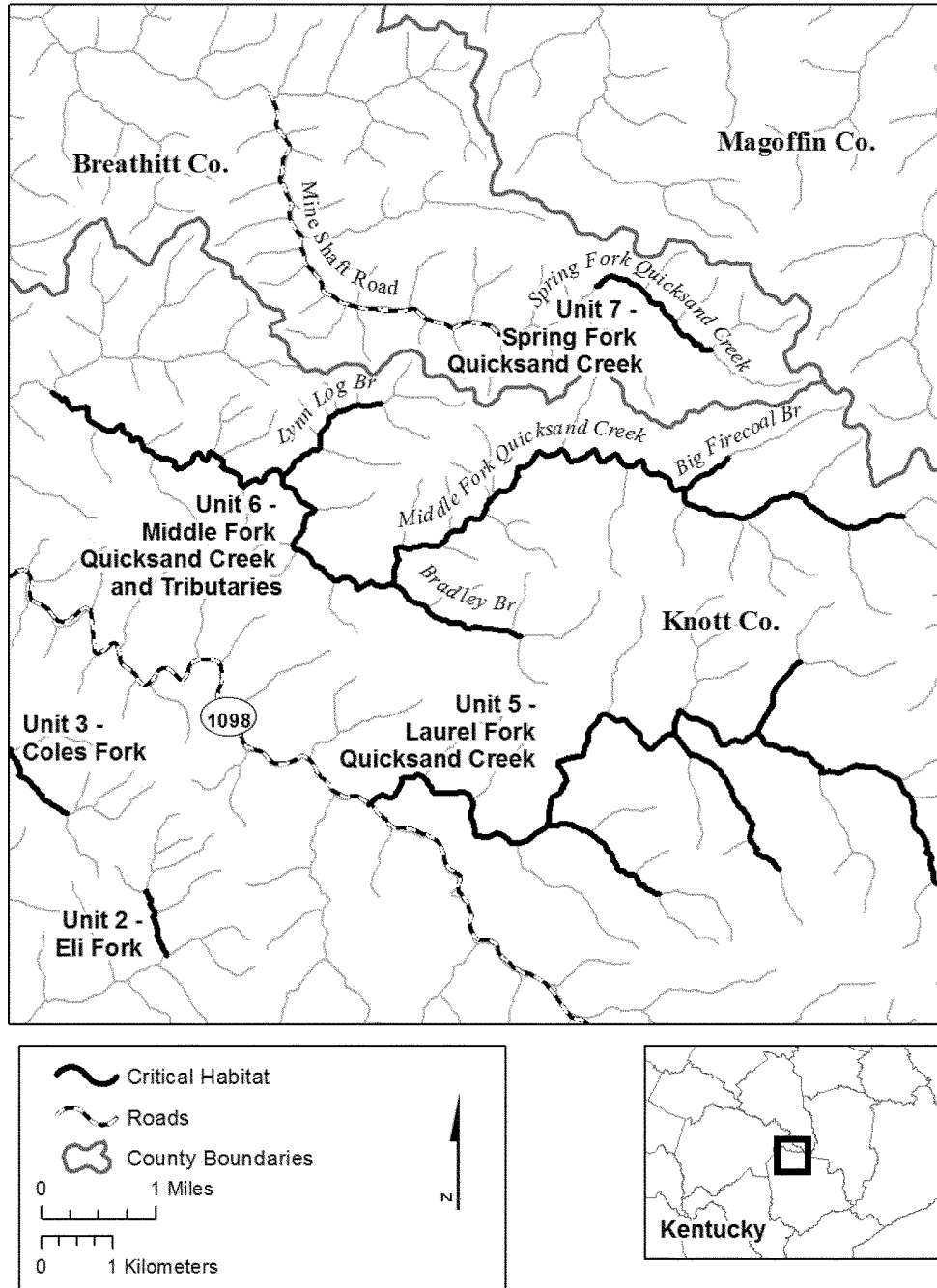
(37.504451, -83.07150) in Knott County, Kentucky.  
(ii) Unit 7 includes 2.2 skm (1.4 smi) of Spring Fork Quicksand Creek from its

headwaters at (37.50746, -82.96647), downstream to its confluence with

Laurel Fork (37.51597, -82.98436) in Breathitt County, Kentucky.

(iii) Map of Units 6 and 7 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 6 - Middle Fork Quicksand Creek and Tributaries: Knott County, Kentucky  
Unit 7 - Spring Fork Quicksand Creek: Breathitt County, Kentucky**



(11) Unit 8: Hunting Creek and Tributaries, Breathitt County, Kentucky.  
(i) Unit 8 includes 0.9 skm (0.5 smi) of Wolf Pen Branch from its headwaters at (37.64580, -83.23885), downstream to its confluence with Hunting Creek

(37.64023, -83.24424); 1.6 skm (1.0 smi) of Negro Fork from its headwaters at (37.62992, -83.25760), downstream to its confluence with Hunting Creek (37.62121, -83.24433); 2.3 skm (1.4 smi) of Fletcher Fork from its

headwaters at (37.61315, -83.26521), downstream to its confluence with Hunting Creek (37.61956, -83.24370); 3.1 skm (1.9 smi) of Licking Fork from its headwaters at (37.63553, -83.21754, -83.21754), downstream to its

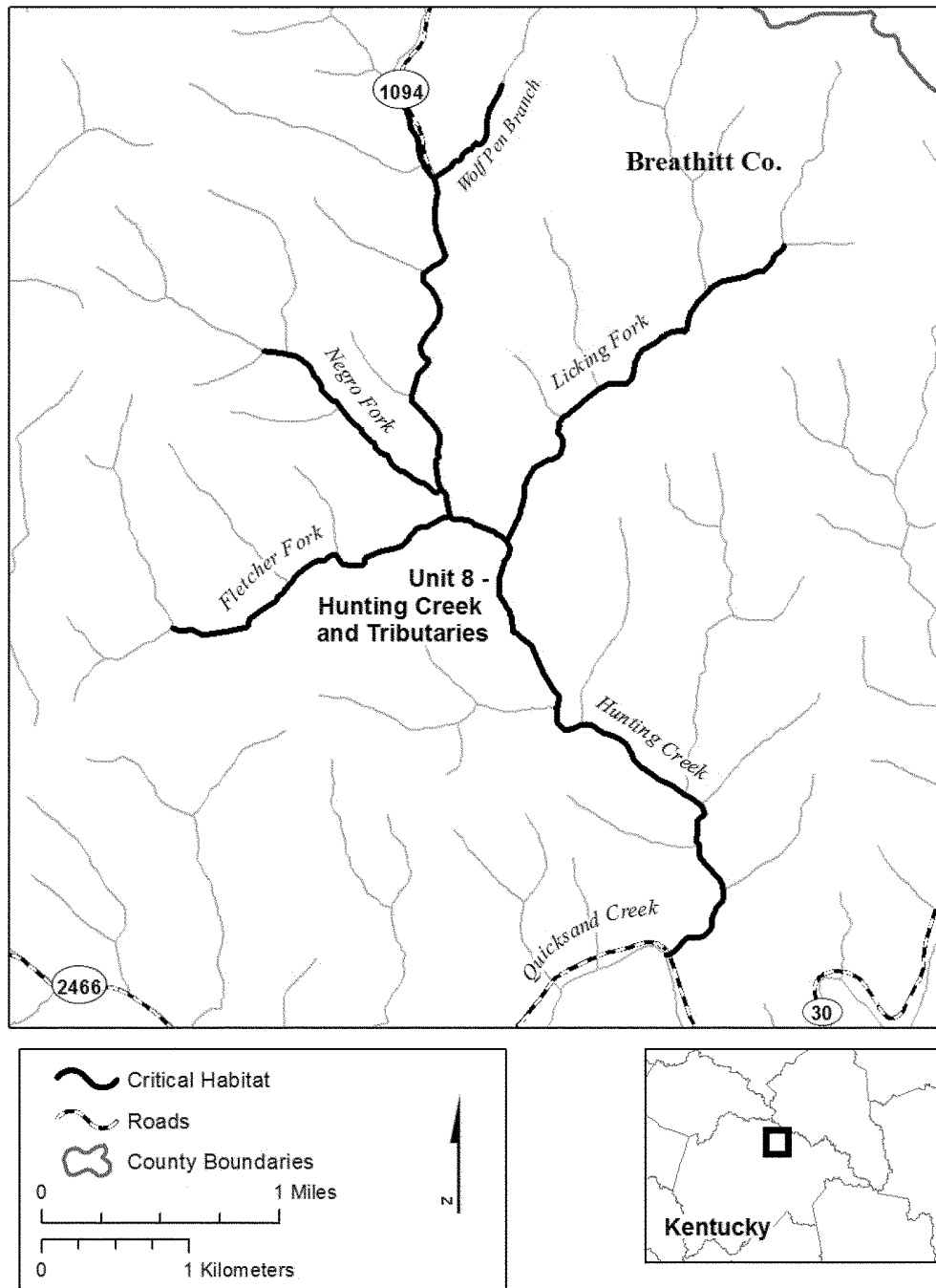


confluence with Hunting Creek (37.61794, -83.23938); and 7.7 skm (4.8 smi) of Hunting Creek from its

confluence with Wells Fork (37.64629, -83.24708), downstream to its confluence with Quicksand Creek

(37.59235, -83.22803) in Breathitt County, Kentucky.  
(ii) Map of Unit 8 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 8 - Hunting Creek and Tributaries: Breathitt County, Kentucky**



(12) Unit 9: Frozen Creek and Tributaries, Breathitt County, Kentucky.

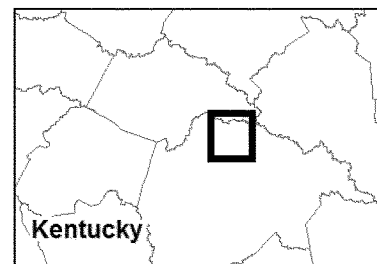
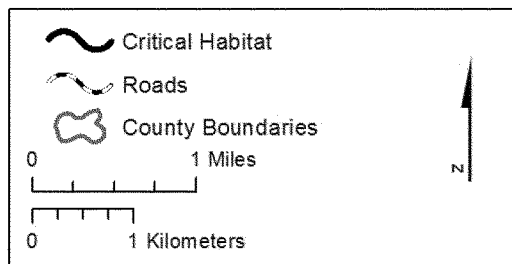
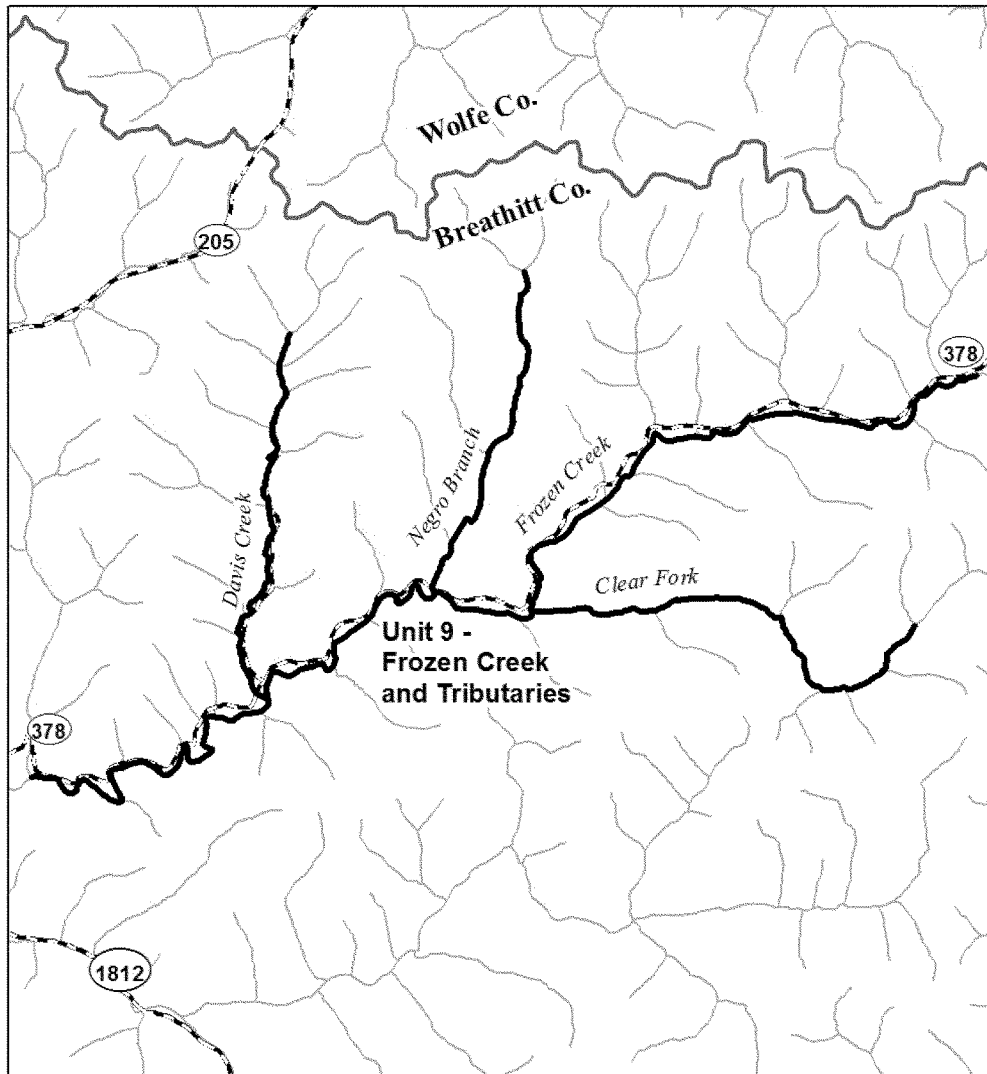
(i) Unit 9 includes 4.7 skm (2.9 smi) of Clear Fork from its headwaters at (37.63899, -83.27706), downstream to its confluence with Frozen Creek (37.64109, -83.31969); 3.6 skm (2.3

smi) of Negro Branch from its headwaters at (37.67146, -83.31971), downstream to its confluence with Frozen Creek (37.64319, -83.33068); 4.2 skm (2.6 smi) of Davis Creek from its headwaters at (37.66644, -83.34599), downstream to its

confluence with Frozen Creek (37.63402, -83.34953); and 13.9 skm (8.6 smi) of Frozen Creek from its headwaters at (37.66115, -83.26945), downstream to its confluence with Morgue Fork (37.62761, -83.37622) in Breathitt County, Kentucky.

(ii) Map of Unit 9 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 9 - Frozen Creek and Tributaries: Breathitt County, Kentucky**



(13) Unit 10: Holly Creek and Tributaries, Wolfe County, Kentucky.

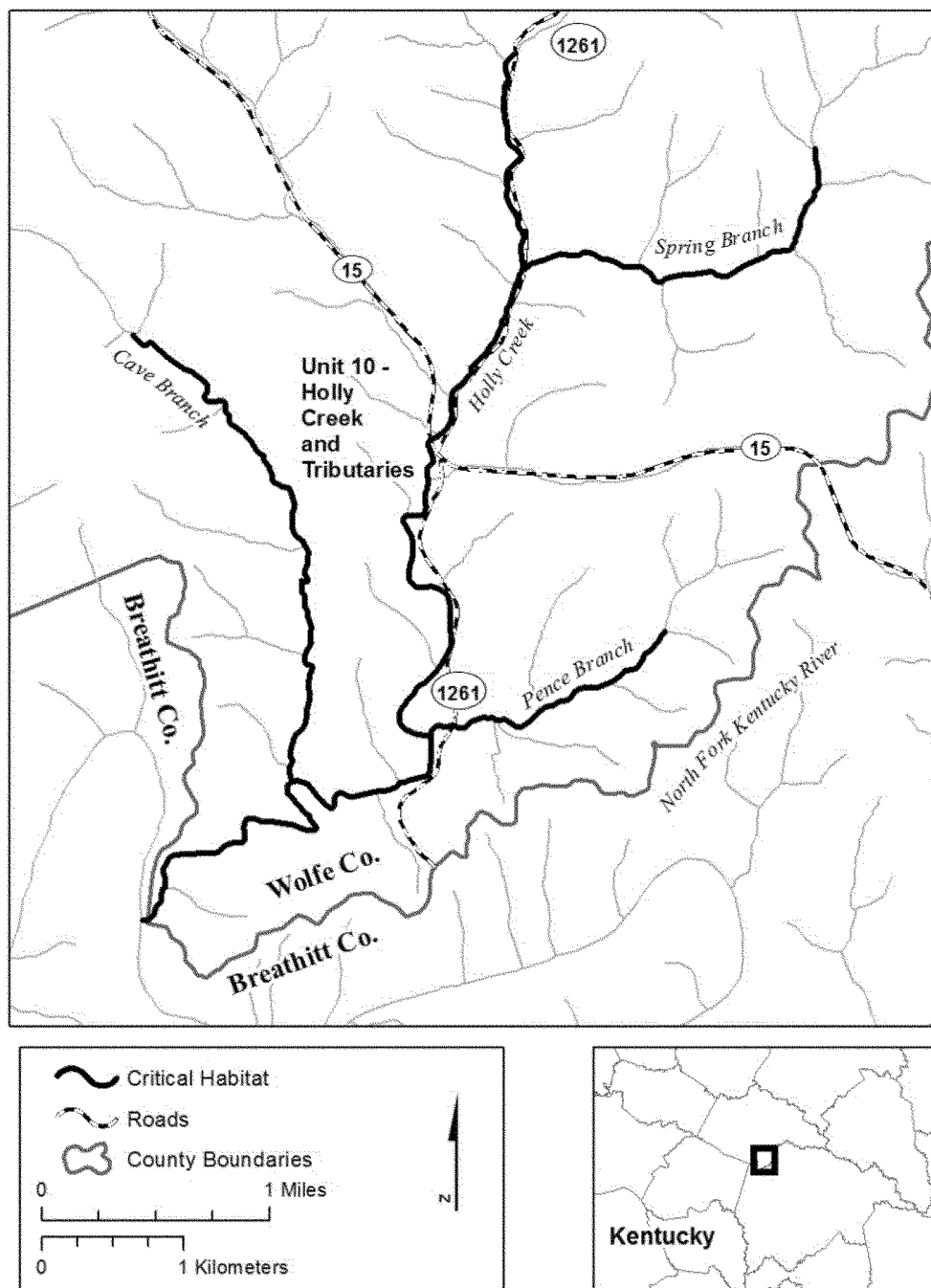
(i) Unit 10 includes 2.8 skm (1.8 smi) of Spring Branch from its headwaters at (37.67110, -83.44406), downstream to its confluence with Holly Creek (37.66384, -83.46780) in Wolfe County; 2.0 skm (1.3 smi) of Pence Branch from

its headwaters at (37.64048, -83.45703), downstream to its confluence with Holly Creek (37.63413, -83.47608) in Wolfe County; 4.0 skm (2.5 mi) of Cave Branch from its headwaters at (37.66023, -83.49916), downstream to its confluence with Holly Creek (37.63149, -83.48725) in

Wolfe County; 9.5 skm (5.9 smi) of Holly Creek from KY 1261 (37.67758, -83.46792) in Wolfe County, downstream to its confluence with the North Fork Kentucky River (37.62289, -83.49948) in Wolfe County, Kentucky.

(ii) Map of Unit 10 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 10 - Holly Creek and Tributaries: Wolfe County, Kentucky**



(14) Unit 11: Little Fork, Lee and Wolfe Counties; Unit 12: Walker Creek and Tributaries, Lee and Wolfe Counties; and Unit 13: Hell Creek and Tributaries, Lee County, Kentucky.

(i) Unit 11 includes 3.8 skm (2.3 smi) of Little Fork from its headwaters at (37.68456, -83.62465) in Wolfe County, downstream to its confluence with

Lower Devil Creek (37.66148, -83.59961) in Lee County, Kentucky.

(ii) Unit 12 includes 3.9 skm (2.4 smi) of an unnamed tributary of Walker Creek from its headwaters at (37.71373, -83.64553) in Wolfe County, downstream to its confluence with Walker Creek (37.68567, -83.65045) in Lee County; 2.4 skm (1.5 smi) of Cowan

Fork from its headwaters at (37.69624, -83.66366) in Wolfe County, downstream to its confluence with Hell for Certain Creek (37.67718, -83.65931) in Lee County; 2.0 skm (1.2 smi) of Hell for Certain Creek from an unnamed reservoir at (37.68377, -83.66804), downstream to its confluence with Walker Creek (37.67340, -83.65449) in

Lee County; 0.8 skm (0.5 smi) of Boonesboro Fork from its headwaters at (37.66706, - 83.66053), downstream to its confluence with Walker Creek (37.66377, - 83.65408) in Lee County; 2.2 skm (1.4 smi) of Peddler Creek from its headwaters at (37.67054, - 83.63456), downstream to its confluence with Walker Creek (37.65696, - 83.64879) in Lee County; 1.1 skm (0.7 smi) of Huff Cave Branch from its headwaters at (37.65664, - 83.66033), downstream to its confluence with Walker Creek

(37.65138, - 83.65034) in Lee County; and 12.6 skm (7.8 smi) of Walker Creek from an unnamed reservoir (37.70502, - 83.65490) in Wolfe County, downstream to its confluence with North Fork Kentucky River (37.60678, - 83.64652) in Lee County, Kentucky. (iii) Unit 13 includes 2.3 skm (1.4 smi) of Miller Fork from its headwaters at (37.66074, - 83.68005), downstream to its confluence with Hell Creek (37.64261, - 83.67912); 0.7 skm (0.4 smi) of Bowman Fork from its headwaters at (37.64142, - 83.68594),

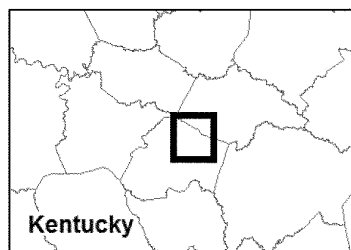
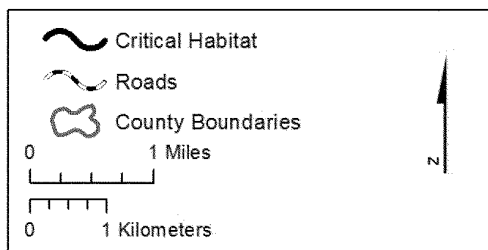
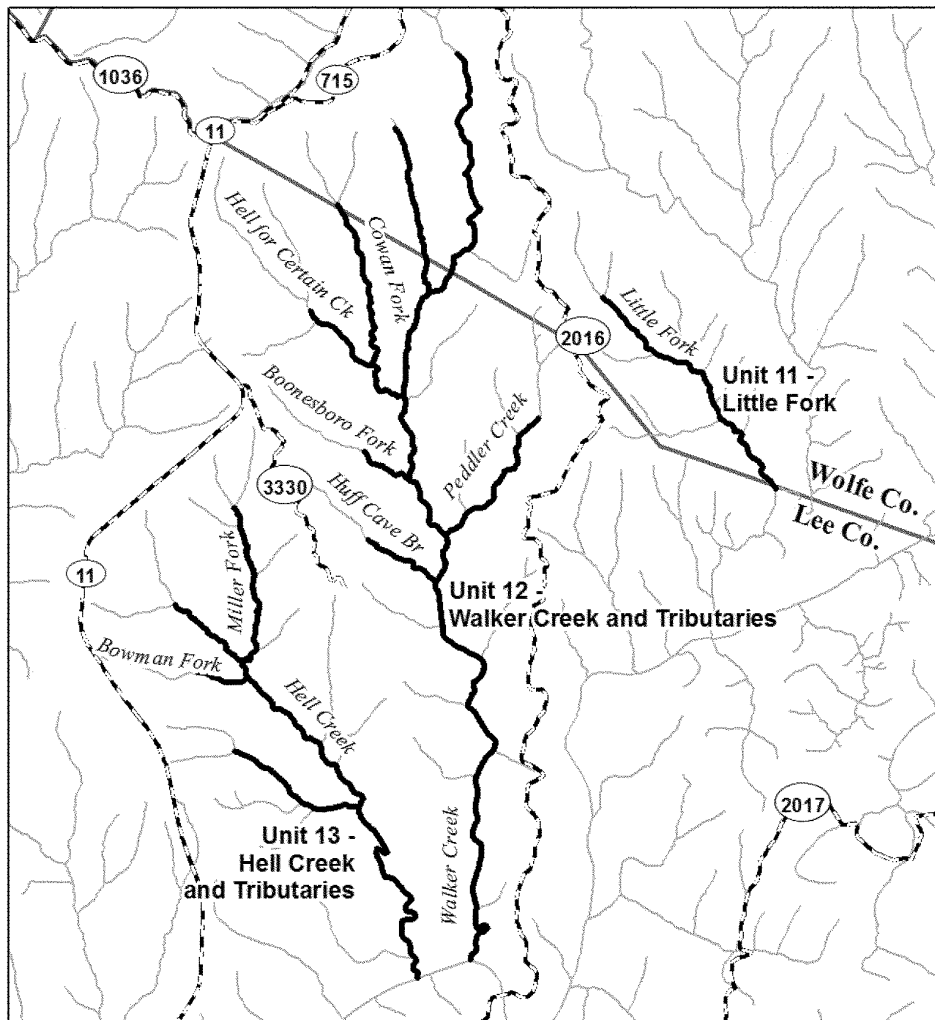
downstream to its confluence with Hell Creek (37.64070, - 83.67848); 1.9 skm (1.2 smi) of an unnamed tributary of Hell Creek from its headwaters at (37.63199, - 83.83.68064), downstream to its confluence with Hell Creek (37.62516, - 83.66246); and 7.1 skm (4.4 smi) of Hell Creek from an unnamed reservoir (37.64941, - 83.68907), downstream to its confluence with North Fork Kentucky River (37.60480, - 83.65440) in Lee County, Kentucky. (iv) Map of Units 11, 12, and 13 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)**

**Unit 11 - Little Fork: Lee and Wolfe Counties, Kentucky**

**Unit 12 - Walker Creek and Tributaries: Wolfe and Lee Counties, Kentucky**

**Unit 13 - Hell Creek and Tributaries: Lee County, Kentucky**



(15) Unit 14: Big Laurel Creek, Harlan County, Kentucky.

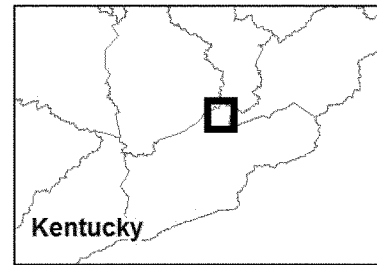
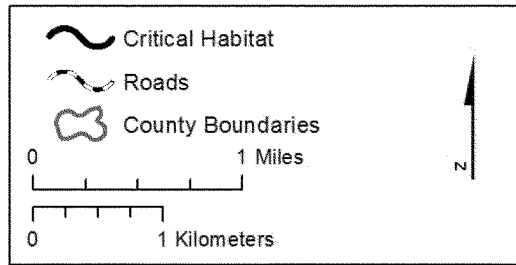
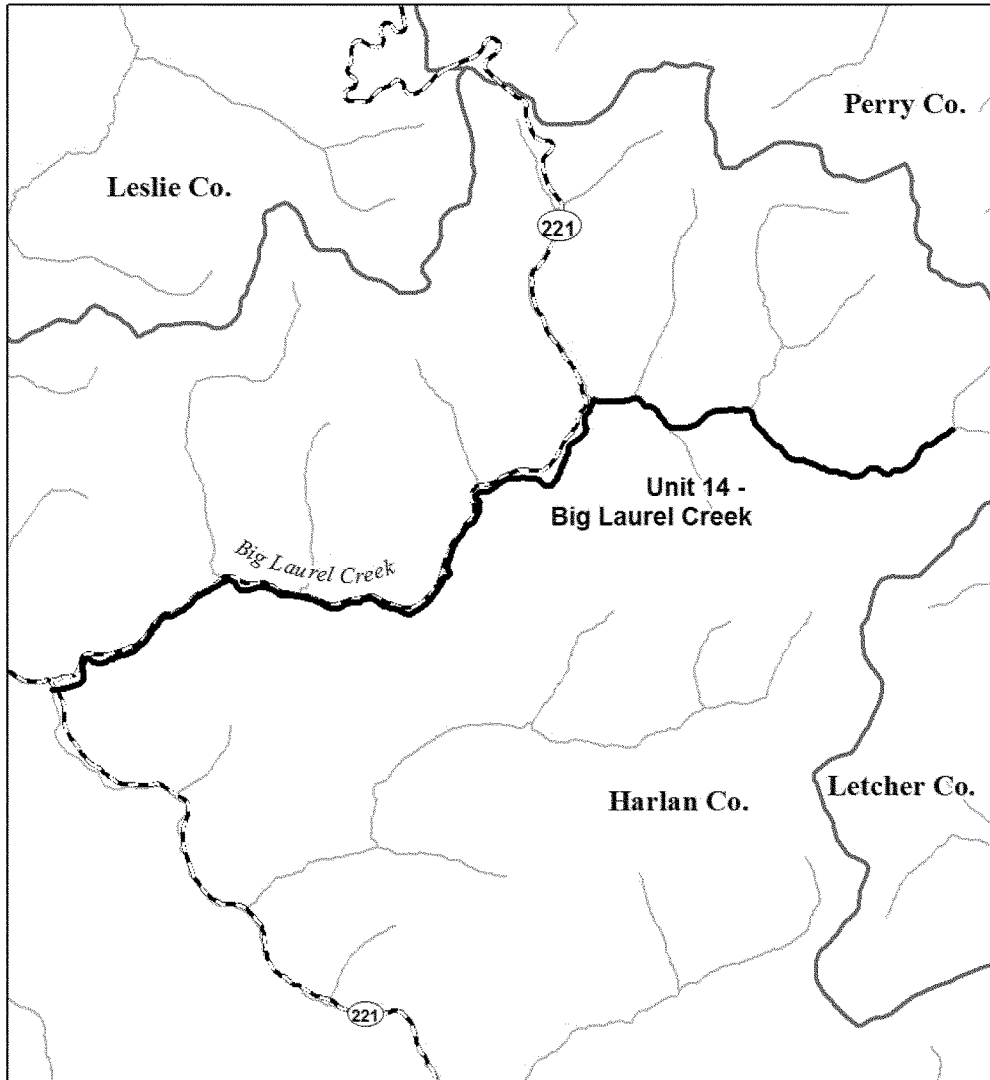
(i) Unit 14 includes 9.1 skm (5.7 smi) of Big Laurel Creek from its confluence

with Combs Fork (36.99520, -83.14086), downstream to its confluence with Greasy Creek

(36.97893, -83.21907) in Harlan County, Kentucky.

(ii) Map of Unit 14 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 14 - Big Laurel Creek: Harlan County, Kentucky**



(16) Unit 15: Laurel Creek, Leslie County, Kentucky.

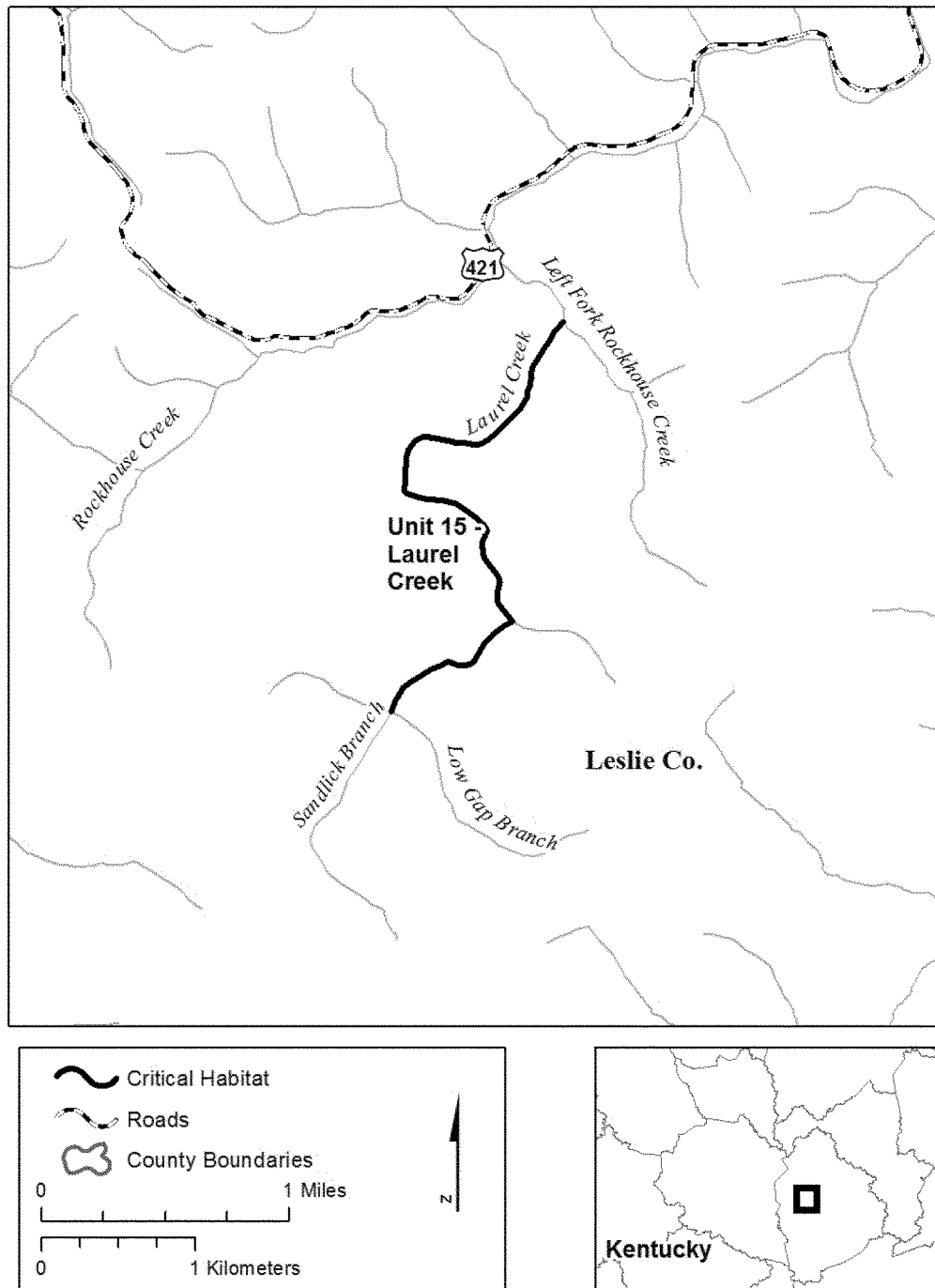
(i) Unit 15 includes 4.1 skm (2.6 smi) of Laurel Creek from its confluence with

Sandlick Branch (37.10825, -83.45036), downstream to its confluence with Left Fork Rockhouse

Creek (37.13085, -83.43699) in Leslie County, Kentucky.

(ii) Map of Unit 15 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 15 - Laurel Creek: Leslie County, Kentucky**



(17) Unit 16: Hell For Certain Creek and Tributaries, Leslie County, Kentucky.

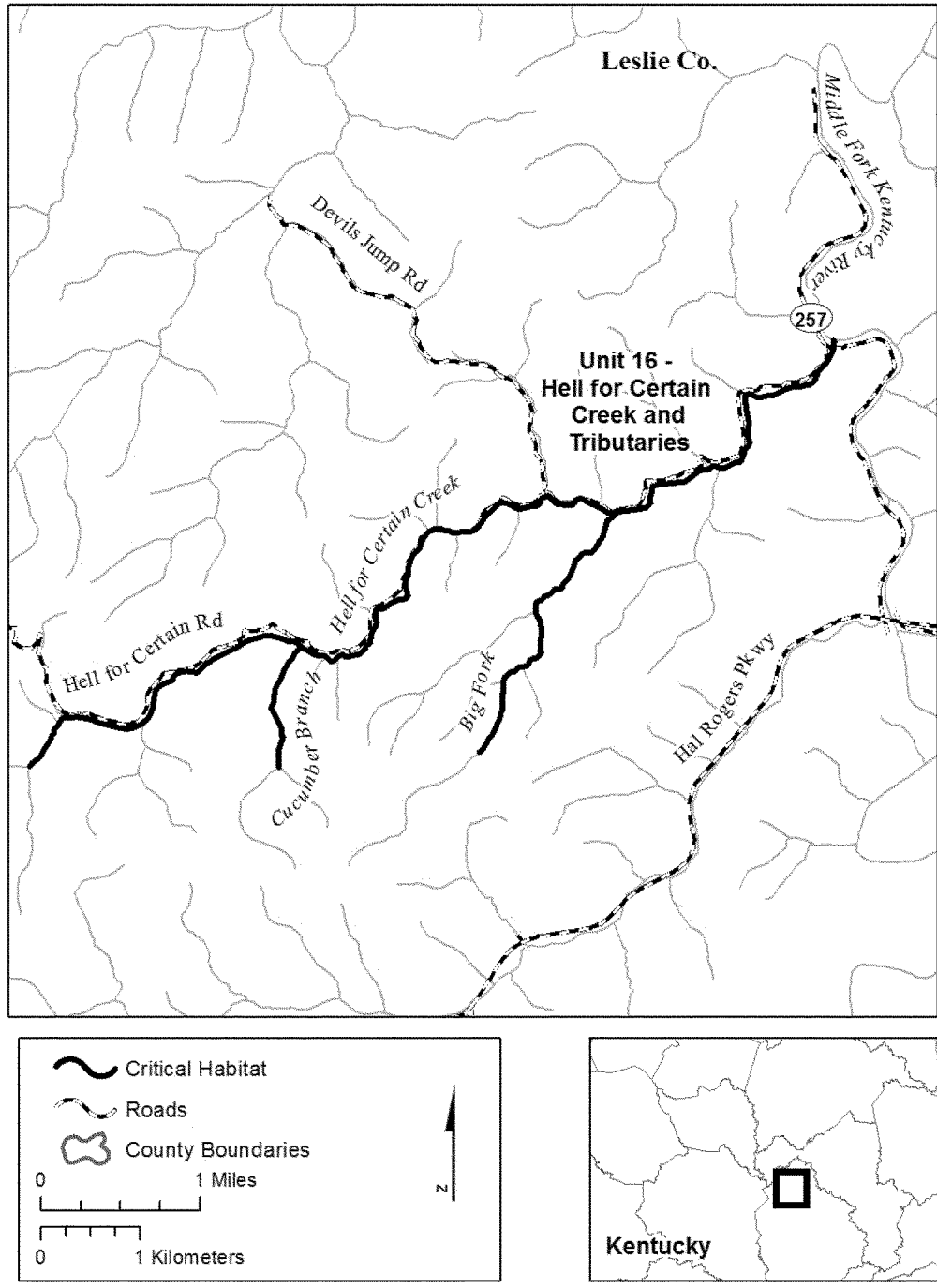
(i) Unit 16 includes 1.3 skm (0.8 smi) of Cucumber Branch from its headwaters at (37.20839, -83.44644), downstream to its confluence with Hell

For Certain Creek (37.21929, -83.44355); 3.1 skm (1.9 smi) of Big Fork from its headwaters at (37.20930, -83.42356), downstream to its confluence with Hell For Certain Creek (37.23082, -83.40720); and 11.4 skm (7.1 smi) of Hell For Certain Creek from

its headwaters at (37.20904, -83.47489), downstream to its confluence with the Middle Fork Kentucky River (37.24611, -83.38192) in Leslie County, Kentucky.

(ii) Map of Unit 16 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 16 - Hell for Certain Creek and Tributaries: Leslie County, Kentucky**



(18) Unit 17: Squabble Creek, Perry County, Kentucky.

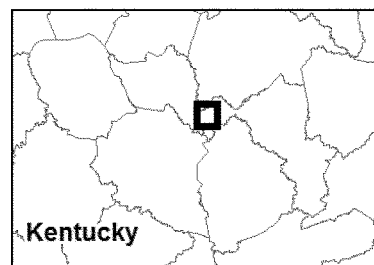
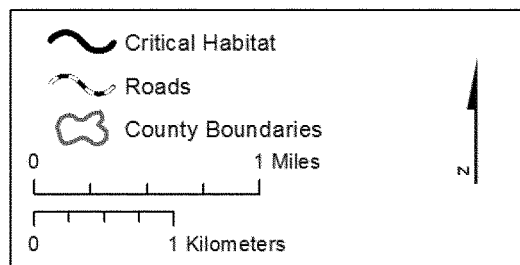
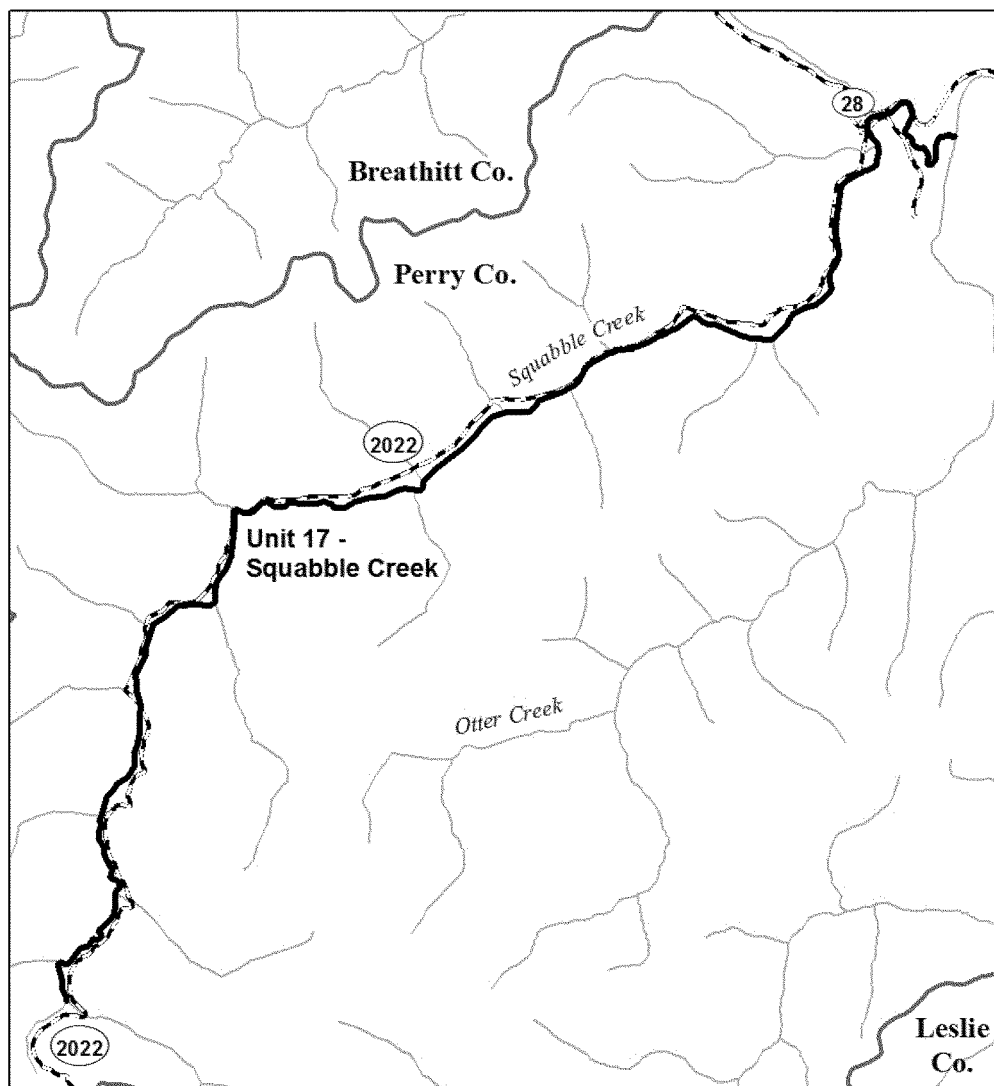
(i) Unit 17 includes 12.0 skm (7.5 smi) of Squabble Creek from its confluence

with Long Fork (37.29162, -83.54202), downstream to its confluence with the Middle Fork Kentucky River (37.34597, -83.46883) in Perry County, Kentucky.



(ii) Map of Unit 17 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 17 - Squabble Creek: Perry County, Kentucky**



(19) Unit 18: Blue Hole Creek and Left Fork Blue Hole Creek, Unit 19: Upper Bear Creek and Tributaries, Unit 20: Katies Creek, and Unit 21: Spring Creek and Little Spring Creek, Clay County; and Unit 22: Bowen Creek and Tributaries, Leslie County, Kentucky.

(i) Unit 18 includes 1.8 skm (1.1 smi) of Left Fork from its headwaters at (36.97278, -83.56898), downstream to its confluence with Blue Hole Creek (36.98297, -83.55687); and 3.9 skm (2.4 smi) of Blue Hole Creek from its headwaters at (36.98254, -83.57376), downstream to its confluence with the

Red Bird River (36.99288, -83.53672) in Clay County, Kentucky.

(ii) Unit 19 includes 1.5 skm (1.0 smi) of Left Fork Upper Bear Creek from its headwaters at (36.99519, -83.58446), downstream to its confluence with Upper Bear Creek (37.00448, -83.57354); 0.8 skm (0.5 smi) of Right

Fork Upper Bear Creek from its headwaters at (37.00858, -83.58013), downstream to its confluence with Upper Bear Creek (37.00448, -83.57354); and 4.5 skm (2.8 smi) of Upper Bear Creek from its confluence with Left Fork and Right Fork Upper Bear Creek (37.02109, -83.53423), downstream to its confluence with the Red Bird River (37.00448, -83.57354) in Clay County, Kentucky.

(iii) Unit 20 includes 5.7 skm (3.5 smi) of Katies Creek from its confluence with Cave Branch (37.01837, -83.58848), downstream to its

confluence with the Red Bird River (37.03527, -83.53999) in Clay County, Kentucky.

(iv) Unit 21 includes 1.0 skm (0.6 smi) of Little Spring Creek from its headwaters at (37.05452, -83.57483), downstream to its confluence with Spring Creek (37.05555, -83.56339); and 8.2 skm (5.1 smi) of Spring Creek from its headwaters at (37.02874, -83.59815), downstream to its confluence with the Red Bird River (37.06189, -83.54134) in Clay County, Kentucky.

(v) Unit 22 includes 2.2 skm (1.4 smi) of Laurel Fork from its headwaters at (37.05536, -83.47452), downstream to its confluence with Bowen Creek (37.04702, -83.49641); 1.8 skm (1.1 smi) of Amy Branch from its headwaters at (37.05979, -83.50083), downstream to its confluence with Bowen Creek (37.05031, -83.51498); and 9.6 skm (6.0 smi) of Bowen Creek from its headwaters at (37.03183, -83.46124), downstream to its confluence with the Red Bird River (37.06777, -83.53840) in Leslie County, Kentucky.

(vi) Map of Units 18, 19, 20, 21, and 22 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)**

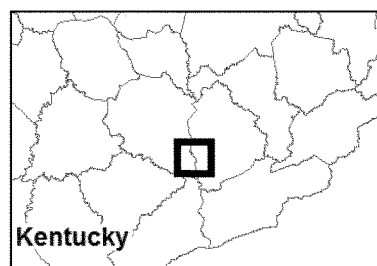
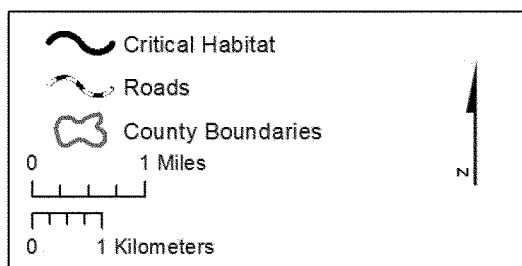
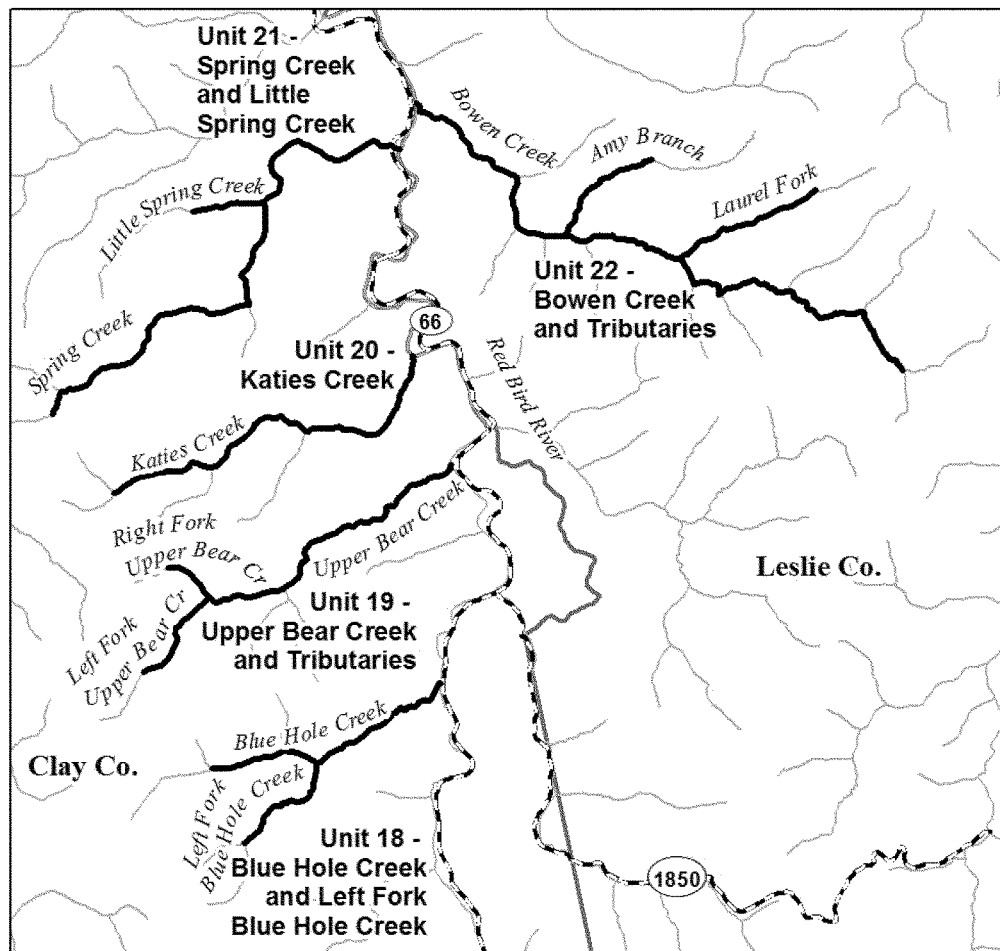
**Unit 18 - Blue Hole Creek and Left Fork Blue Hole Creek: Clay County, Kentucky**

**Unit 19 - Upper Bear Creek and Tributaries: Clay County, Kentucky**

**Unit 20 - Katies Creek: Clay County, Kentucky**

**Unit 21 - Spring Creek and Little Spring Creek: Clay County, Kentucky**

**Unit 22 - Bowen Creek and Tributaries: Leslie County, Kentucky**



(20) Unit 23: Elisha Creek and Tributaries, Leslie County; and Unit 24: Gilberts Big Creek, and Unit 25: Sugar

Creek, Clay and Leslie Counties, Kentucky.

(i) Unit 23 includes 4.4 skm (2.7 smi) of Right Fork Elisha Creek from its

headwaters at (37.07255, -83.47839), downstream to its confluence with Elisha Creek (37.08165, -83.51802); 2.3 skm (1.4 smi) of Left Fork Elisha Creek

from its headwaters at (37.09632, -83.51108), downstream to its confluence with Elisha Creek (37.08528, -83.52645); and 2.9 skm (1.8 smi) of Elisha Creek from its confluence with Right Fork Elisha Creek (37.08165, -83.51802), downstream to its confluence with the Red Bird River

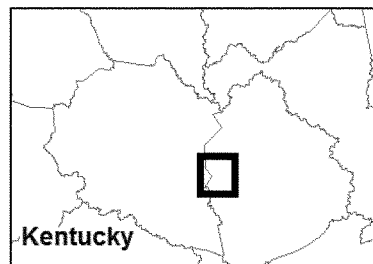
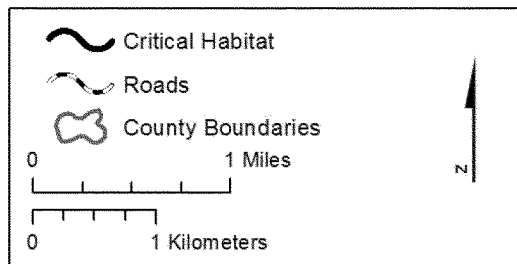
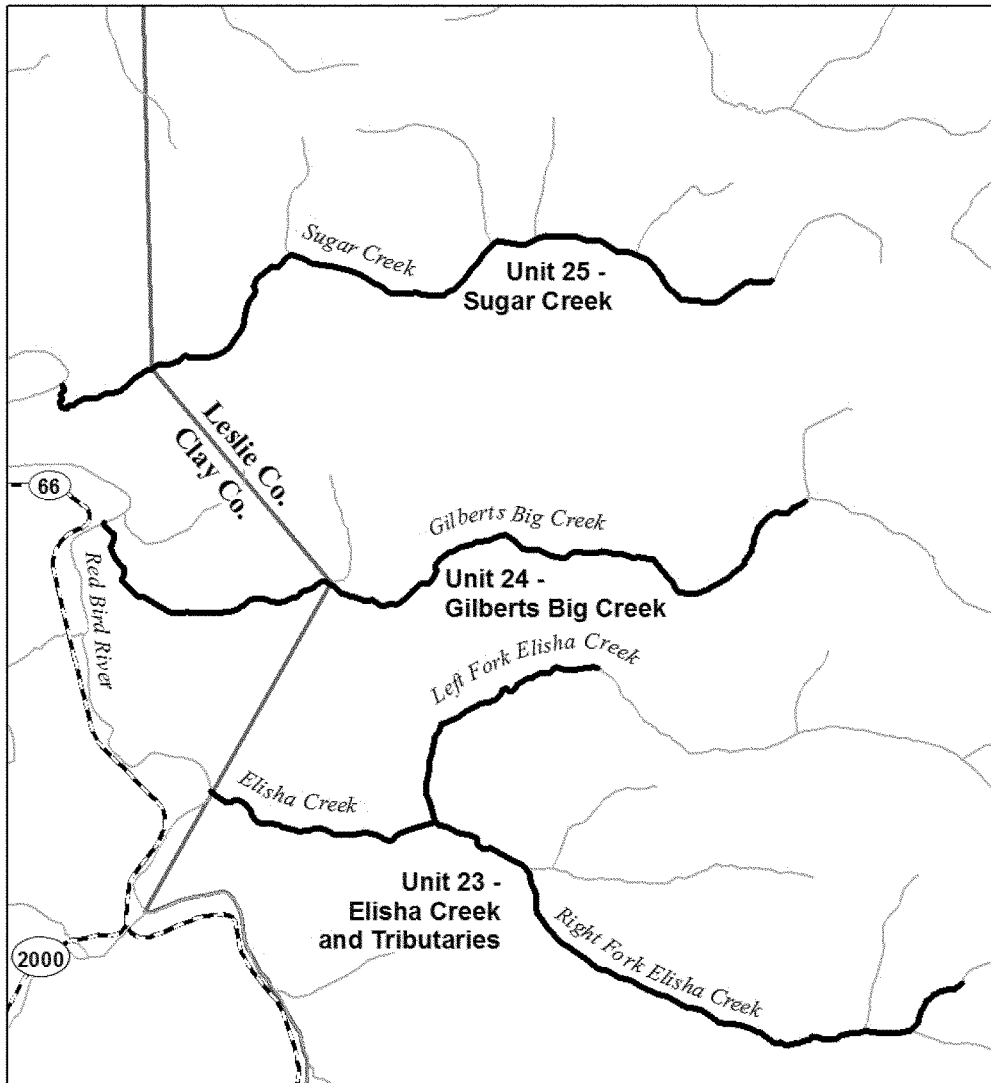
(37.08794, -83.54676) in Leslie County, Kentucky.

(ii) Unit 24 includes 7.2 skm (4.5 smi) of Gilberts Big Creek from its headwaters at (37.10825, -83.49164) in Leslie County, downstream to its confluence with the Red Bird River (37.10784, -83.55590) in Clay County, Kentucky.

(iii) Unit 25 includes 7.2 skm (4.5 smi) of Sugar Creek from its headwaters at (37.12446, -83.49420) in Leslie County, downstream to its confluence with the Red Bird River (37.11804, -83.55952) in Clay County, Kentucky.

(iv) Map of Units 23, 24, and 25 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)**  
**Unit 23 - Elisha Creek and Tributaries: Leslie County, Kentucky**  
**Unit 24 - Gilberts Big Creek: Clay and Leslie Counties, Kentucky**  
**Unit 25 - Sugar Creek: Clay and Leslie Counties, Kentucky**



(21) Unit 26: Big Double Creek and Tributaries, and Unit 27: Little Double Creek, Clay County, Kentucky.

(i) Unit 26 includes 1.4 skm (0.9 smi) of Left Fork Big Double Creek from its headwaters at (37.07967, -83.60719), downstream to its confluence with Big Double Creek (37.09053, -83.60245); 1.8 skm (1.1 smi) of Right Fork Big

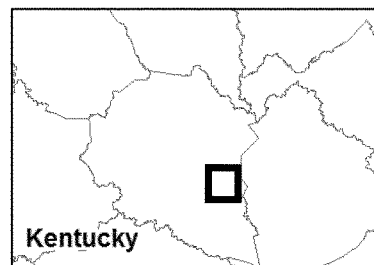
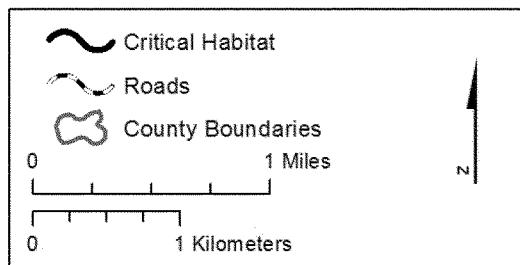
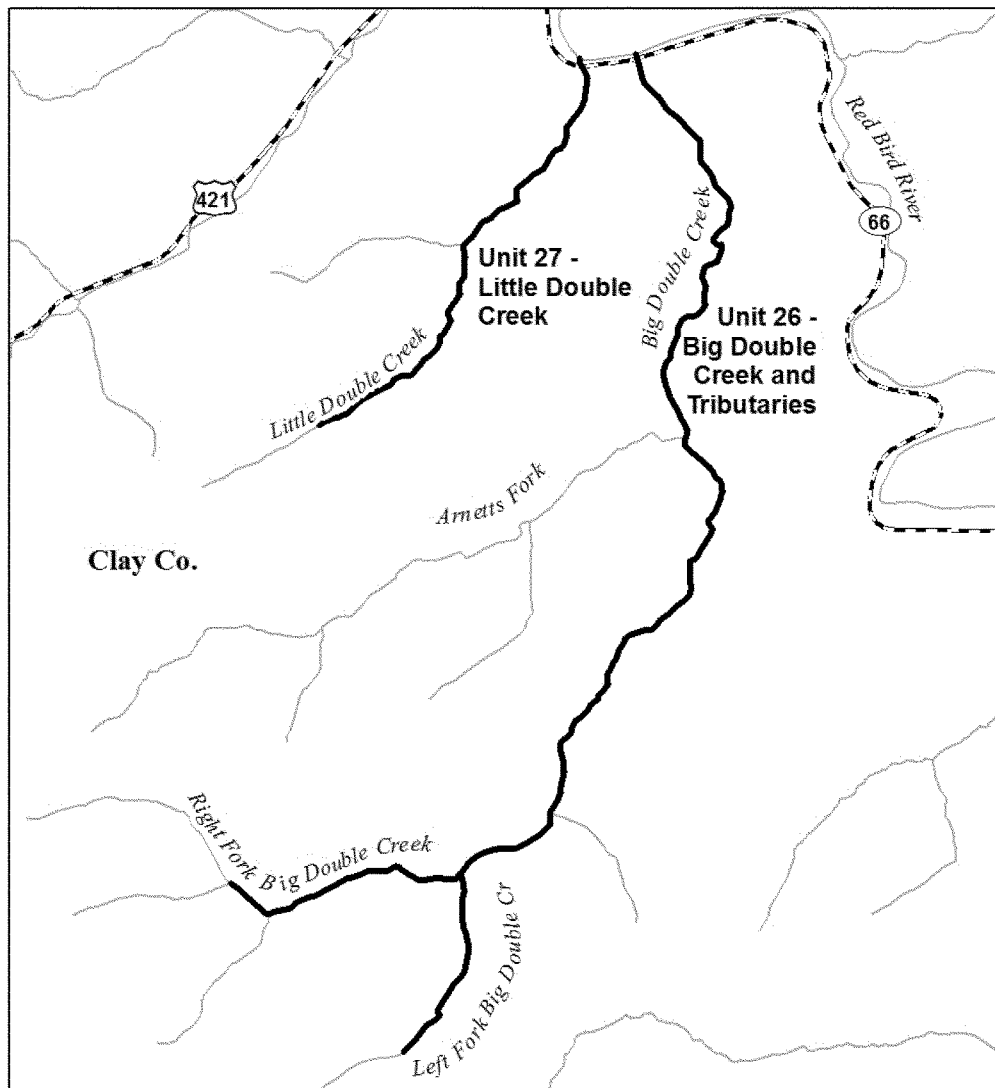
Double Creek from its headwaters at (37.09021, -83.62010), downstream to its confluence with Big Double Creek (37.09053, -83.60245); and 7.1 skm (4.4 smi) of Big Double Creek from its confluence with the Left and Right Forks (37.09053, -83.60245), downstream to its confluence with the

Red Bird River (37.14045, -83.58768) in Clay County, Kentucky.

(ii) Unit 27 includes 3.4 skm (2.1 smi) of Little Double Creek from its headwaters at (37.11816, -83.61251), downstream to its confluence with the Red Bird River (37.14025, -83.59197) in Clay County, Kentucky.

(iii) Map of Units 26 and 27 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)**  
**Unit 26 - Big Double Creek and Tributaries: Clay County, Kentucky**  
**Unit 27 - Little Double Creek: Clay County, Kentucky**



(22) Unit 28: Jacks Creek, and Unit 29: Long Fork, Clay County, Kentucky.

(i) Unit 28 includes 5.9 skm (3.7 smi) of Jacks Creek from its headwaters at (37.21472, -83.54108), downstream to

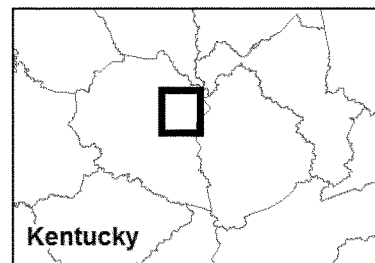
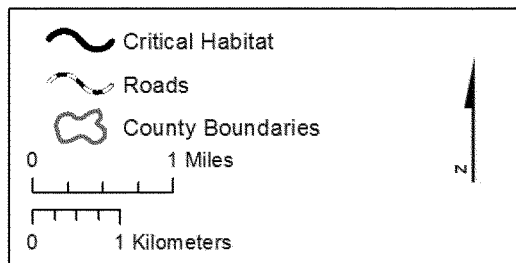
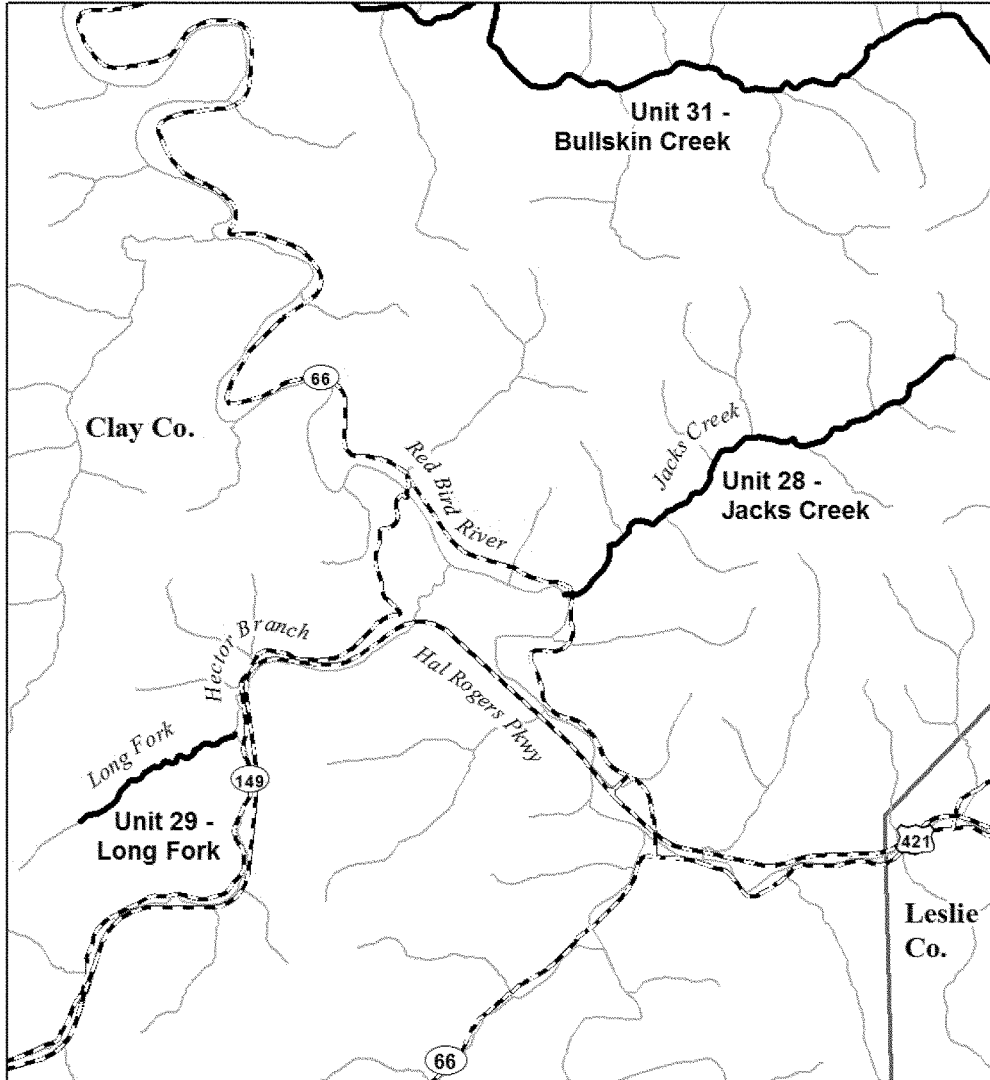
its confluence with the Red Bird River (37.19113, -83.59185) in Clay County, Kentucky.

(ii) Unit 29 includes 2.2 skm (1.4 smi) of Long Fork from its headwaters at

(37.16889, -83.65490), downstream to its confluence with Hector Branch (37.17752, -83.63464) in Clay County, Kentucky.

(iii) Map of Units 28 and 29 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)**  
**Unit 28 - Jacks Creek: Clay County, Kentucky**  
**Unit 29 - Long Fork: Clay County, Kentucky**

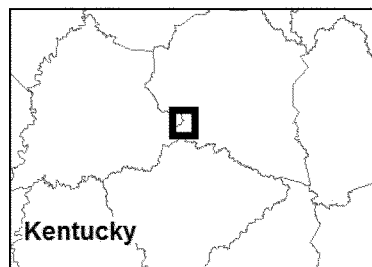
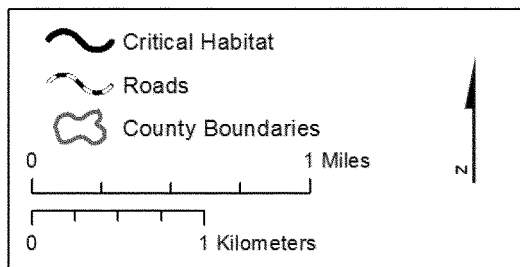
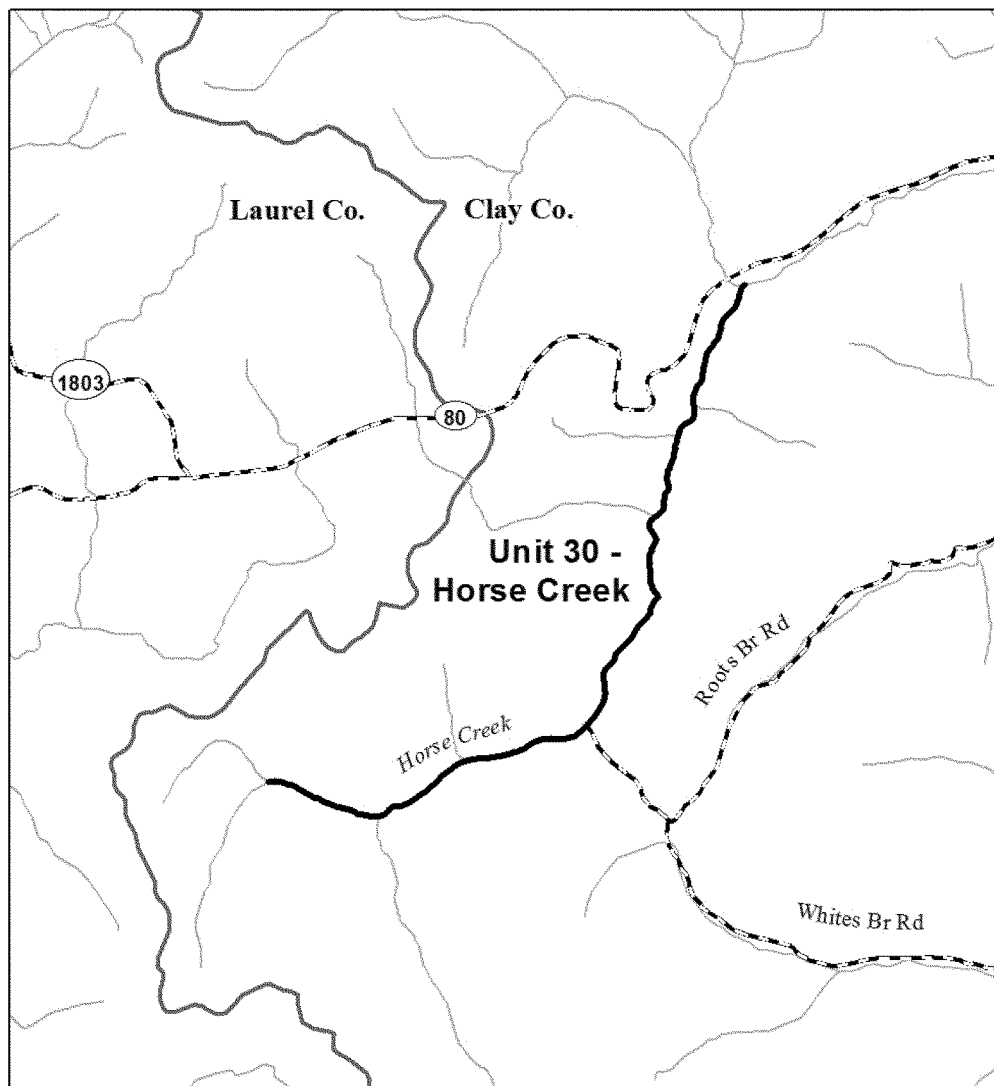


(23) Unit 30: Horse Creek, Clay County, Kentucky.  
 (i) Unit 30 includes 5.0 skm (3.1 smi) of Horse Creek from its headwaters at

(37.07370, -83.87756), downstream to its confluence with Pigeon Roost Branch (37.09926, -83.84582) in Clay County, Kentucky.

(ii) Map of Unit 30 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 30 - Horse Creek: Clay County, Kentucky**



(24) Unit 31: Bullskin Creek, Clay and Leslie Counties, Kentucky.

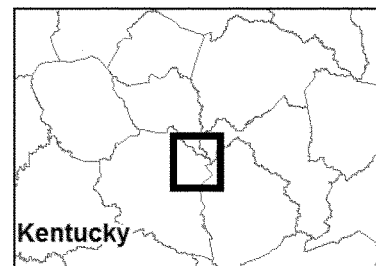
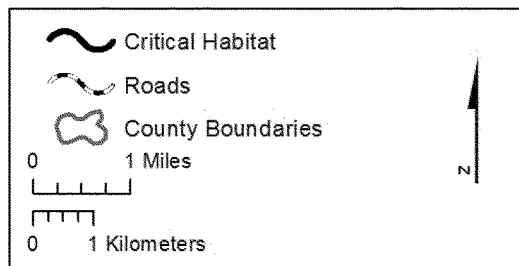
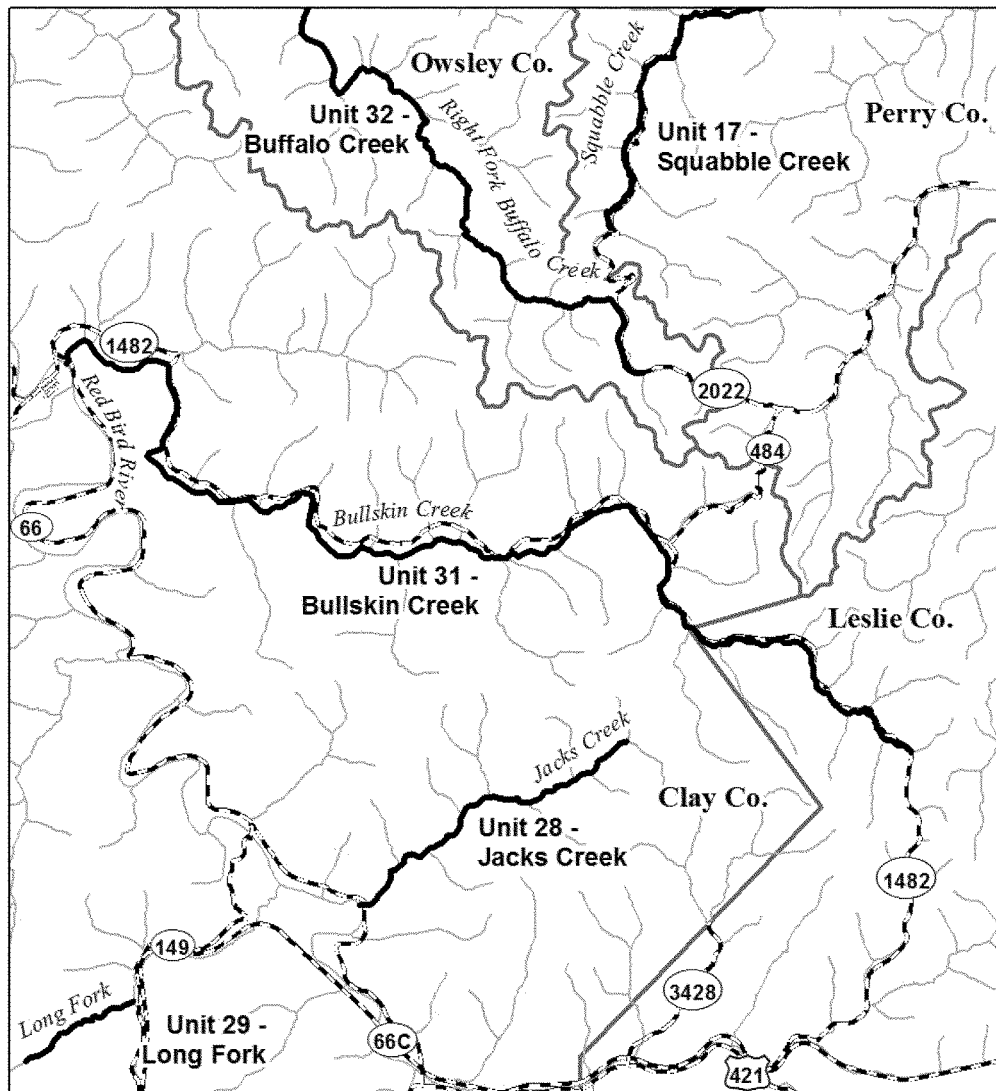
(i) Unit 31 includes 21.7 skm (13.5 smi) of Bullskin Creek from its

confluence with Old House Branch (37.21218, -83.48798) in Leslie County, downstream to its confluence with the

South Fork Kentucky River (37.27322, -83.64441) in Clay County, Kentucky.

(ii) Map of Unit 31 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 31 - Bullskin Creek: Clay and Leslie Counties, Kentucky**



(25) Unit 32: Buffalo Creek and Tributaries, Owsley County, Kentucky.  
(i) Unit 32 includes 2.0 skm (1.2 smi) of Cortland Fork from its headwaters at (37.35052, -83.54570), downstream to its confluence with Laurel Fork (37.34758, -83.56466); 6.4 skm (4.0 smi) of Laurel Fork from its headwaters at (37.32708, -83.56450), downstream

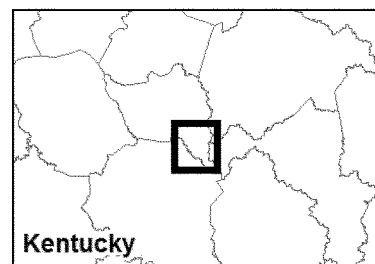
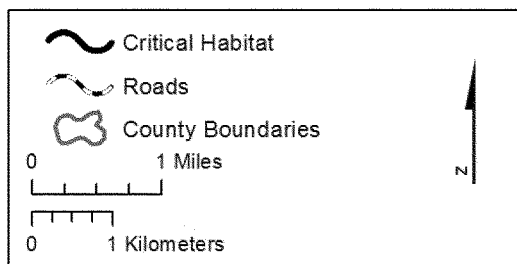
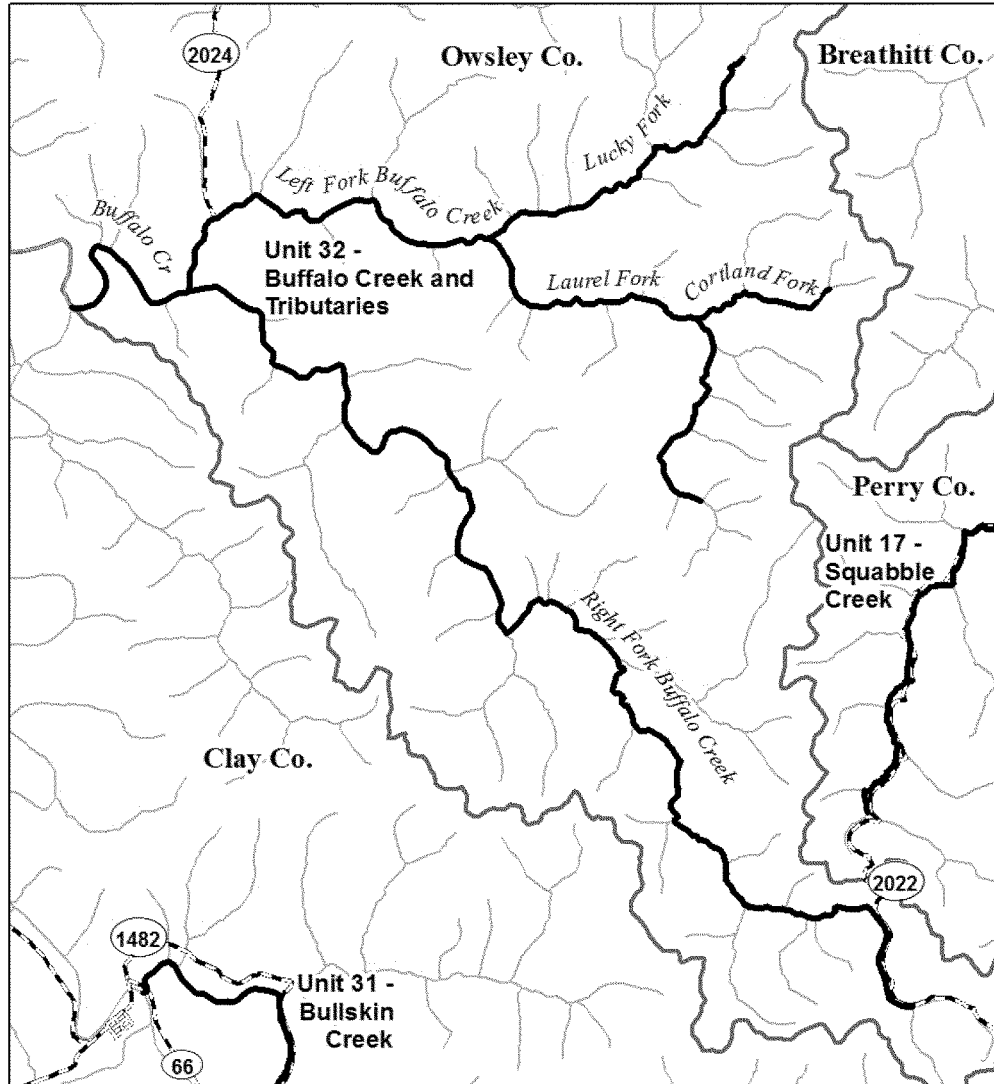
to its confluence with Left Fork Buffalo Creek (37.347758, -83.56466); 4.6 skm (2.9 smi) of Lucky Fork from its headwaters at (37.37682, -83.55711), downstream to its confluence with Left Fork Buffalo Creek (37.35713, -83.59367); 5.1 skm (3.2 smi) of Left Fork Buffalo Creek from its confluence with Lucky Fork and Left Fork

(37.35713, -83.59367), downstream to its confluence with Buffalo Creek (37.35197, -83.63583); 17.3 skm (10.8 smi) of Right Fork Buffalo Creek from its headwaters at (37.26972, -83.53646), downstream to its confluence with Buffalo Creek (37.35197, -83.63583); and 2.7 skm (1.7 smi) of Buffalo Creek from its confluence with the Left and



Right Forks (37.35197, -83.63583), -83.65233) in Owsley County, Kentucky, downstream to its confluence with the South Fork Kentucky River (37.35051, (ii) Map of Unit 32 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 32 - Buffalo Creek and Tributaries: Owsley County, Kentucky**



(26) Unit 33: Lower Buffalo Creek, Lee and Owsley Counties, Kentucky.

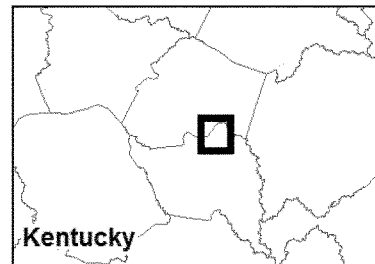
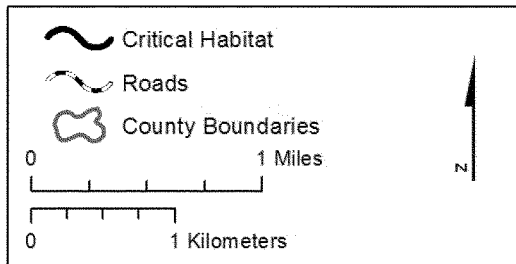
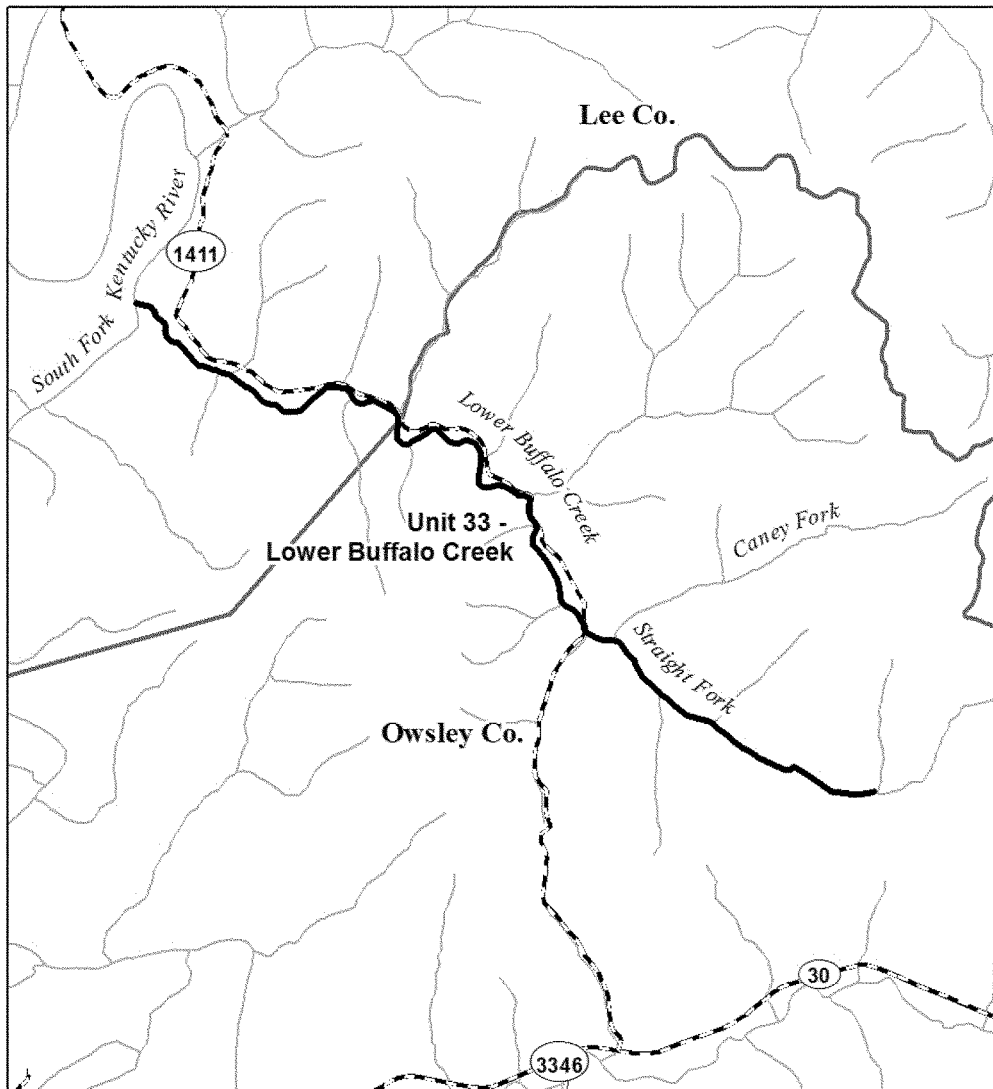
(i) Unit 33 includes 2.2 skm (1.4 smi) of Straight Fork from its headwaters at (37.49993, -83.62996), downstream to

its confluence with Lower Buffalo Creek (37.50980, -83.65015) in Owsley County; and 5.1 skm (3.2 smi) of Lower Buffalo Creek from its confluence with Straight Fork (37.50980, -83.65015) in

Owsley County, downstream to its confluence with the South Fork Kentucky River (37.53164, -83.68732) in Lee County, Kentucky.

(ii) Map of Unit 33 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 33 - Lower Buffalo Creek: Owsley and Lee Counties, Kentucky**



(27) Unit 34: Silver Creek, Lee County, Kentucky.

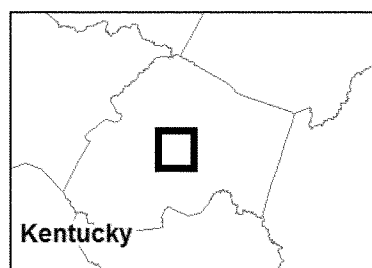
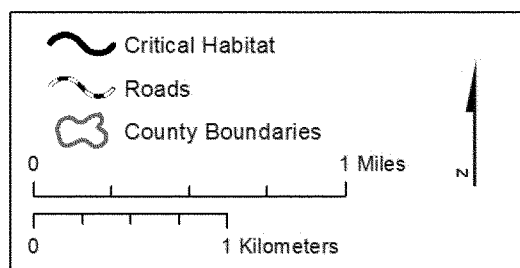
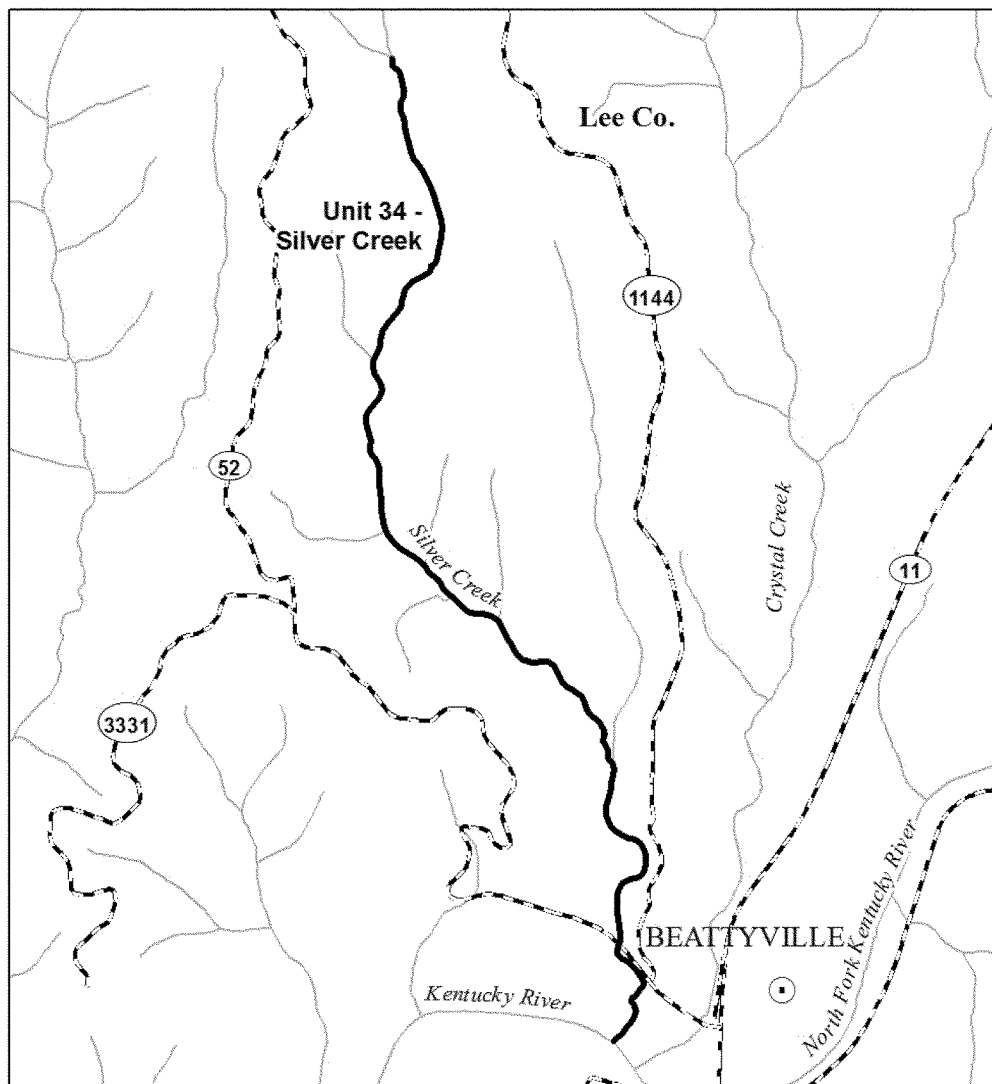
(i) Unit 34 includes 6.2 skm (3.9 smi) of Silver Creek from its headwaters at

(37.61857, -83.72442), downstream to its confluence with the Kentucky River

(37.57251, -83.71264) in Lee County, Kentucky.

(ii) Map of Unit 34 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 34 - Silver Creek: Lee County, Kentucky**



(28) Unit 35: Travis Creek, Jackson County; Unit 36: Wild Dog Creek, Jackson and Owsley Counties; and Unit 37: Granny Dismal Creek, Owsley and Lee Counties, Kentucky.

(i) Unit 35 includes 4.1 skm (2.5 smi) of Travis Creek from its headwaters at (37.43039, -83.88516), downstream to its confluence with Sturgeon Creek

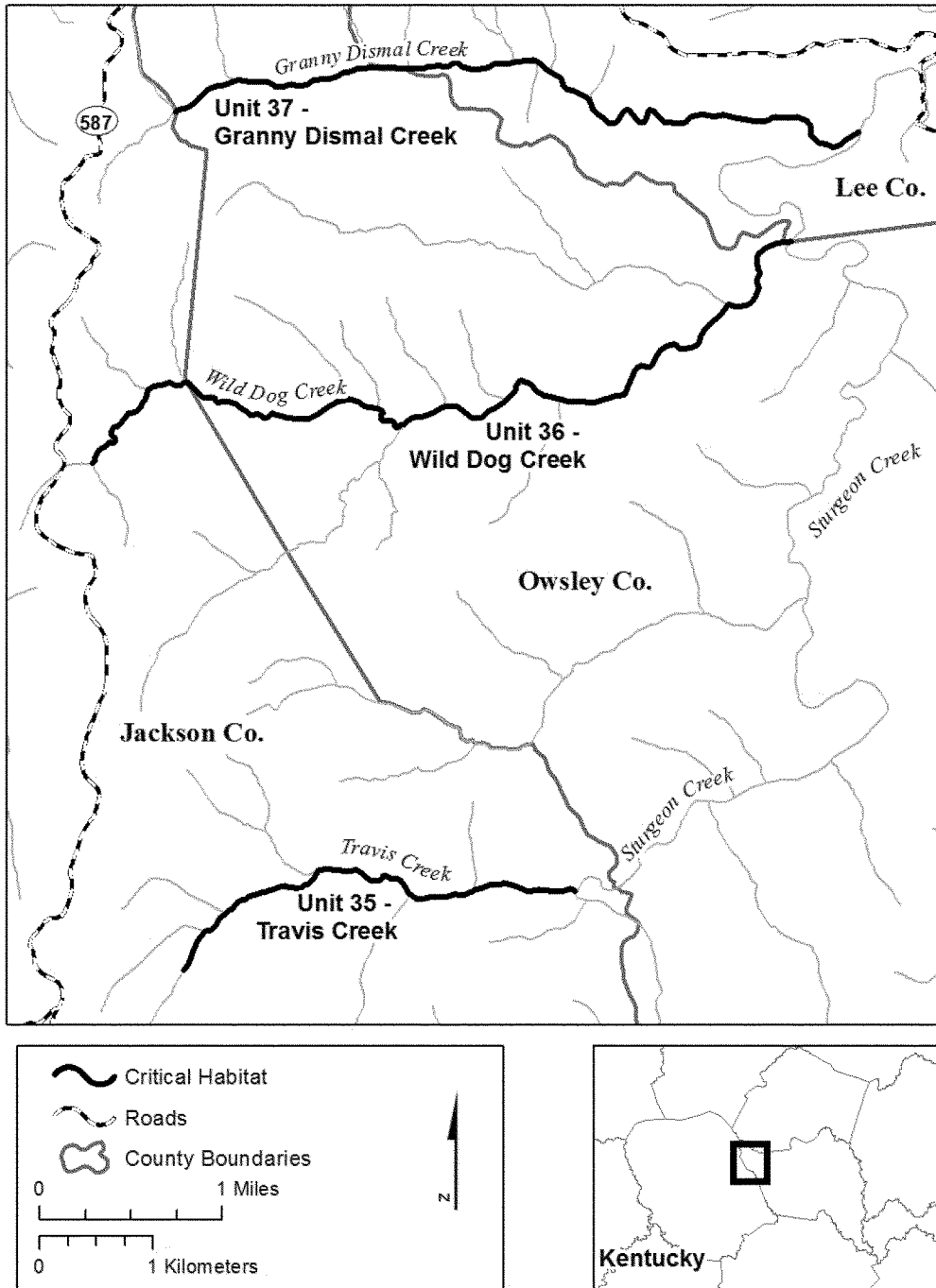
(37.43600, -83.84609) in Jackson County, Kentucky.

(ii) Unit 36 includes 8.1 skm (5.1 smi) of Wild Dog Creek from its headwaters at (37.47081, -83.89329) in Jackson County, downstream to its confluence with Sturgeon Creek (37.48730, -83.82319) in Owsley County, Kentucky.

(iii) Unit 37 includes 6.9 skm (4.3 smi) of Granny Dismal Creek from its headwaters at (37.49862, -83.88435) in Owsley County, downstream to its confluence with Sturgeon Creek (37.49586, -83.81629) in Lee County, Kentucky.

(iv) Map of Units 35, 36, and 37 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)**  
**Unit 35 - Travis Creek: Jackson County, Kentucky**  
**Unit 36 - Wild Dog Creek: Jackson and Owsley Counties, Kentucky**  
**Unit 37 - Granny Dismal Creek: Owsley and Lee Counties, Kentucky**

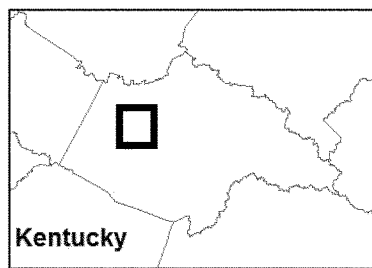
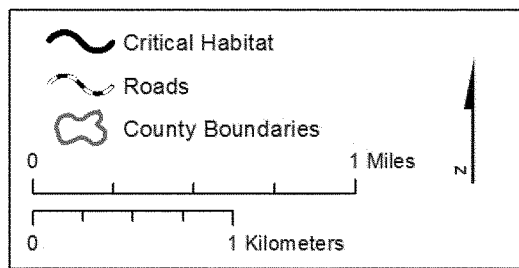
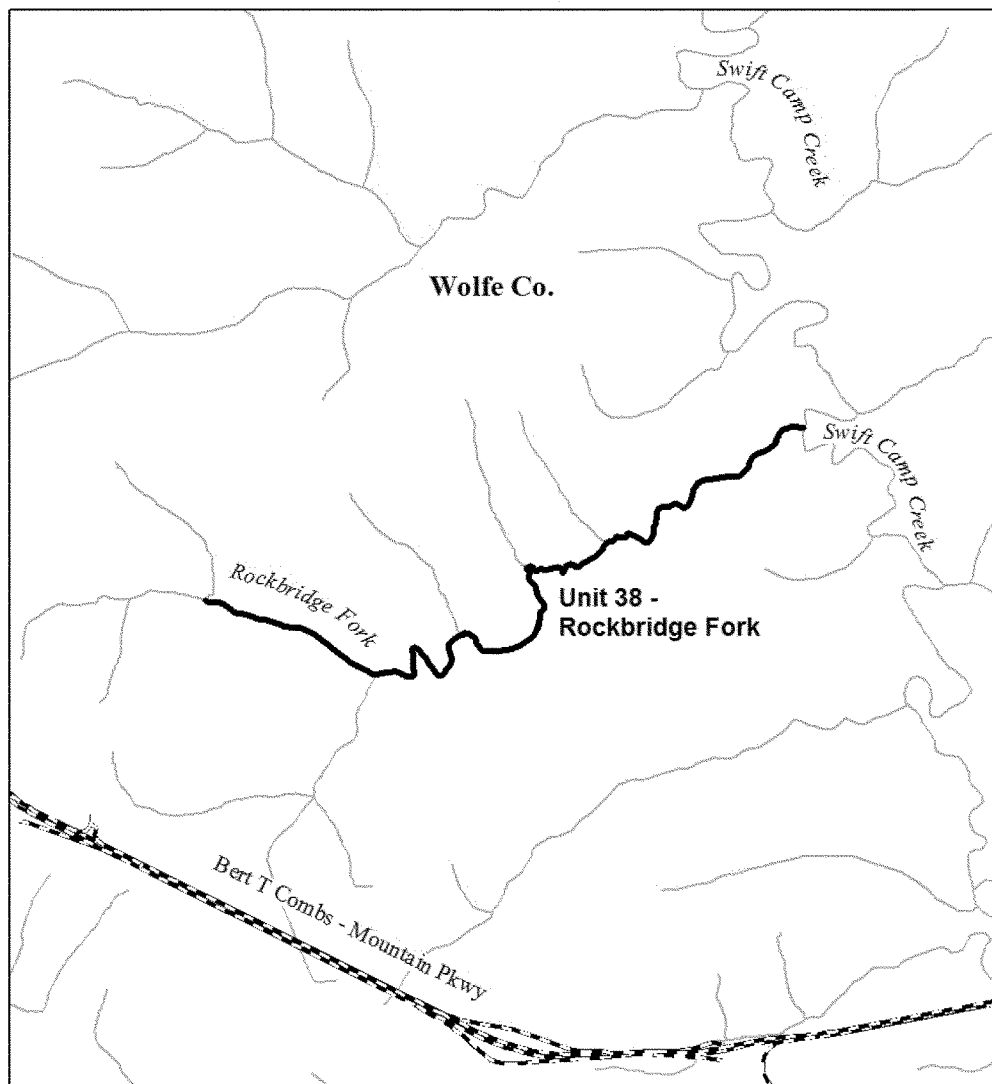


(29) Unit 38: Rockbridge Fork, Wolfe County, Kentucky.  
 (i) Unit 38 includes 4.5 skm (2.8 smi) of Rockbridge Fork from its headwaters

at (37.76228, - 83.59553), downstream to its confluence with Swift Camp Creek (37.76941, - 83.56134) in Wolfe County, Kentucky.

(ii) Map of Unit 38 follows:

**Critical Habitat for Kentucky Arrow Darter (*Etheostoma spilotum*)  
Unit 38 - Rockbridge Fork: Wolfe County, Kentucky**



\* \* \* \* \*

Dated: September 22, 2015.  
**Karen Hyun,**  
*Acting Principal Deputy Assistant Secretary  
for Fish and Wildlife and Parks.*  
[FR Doc. 2015-25290 Filed 10-7-15; 8:45 am]  
**BILLING CODE 4333-15-P**



# FEDERAL REGISTER

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Vol. 80

Thursday,

No. 195

October 8, 2015

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Part V

The President

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Proclamation 9343—German-American Day, 2015



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# Presidential Documents

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Title 3—

Proclamation 9343 of October 5, 2015

The President

German-American Day, 2015

By the President of the United States of America

## A Proclamation

Throughout our history, German Americans have woven distinct threads into the fabric of our country. In extraordinary ways—by crossing the Atlantic, planting roots in communities across our country, and spurring shared advances—German Americans have proven our Nation's diversity makes our society ever stronger. On German-American Day, we celebrate the immeasurable ways their talents and ideas have helped shape the progress of our time.

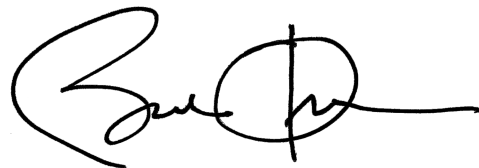
Since their earliest days on America's shores, the German people have striven to realize the fundamental promise that everyone deserves the chance to make of their lives what they will. Building up our society as architects and artists, inventors and engineers, they continue to push boundaries and bolster dreams in their communities and across our country. From their service in our Armed Forces to our classrooms, we see the strength and passion of German heritage integrated into the identity of our American family.

The stories of German-American men and women also remind us of the important partnership between our two nations. In the 70 years since the end of World War II and the quarter century since the fall of the Berlin Wall, Americans and Germans have inspired each other and worked to address key challenges that affect the world we share. From combatting violent extremism and climate change to expanding economic and educational opportunity for women and girls, our common principles bind us together as inseparable allies. As we commemorate the strong friendship between our peoples, may we never forget our unique histories, and may we continue working together to reach for a more peaceful and prosperous future.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 6, 2015, as German-American Day. I encourage all Americans to learn more about the history of German Americans and reflect on the many contributions they have made to our Nation.



IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord two thousand fifteen, and of the Independence of the United States of America the two hundred and fortieth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

# Reader Aids

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Thursday, October 8, 2015

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