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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1714; Project Identifier AD–2023–00902–E; Amendment 39–22526; AD 2023–16–07]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines, LLC Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain International Aero Engines, LLC (IAE LLC) Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G–JM, PW1127G1–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, PW1133GA–JM, PW1428G–JM, PW1428GA–JM, PW1428GH–JM, PW1431G–JM, PW1431GA–JM, and PW1431GH–JM engines. This AD was prompted by an updated analysis of an event involving an IAE LLC Model PW1127GA–JM engine, which experienced a high-pressure compressor (HPC) 7th-stage integrally bladed rotor (IBR–7) separation that resulted in an aborted takeoff. This AD requires performing an ultrasonic inspection (USI) of the high-pressure turbine (HPT) 1st-stage hub and HPT 2nd-stage hub for cracks and, depending on the results of the inspections, replacing the HPT 1st-stage hub or HPT 2nd-stage hub. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 28, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 28, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 7, 2022 (87 FR 59660, October 3, 2022; corrected 87 FR 64156, October 24, 2022).

The FAA must receive comments on this AD by October 6, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1714; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

- For Pratt & Whitney (PW) service information identified in this final rule, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 690–9667; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1714.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1714; Project Identifier AD–2023–00902–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Carol Nguyen, Aviation Safety Engineer, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

On March 18, 2020, an Airbus Model A321–231 airplane, powered by International Aero Engines AG (IAE AG) Model V2533–A5 engines, experienced an uncontained HPT 1st-stage disk failure that resulted in high-energy debris penetrating the engine cowling. Based on a preliminary analysis of this event, on March 21, 2020, the FAA issued Emergency AD 2020–07–51 (followed by publication in the **Federal Register** on April 13, 2020, as a final

rule, request for comments (85 FR 20402)), which requires the removal from service of certain HPT 1st-stage disks installed on IAE AG Model V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 engines. A manufacturer investigation found that the failure of the HPT 1st-stage disk was a result of a material anomaly attributed to deficiencies in the manufacturing process.

Based on the analysis performed since that March 2020 event, the manufacturer, PW, identified a different population of HPT 1st-stage disks and HPT 2nd-stage disks that are subject to the same unsafe condition identified in AD 2020–07–51. In response, the FAA issued AD 2021–19–10, Amendment 39–21728 (86 FR 50610, September 10, 2021) (AD 2021–19–10), which requires the removal from service of certain HPT 1st-stage disks and HPT 2nd-stage disks installed on IAE LLC Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM engines.

Since the FAA issued AD 2021–19–10, PW identified another subpopulation of HPT 1st-stage disks and HPT 2nd-stage disks that, because of their susceptibility to the same material anomaly, require inspection and possible removal from service. In response, the FAA issued AD 2022–19–15, Amendment 39–22184 (87 FR 59660, October 3, 2022; corrected 87 FR 64156, October 24, 2022) (AD 2022–19–15), which requires performing a USI of the HPT 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk installed on IAE LLC Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM engines.

Since the FAA issued AD 2022–19–15, on December 24, 2022 an Airbus Model A320neo airplane powered by IAE LLC Model PW1127GA–JM engines, experienced an HPC IBR–7 failure that resulted in engine shutdown and aborted take-off. Following this event, the manufacturer conducted a records review of production and field-returned parts, and re-evaluated their engineering analysis methodology. The new analysis identified HPT 1st-stage hubs and HPT 2nd-stage hubs that are susceptible to failure much earlier than previously determined. On August 4, 2023, PW issued service information to instructing operators to conduct a USI to detect cracks and prevent premature failure. The new service information necessitates action much earlier than the timing mandated in AD 2022–19–15. The manufacturer's updated analysis also identified PW1400G series engines that contain HPT 1st-stage hubs and HPT 2nd-stage hubs that are also subject to this vulnerability and therefore need immediate inspection. This condition, if not addressed, could result in uncontained disk failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed PW Special Instruction No. 149F–23, dated August 4, 2023. This service information provides the list of affected HPT 1st-stage hubs and HPT 2nd-stage hubs, identified by part number and serial number, installed on certain IAE LLC engines.

Pratt & Whitney Service Bulletin PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, was previously approved for incorporation by reference on November 7, 2022 (87 FR 59660, October 3, 2022; corrected 87 FR 64156, October 24, 2022).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

AD Requirements

This AD requires performing a USI of the HPT 1st-stage hub and HPT 2nd-stage hub and, depending on the results of the inspections, replacement of the HPT 1st-stage hub or HPT 2nd-stage hub.

Differences Between the AD and the Service Information

PW Service Bulletin PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, includes only PW1100G–JM series engines in its applicability. This AD applies to both PW1100G–JM series engines and PW1400G–JM series engines.

Interim Action

The FAA considers this AD to be an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule. The presence of material anomalies in the HPT 1st-stage hubs and HPT 2nd-stage hubs discovered after the December 24, 2022 engine shutdown and aborted take-off could lead to premature fracture and uncontained failure, which indicates an immediate safety of flight problem. The manufacturer also recently conducted a records review of production and field-returned parts, and re-evaluated their engineering analysis methodology and identified HPT 1st-stage hubs and HPT 2nd-stage hubs that require USI much earlier than previously required. The manufacturer issued service information on August 4, 2023 instructing operators to remove these engines from service by September 15, 2023 due to the urgency of the safety of flight issue. The longer these parts remain in service, without the inspections required by this AD, the higher the probability of failure. Therefore, the compliance time for these required inspections is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in

less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 20 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
USI the HPT 1st-stage hub	100 work-hours × $85 per hour = $8,500.	$0	$8,500	$170,000
USI the HPT 2nd-stage hub	100 work-hours × $85 per hour = $8,500.	0	8,500	170,000

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace HPT 1st-stage hub or HPT 2nd-stage hub	1 work-hours × $85 per hour = $85	$171,000	$171,085

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.

The FAA is 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

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, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

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:

2023–16–07 International Aero Engines, LLC: Amendment 39–22526; Docket No. FAA–2023–1714; Project Identifier AD–2023–00902–E.

(a) Effective Date

This airworthiness directive (AD) is effective August 28, 2023.

(b) Affected ADs

AD 2022–19–15, Amendment 39–22184 (87 FR 59660, October 3, 2022; corrected 87 FR 64156, October 24, 2022) (AD 2022–19–15) is related to this AD.

(c) Applicability

This AD applies to International Aero Engines, LLC (IAE LLC) Model PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G–JM, PW1127G1–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, PW1133GA–JM, PW1428G–JM, PW1428GA–JM, PW1428GH–JM, PW1431G–JM, PW1431GA–JM, and PW1431GH–JM engines with an installed:

(1) High-pressure turbine (HPT) 1st-stage hub, part number (P/N) 30G6201 or 30G7301, with a serial number (S/N) listed in Tables 1, 2, 3, or 4 of Pratt & Whitney (PW) Special Instruction No. 149F–23, dated August 4, 2023; or

(2) HPT 2nd-stage hub, P/N 30G5502 or 30G6602, with an S/N listed in Tables 1, 2, 3, or 4 of PW Special Instruction No. 149F–23, dated August 4, 2023.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an analysis of an event involving an IAE LLC Model PW1127GA–JM engine, which experienced a failure of a high-pressure compressor 7th-stage integrally bladed rotor that resulted in an aborted takeoff. The FAA is issuing this AD to prevent failure of the HPT 1st-stage hub and HPT 2nd-stage hub. The unsafe condition, if not addressed, could result in uncontained hub failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 30 days after the effective date of this AD, perform an ultrasonic inspection (USI) of the HPT 1st-stage hubs for cracks in accordance with the Accomplishment Instructions, paragraph 9.A. or 9.B., as applicable, of PW Service Bulletin (SB) PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022 (PW1000G–C–72–00–0188–00A–930A–D, Issue 002).

(2) Within 30 days after the effective date of this AD, perform a USI of the HPT 2nd-stage hubs for cracks in accordance with the Accomplishment Instructions, paragraph 9.C. or 9.D., as applicable, of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue 002.

(3) If a rejectable indication is found during the inspections required by paragraph (g)(1) or (2) of this AD, before further flight, replace the HPT 1st-stage hub or HPT 2nd-stage hub with a part eligible for installation.

(h) Definition

For the purpose of this AD, a ''part eligible for installation'' is:

(1) Any HPT 1st-stage hub or HPT 2nd-stage hub that has passed the USI required by paragraphs (g)(1) or (2) of this AD.

(2) Any HPT 1st-stage hub or HPT 2nd-stage hub with a certificate of conformance indicating ''PW1000G–C–72–00–0188–00A–930A–D,'' ''1 CODE 45S,'' or identified by part marking ''21CC332'' or ''SB 72–0188.''

(i) Credit for Previous Actions

You may take credit for the USIs required by paragraphs (g)(1) and (2) of this AD if you performed the USIs before the effective date of this AD using PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 001, dated September 13, 2021.

(j) Terminating Action to AD 2022–19–15

Compliance with this AD satisfies the requirements of AD 2022–19–15.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, 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 branch manager, send it to the attention of the person identified in paragraph (l) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(l) Additional Information

(1) For more information about this AD, contact Carol Nguyen, Aviation Safety Engineer, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: *carol.nguyen@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(5) and (6) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on August 28, 2023.

(i) Pratt & Whitney Special Instruction No. 149F–23, dated August 4, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on November 7, 2022 (87 FR 59660, October 3, 2022; corrected 87 FR 64156, October 24, 2022).

(i) Pratt & Whitney Service Bulletin PW1000G–C–72–00–0188–00A–930A–D, Issue No.: 002, dated July 8, 2022.

(ii) [Reserved]

(5) For Pratt & Whitney service information identified in this AD, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 690–9667; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*

(6) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 11, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–18114 Filed 8–18–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 230810–0191]

RIN 0694–AJ33

Revisions to the Unverified List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by removing a total of 35 persons from the Unverified List (UVL), including 27 under the destination of China, one under the destination of Indonesia, two under the destination of Pakistan, one under the destination of Singapore, one under the destination of Turkey, and one under the destination of the United Arab Emirates because BIS was able to verify their *bona fides;* two persons, under the destination of Russia, are also removed from the UVL after they were added to the Entity List.

DATES: This rule is effective August 22, 2023.

FOR FURTHER INFORMATION CONTACT: For questions on the Unverified List revisions, contact Linda Minsker, Director, Office of Enforcement Analysis, Phone: (202) 482–4255, Email: *UVLRequest@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Unverified List Changes

The UVL, found in supplement no. 6 to part 744 of the EAR (15 CFR parts 730–774), contains the names and addresses of foreign persons who are or have been parties to a transaction, as described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR. These foreign persons are added to the UVL because BIS or federal officials acting on BIS's behalf were unable to verify their *bona fides* (*i.e.,* legitimacy and reliability relating to the end use and end user of items subject to the EAR) through the completion of an end-use check. Sometimes these checks, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside the U.S. Government's control.

There are any number of reasons why these checks cannot be completed to the satisfaction of the U.S. Government. The reasons include, but are not limited to: (1) reasons unrelated to the cooperation of the foreign party subject to the end-use check (for example, BIS sometimes initiates end-use checks but is unable to complete them because the foreign party cannot be found at the address indicated on the associated export documents and BIS cannot contact the party by telephone or email); (2) reasons related to a lack of cooperation by the host government that fails to schedule and facilitate the completion of an end-use check, for example by host government agencies' lack of responses to requests to conduct end-use checks, actions preventing the scheduling of such checks, or refusals to schedule checks in a timely manner; or (3) when, during the

end-use check, a recipient of items subject to the EAR is unable to produce the items that are the subject of the end-use check for visual inspection or provide sufficient documentation or other evidence to confirm the disposition of the items.

BIS's inability to confirm the *bona fides* of foreign persons subject to end-use checks for the reasons described above raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-country) of items subject to the EAR; this also indicates a risk that such items may be diverted to prohibited end uses and/or end users. Under such circumstances, there may not be sufficient information to add the foreign person at issue to the Entity List under § 744.11 of the EAR. Therefore, BIS may add the foreign person to the UVL.

As provided in § 740.2(a)(17) of the EAR, the use of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL is suspended. Additionally, under § 744.15(b) of the EAR, there is a requirement for exporters, re-exporters, and transferors to obtain (and maintain a record of) a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) to such persons, when the exports, reexports, and transfers (in-country) are not subject to a license requirement. Finally, pursuant to § 758.1(b)(8), Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for all exports of tangible items subject to the EAR where any party to the transaction, as described in § 748.5(d) through (f), is listed on the UVL.

Requests for the removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL entry will be made by the Deputy Assistant Secretary for Export Enforcement, based on a demonstration by the listed person of their *bona fides.*

Removals From the UVL

This final rule removes 33 persons from the UVL after BIS was able to verify their *bona fides.* This rule removes the following 27 persons under the destination of China: ''Beijing PowerMac Company;'' ''Beijing SWT Science;'' ''Beijing Zhonghehangxun Technology;'' ''Chongqing Xinyuhang Technology Co., Ltd.;'' ''Dandong Center for Food Control;'' ''DK Laser Company Ltd.;'' ''Guangdong Guanghua Sci-Tech Co.;'' ''Guangzhou GRG Metrology & Test (Beijing) Co., Ltd.;'' ''Gucheng Xian Fengxin Titanium Alloy;'' ''Hunan University;'' ''Jialin Precision Optics (Shanghai) Co., Ltd.;'' ''Jinan Bodor CNC Machine Co., Ltd.;'' ''Lishui Zhengyang Electric Power Construction;'' ''Luoyang Weimi Optics;'' ''Nanchang University;'' ''Nanjing Gova Technology Co. Ltd.;'' ''Qingdao Sci-Tech Innovation Quality Testing Co. Ltd.;'' ''Shuang Xiang (Fujian) Electronics;'' ''Sino Superconductor Technology;'' ''Suzhou Chaowei Jingna Optoelectric Co.;'' ''Suzhou Sen-Chuan Machinery Technology Co., Ltd.;'' ''Tianjin Optical Valley Technology Co., Ltd.;'' ''TRI Microsystems;'' ''Wuxi Hengling Technology Co., Ltd.;'' ''Yunnan FS Optics Co., Ltd.;'' ''Yunnan Tianhe Optoelectronic Co., Ltd.;'' and ''Zhuzhou CRRC Special Equipment Technology Co.'' This rule also removes ''PT Smart Cakrawala Aviation'' under the destination of Indonesia, ''Seven Star Company'' and ''T.M.A. International'' under the destination of Pakistan, ''Smart Cakrawala Aviation'' under the destination of Singapore, ''Odak Kimya'' under the destination of Turkey, and ''Recaz Star General Trading LLC'' under the destination of the United Arab Emirates. BIS is removing these 33 persons pursuant to § 744.15(c)(2) of the EAR.

On June 6, 2022, in the final rule ''Additions of Entities to the Entity List'' (87 FR 34154), BIS added ''OAO Radiofizika'' and ''Voentelecom JSC'' under the destination of Russia to the Entity List. Therefore, as a conforming change, this final rule also removes ''Radiofizika OAO'' and ''JSC Voentelecom'', under the destination of Russia, from the Unverified List.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this final rule.

Rulemaking Requirements

Executive Order Requirements

Executive Orders 13563 and 12866 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, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a ''significant regulatory action'' under Executive Order 12866.

This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under the following control numbers: 0694–0088 (Simplified Network Application Processing System—Redesign (SNAP–R) and the Multipurpose Export License Application), 0694–0122 (Licensing Responsibilities and Enforcement), and 0694–0137 (License Exceptions and Exclusions). The restoration of license exceptions for listed persons on the Unverified List will result in decreased license applications being submitted to BIS by exporters. The total burden hours associated with the Paperwork Reduction Act are not expected to change.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to section 4821 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking and opportunity for public participation.

Further, no other law requires notice of proposed rulemaking or opportunity for public comment for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR

parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

Supplement No. 6 to Part 744 [Amended]

■ 2. Supplement no. 6 to part 744 is amended:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF by removing the entries for ''Beijing PowerMac Company;'' ''Beijing SWT Science;'' ''Beijing Zhonghehangxun Technology;'' ''Chongqing Xinyuhang Technology Co., Ltd.;'' ''Dandong Center for Food Control;'' ''DK Laser Company Ltd.;'' ''Guangdong Guanghua Sci-Tech Co.;'' ''Guangzhou GRG Metrology & Test (Beijing) Co., Ltd.;'' ''Gucheng Xian Fengxin Titanium Alloy;'' ''Hunan University;'' ''Jialin Precision Optics (Shanghai) Co., Ltd.;'' ''Jinan Bodor CNC Machine Co., Ltd.;'' ''Lishui Zhengyang Electric Power Construction;'' ''Luoyang Weimi Optics;'' ''Nanchang University;'' ''Nanjing Gova Technology Co., Ltd.;'' ''Qingdao Sci-Tech Innovation Quality Testing Co., Ltd.;'' ''Shuang Xiang (Fujian) Electronics;'' ''Sino Superconductor Technology;'' ''Suzhou Chaowei Jingna Optoelectric Co.;'' ''Suzhou Sen-Chuan Machinery Technology Co., Ltd.;'' ''Tianjin Optical Valley Technology Co., Ltd.;'' ''TRI Microsystems;'' ''Wuxi Hengling Technology Co., Ltd.;'' ''Yunnan FS Optics Co., Ltd.;'' ''Yunnan Tianhe Optoelectronic Co., Ltd.;'' and ''Zhuzhou CRRC Special Equipment Technology Co.;''

■ b. By removing the country listing for INDONESIA and the entry for ''PT Smart Cakrawala Aviation'' under the listing;

■ c. Under PAKISTAN by removing the entries for ''T.M.A. International'' and ''Seven Star Company;''

■ d. Under RUSSIA by removing the entries for and ''JSC Voentelecom'' and ''Radiofizika OAO;''

■ e. Under SINGAPORE by removing the entry for ''Smart Cakrawala Aviation;''

■ f. Under TURKEY by removing the entry for ''Odak Kimya;'' *and*

■ g. Under the UNITED ARAB EMIRATES by removing the entry for ''Recaz Star General Trading LLC.''

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2023–18125 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2017–0042]

RIN 0960–AG65

Revised Medical Criteria for Evaluating Digestive Disorders and Skin Disorders

Correction

In Rule Document C1–2023–11771, appearing on page 55366 in the issue of Tuesday, August 15, 2023, amendatory instruction 1 and the following text is corrected to read as follows:

■ 1, On page 37740, in the first column, after line 32 of Part 404, Appendix 1 to Subpart P, is corrected as set forth below.

* * * * *

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–) [Corrected]

* * * * *

Subpart P—Determining Disability and Blindness

* * * * *

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

(a) The initial calculation is:

$$\text{SSA CLD}_i =$$

$$9.57 \times [\log_e (\text{serum creatinine mg/dL})]$$

$$+ 3.78 \times [\log_e (\text{serum total bilirubin mg/dL})]$$

$$+ 11.2 \times [\log_e (\text{INR})]$$

$$+ 6.43$$

rounded to the nearest whole integer.

* * * * *

[FR Doc. C2–2023–11771 Filed 8–21–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0542]

RIN 1625–AA00

Safety Zones; Savannah River, M/V BIGLIFT BARENTSZ, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for navigable waters of the Savannah River, within a 500-yard radius around Motor Vessel (M/V) BIGLIFT BARENTSZ. The safety zones are needed to protect personnel, vessels, and the marine environment from potential hazards created by the transit through the Savannah River to Georgia Port Authority Garden City Terminal Berth No. 1 while carrying large cranes, and for the offload of those cranes to the facility. Entry of vessels or persons into the safety zones are prohibited unless specifically authorized by the Captain of the Port Savannah or a designated representative.

DATES: This rule is effective from 7 a.m. on August 24, 2023 through 11:59 p.m. on September 11, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0542 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Marine Science Technician First Class Kellyn Starkey, Shoreside Compliance, Marine Safety Unit Savannah, U.S. Coast Guard; telephone 912–652–4353, email *Kellyn.A.Starkey@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
M/V Motor Vessel
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. It is impracticable to publish an NPRM because we must establish safety zones by August 24, 2023. The Motor Vessel (M/V) BIGLIFT BARENTSZ will be transiting through the Savannah River to Georgia Port Authority Garden City Terminal Berth No. 1 while carrying large cranes, and for the offloading of those cranes to the facility. Immediate action is necessary to protect the safety of the public, and vessels transiting the waters of the Savannah River during the planned movement and obstruction created by oversized cranes.

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**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potentical safety hazards associated with the potential hazards associated with the transit and offload of gantry cranes from M/V BIGLIFT BARENTSZ.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Savannah (COTP) has determined that potential hazards associated with the transit and offload of gantry cranes from M/V BIGLIFT BARENTSZ scheduled for August 24, 2023, through September 11, 2023, will be a safety concern for anyone within a 500-yard radius of the vessel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zones while the vessel is transiting the Savannah River and offloading gantry cranes.

IV. Discussion of the Rule

This rule establishes two temporary safety zones from August 24, 2023 through September 11, 2023. A moving and fixed temporary safety zone will be established for the vessel M/V BIGLIFT BARENTSZ while it is in the Savannah River and would cover all navigable waters within 500 yards of the vessel, up to Georgia Port Authority Garden City Terminal Berth No. 1, and during offload of the cranes. The moving temporary safety zone would only be enforced while the vessel is transiting, and the fixed temporary safety zone will be enforced while it is discharging the cranes. This safety zone may last until September 11, 2023, but it will not be enforced after the cranes have been removed from the vessel. The safety zones are needed to protect personnel, vessels, and the marine environment from potential hazards created by the movement and obstruction hazard of two oversized cranes transiting the Savannah River, and when the vessel is moored to that facility. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 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. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location and scope of the safety zones. The safety zones are limited in size, location, and duration as it will cover all navigable waters of the Savannah River within 500 yards of the M/V/BIGLIFT BARENTSZ while it is underway with cranes onboard, and while it is moored to the terminal, and discharging its cargo. The safety zones are limited in scope as vessel traffic may be able to safely transit around the safety zones and vessels may seek permission from the COTP to enter the safety zones. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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.

C. 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).

D. 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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.

E. 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.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 involves safety zones within 500 yards of M/V BIGLIFT BAFFIN during transit and offload of cranes. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0542 to read as follows:

§ 165.T07–0542 Safety Zone; Savannah River, M/V BIGLIFT BARENTSZ, Savannah, GA.

(a) *Location.* The following areas are safety zones:

(1) A moving safety zone that includes all navigable waters of the Savannah River, within a 500-yard radius of the Motor Vessel (M/V) BIGLIFT BARENTSZ while transiting the Savannah River and laden with oversized cranes.

(2) A fixed zone that includes all navigable waters of the Savannah River, within a 500-yard radius of vessel M/V BIGLIFT BARENTSZ while moored at Georgia Port Authority Garden City Terminal Berth No. 1 and laden with oversized cranes.

(b) *Definition.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Savannah (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Persons or vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact COTP Savannah by telephone at (912) 247–0073, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Broadcast Notice to Mariners, Marine Safety Information Bulletins, and on-scene designated representatives.

(d) *Effective period.* This section is effective from August 24, 2023, through September 11, 2023.

(e) *Enforcement period.* The moving safety zone will be enforced while the vessel M/V BIGLIFT BARENTSZ is transiting with the cranes embarked. The fixed safety zone will be enforced while the vessel M/V BIGLIFT BARENTSZ is moored at the facility, and the cranes are onboard.

Dated: August 16, 2023.

N.L. Robinson,

Commander, U.S. Coast Guard, Captain of the Port, Savannah, GA.

[FR Doc. 2023–18008 Filed 8–21–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0380]

RIN 1625–AA00

Safety Zone; Hurricanes, Tropical Storms and other Disasters in Southeast Texas and Southwest Louisiana

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone to be enforced in the event of hurricanes, tropical storms, and other disasters in southeast Texas and southwest Louisiana. This action is necessary to ensure the safety of the waters of the Port Arthur Captain of the Port (COTP) zone Port Arthur, TX, prior to, during and following hurricanes, tropical storms and other disasters. This regulation establishes actions to be completed by industry and vessels in the COTP zone prior to landfall of hurricanes, tropical storms, and other disasters threatening Port Arthur, TX.

DATES: This rule is effective September 21, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0380 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or

email Mr. Douglas Hendrix, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email *douglas.g.hendrix2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Southeast Texas and southwest Louisiana has the potential to be affected by hurricanes, tropical storms and other disasters on a yearly basis, especially between the months of June and November.

On May 31, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Hurricanes, Tropical Storms, and Other Disasters in Southeast Texas and Southwest Louisiana.'' 88 FR 34797. There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended June 15, 2023, we received two (2) comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The purpose of this rulemaking is to protect mariners, port infrastructure and the environment during and after extreme weather and other natural disasters.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published May 31, 2023. One comment received was supportive of the rule. The second comment suggested that (1) the regulatory text should be clearer in identifying the geographic area(s) where Port Condition requirements would be applicable; and (2) that the COTP should require identification and notification of ''marine vessels, offshore rigs, barges, etc.'' We concur with the first suggestion and have modified the language in paragraphs (c)(1), (2), and (7) of the regulatory text to be clearer. With regard to the second suggestion, we do not concur that additional language is necessary. The regulatory text provides the COTP sufficient authority to address situational circumstances without establishing vague affirmative requirements.

This rule establishes actions to be completed by local industry and vessels in the COTP zone prior to landfall of hurricanes, tropical storms, and other disasters threatening the COTP zone and describes the actions a COTP may take to restrict access to hazardous areas in the aftermath of these events. The safety zone consists of all navigable waters of the Port Arthur COTP zone, as prescribed in 33 CFR 3.40–28(b). The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 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. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the following: (1) Vessel traffic and facilities would be impacted by this rule only during limited times while heavy weather or other disaster is expected to impact the Port Arthur COTP zone; (2) vessel traffic would be secured only during port conditions Yankee, Zulu, and Recovery and only in port areas affected by gale force winds; and (3) the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and this rule would allow vessels to seek permission to remain in port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this 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.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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.

C. 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).

D. 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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.

E. 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.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (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 involves a safety zone that prohibits entry in certain waters of the Port Arthur COTP Zone for the duration needed to ensure safe transit of vessels and industry post hurricane, post storm, and post emergency. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.804 to read as follows:

§ 165.804 Safety Zone; Hurricanes, Tropical Storms and Other Disasters in Southeast Texas and Southwest Louisiana.

(a) *Regulated areas.* All navigable waters within the Port Arthur Captain of the Port (COTP) Zone, MSU Port Arthur, TX, as described in 33 CFR 3.40–28(b), during specified conditions.

(b) *Definitions.* (1) *Designated representative* 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 Port Arthur, in the enforcement of the regulated areas.

(2) *Port Condition WHISKEY* means a condition set by the COTP when weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

(3) *Port Condition X–RAY* means a condition set by the COTP when weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) *Port Condition YANKEE* means a condition set by the COTP when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) *Port Condition ZULU* means a condition set by the COTP when weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(6) *Port Condition RECOVERY* means the condition set when weather advisories indicate that sustained gale force winds from a tropical hurricane force storm are no longer predicted for the designated area. This port condition remains in effect until the regulated areas are safe and reopened to normal operations.

(c) *Regulations*—(1) *Port Condition WHISKEY.* All vessels and port facilities in designated areas must exercise due diligence in preparation for potential storm impacts. Ports and waterfront facilities must begin removing all debris and securing potential flying hazards. Oceangoing vessels 500 gross tons (GT) and above must make plans to depart no later than the setting of Port Condition Yankee unless authorized by the COTP. Vessels wishing to remain in port are required to submit a Notice of Intent to Remain In Port to the COTP prior to setting Port Condition X-Ray.

(2) *Port Condition X–RAY.* All vessels and port facilities in designated areas must ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a safe manner and away from waterfront areas. Vessels over 500GT without an approval to remain in port must depart prior to the setting of Port Condition YANKEE. Vessels with the COTP's permission to remain in port must implement their pre-approved mooring arrangement. Terminal operators must prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) *Port Condition YANKEE.* Affected ports are closed to inbound vessel traffic. All oceangoing vessels greater than 500 Gross Tons must depart designated ports prior to the setting of Port Condition ZULU. Terminal operators must terminate all cargo operations not associated with storm preparations. Cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities must continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the Maritime Transportation Security Act.

(4) *Port Condition ZULU.* Designated areas are closed to all vessel traffic except those specifically authorized by the COTP. Cargo operations are suspended, including bunkering and lightering. Waivers may be granted unless Cargo of Particular Hazard or Certain Dangerous Cargo is involved.

(5) *Port Condition RECOVERY.* Designated areas are closed to all commercial traffic and recreational vessels 65-feet in length and greater. Based on assessments of channel

conditions, navigability concerns, and hazards to navigation, the COTP may permit vessel movements with restrictions. Restrictions may include, but are not limited to, preventing vessel movements, imposing draft, speed, size, horsepower, or daylight restrictions, or directing the use of specific routes. Vessels permitted to transit the regulated area shall comply with the lawful orders or directions given by the COTP or designated representative.

(6) *Safety zones notice.* The Coast Guard COTP will notify the maritime community of periods during which these safety zones will be in effect via Broadcast Notice to Mariners and Marine Safety Information Bulletin or by on-scene designated representatives.

(7) *Regulated area notice.* The Coast Guard will provide notice of the designated ports and/or waterways within the regulated area covered by each Port Condition via Broadcast Notice to Mariners, Marine Safety Information Bulletin or by on-scene designated representatives.

(8) *Exception.* This section does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: August 15, 2023.

Anthony R. Migliorini,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2023–18066 Filed 8–21–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–300 and 60–741

RIN 1250–AA14

Pre-Enforcement Notice and Conciliation Procedures; Correction

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule; correction.

SUMMARY: The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published a final rule in the **Federal Register** on August 4, 2023, modifying procedures and standards OFCCP uses when issuing pre-enforcement notices and securing compliance through conciliation. This document corrects amendatory instructions included in the final rule.

DATES: These corrections are effective September 5, 2023.

FOR FURTHER INFORMATION CONTACT: Tina Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 or toll free at 1–800–397–6251. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Corrections

OFCCP makes the following corrections to the final rule (FR Doc. 2023–16098) published on August 4, 2023 (88 FR 51717):

§ 60–300.2 [Corrected]

■ 1. On page 51735, column 3, in amendatory instruction 20 for § 60–300.2, the instruction ''Amend § 60–300.2 by removing the definitions for 'Qualitative evidence' and 'Quantitative evidence' '' is corrected to read ''Remove and reserve § 60–300.2(t) and (u).''

§ 60–300.85 [Corrected]

■ 2. On page 51736, column 2, in amendatory instruction 24 for § 60–300.85, the instruction ''Add § 60–300.85 to subpart D to read as follows:'' is corrected to read ''Add § 60–300.85 to subpart E to read as follows:''.

§ 60–741.2 [Corrected]

■ 3. On page 51736, column 2, in amendatory instruction 26 for § 60–741.2, the instruction ''Amend § 60–741.2 by removing the definitions for 'Qualitative evidence' and 'Quantitative evidence' is corrected to read ''Remove and reserve § 60–741.2(s) and (t).''

Michele Hodge,

Acting Director, Office of Federal Contract Compliance Programs.

[FR Doc. 2023–17958 Filed 8–21–23; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230728–0179]

RIN 0648–BL08

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: On August 8, 2023, NMFS published a final rule to implement Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The final rule included an incorrect cross reference and inadvertently left out two footnotes in a table. This correction fixes these errors.

DATES: Effective on September 7, 2023.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907–586–7228.

SUPPLEMENTARY INFORMATION: The NMFS final rule to implement Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) (88 FR 53704) included an incorrect cross-reference at § 679.134(e)(3) and inadvertently left out two footnotes in table 40 to part 679. NMFS is now correcting the final rule to reflect the correct cross-reference to § 679.133(b) instead of § 679.133(c) and to include footnotes 1 and 2 in table 40 to part 679.

Corrections

In FR Doc. 2023–16526, published August 8, 2023, at 88 FR 53704, the following corrections are made:

■ 1. On page 53743, in the first column, § 679.134(e)(3) is corrected to read as follows:

§ 679.134 [Corrected]

(e) * * *

(3) *Groundfish sideboard limits.* All groundfish harvests in the BSAI and GOA that are subject to a sideboard limit for that groundfish species as described under § 679.133(b), except groundfish harvested by a vessel when participating in the Central GOA

Rockfish Program, will be debited against the applicable sideboard limit.

Table 40 to Part 679 [Corrected]

■ 2. On page 53744, table 40 to part 679 is corrected to read as follows:

TABLE 40 TO PART 679—BSAI HALIBUT PSC SIDEBOARD LIMITS FOR AFA CATCHER/PROCESSORS AND AFA CATCHER VESSELS

In the following target species categories as defined at § 679.21(b)(1)(iii) and (e)(3)(iv) . . .	The AFA catcher/processor halibut PSC sideboard limit in metric tons is . . .	The AFA catcher vessel halibut PSC sideboard limit in metric tons is . . .
All target species categories	286	N/A
Pacific cod trawl	N/A	N/A
Pacific cod hook-and-line or pot	N/A	2
Yellowfin sole	N/A	101
Rock sole/flathead sole/"other flatfish" [1]	N/A	228
Turbot/Arrowtooth/Sablefish	N/A	0
Rockfish [2]	N/A	2
Pollock/Atka mackerel/"other species"	N/A	5

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, flathead sole, yellowfin sole, and arrowtooth flounder.
[2] Applicable from July 1 through December 31.

Dated: August 17, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–18072 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 161
Tuesday, August 22, 2023

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 ENERGY

10 CFR Part 900

[DOE–HQ–2023–0050]

RIN 1901–AB62

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notification of public meeting.

SUMMARY: On August 16, 2023, the Department of Energy's (DOE) Grid Deployment Office published a notice of proposed rulemaking (NOPR) to propose amendments to its regulations for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to the Federal Power Act (FPA). This document announces a public meeting to be held on August 23, 2023, to discuss the proposal.

DATES: DOE will hold a public meeting via webinar on Wednesday, August 23, 2023, from 1:30 p.m. ET to 3:00 p.m. ET. Requests to speak during the meeting must be submitted via the registration page no later than Tuesday, August 22, 2023. See the ''Public Participation'' section for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. DOE will accept comments, data, and information regarding the NOPR no later than Monday, October 2, 2023.

ADDRESSES: Interested persons are encouraged to submit comments on the NOPR using the Federal eRulemaking Portal at *www.regulations.gov* under docket number DOE–HQ–2023–0050. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number DOE–HQ–2023–0050 and/or Regulation Identification Number (RIN) 1901–AB62, by any of the following methods:

- *Email: CITAP@hq.doe.gov.* Include the docket number DOE–HQ–2023–0050 and/or RIN 1901–AB62 in the subject line of the email.
- *Postal mail:* Address written comments to U.S. Department of Energy, Grid Deployment Office, 4H–065, 1000 Independence Avenue SW, Washington, DC 20585.
- *Hand Delivery/Courier:* U.S. Department of Energy, Grid Deployment Office, 4H–065, 1000 Independence Avenue SW, Washington, DC 20585.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov* under docket number DOE–HQ–2023–0050. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

FOR FURTHER INFORMATION CONTACT: Liza Reed, U.S. Department of Energy, Grid Deployment Office, 4H–065, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–2006. Email: *CITAP@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE published a NOPR on August 16, 2023, in which DOE proposed amendments to 10 CFR part 900 to establish a Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program) that will reduce the time required for electric transmission project developers to receive decisions on Federal authorizations for electric transmission projects. (88 FR 55826) In the proposed rulemaking, DOE sought comment from interested persons. DOE announces in this document that it will hold a public meeting via webinar to discuss the NOPR on Wednesday, August 23, 2023, from 1:30 p.m. ET to 3:00 p.m. ET.

Public Participation

A. Participation in the Webinar

The time and date for the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants are published on DOE's website*: https://www.energy.gov/gdo/events/august-23-coordinated-interagency-transmission-authorization-and-permits-webinar.* The public meeting will be held via the WebEx Webinar Platform. Participants are responsible for ensuring their systems are compatible with the webinar software. Requests to speak during the meeting must be submitted via the registration page no later than August 22, 2023.

B. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the proposed rulemaking. During the meeting, DOE will present a general overview of the topics addressed in the NOPR and allow time for statements by participants who requested the opportunity to speak at the meeting. Speakers will be limited to two minutes during the meeting. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document.

Signing Authority

This document of the Department of Energy was signed on August 16, 2023, by Maria D. Robinson, Director of the Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for

publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 16, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–17955 Filed 8–21–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1648; Project Identifier AD–2022–01501–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by a reported quality escapement where the seat track fitting nuts were under-torqued on some flight attendant seats in production. This proposed AD requires re-torqueing each free standing attendant seat track fitting nut. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 6, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1648; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tony Koung, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA; phone: 206–231–3985; email: *Tony.Koung@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1648; Project Identifier AD–2022–01501–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tony Koung, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3985; email: *Tony.Koung@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating Boeing found a quality escapement where the seat track fitting nuts were under-torqued on some flight attendant seats in production. One flight attendant seat was discovered to be loose after final installation, and a subsequent production line check found similarly under-torqued fitting nuts on other airplanes. An investigation revealed that the attachment nuts were torqued using a yoke-type U-joint adapter, which is not allowed for final torque, as using these adapters can result in inaccurate torque values. While the attachment nuts should be torqued to 140–150 in-lbs, the inspections found a few fitting nuts that were only finger tight (essentially zero torque), and many fitting nuts that were torqued only to the 30–130 in-lbs range. This condition, if not addressed, could result in the forward facing flight attendant seats breaking free in a high load event, causing injury to the flight attendants and blocking the exits during emergency egress.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Service Letter 787–SL–25–025, dated September 6, 2022. This service information specifies procedures for re-torqueing each free standing attendant seat track fitting nut to 140–150 in-lbs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 134 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Re-Torque seat track fitting nuts.	Up to 2.5 work-hours × $85 per hour = Up to $212.50.	$0	Up to $212.50	Up to $28,475.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

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.

The FAA is 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

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

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

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

(2) Would not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

The Boeing Company: Docket No. FAA–2023–1648; Project Identifier AD–2022–01501–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 6, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category, as identified in Boeing Service Letter 787–SL–25–025, dated September 6, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a reported quality escapement where the seat track fitting nuts were under-torqued on some flight attendant seats in production. The FAA is issuing this AD to address under-torqued seat track fitting nuts. The unsafe condition, if not addressed, could result in the forward facing flight attendant seats breaking free in a high load event, causing injury to flight attendants and blocking the exits during emergency egress.

(f) Compliance

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

(g) Re-torque Seat Track Fitting Nuts

Within 6 months after the effective date of this AD, re-torque each free standing attendant seat track fitting nut in accordance with Steps 2., 3., and 4. of ''Suggested Operator Action'' of Boeing Service Letter 787–SL–25–025, dated September 6, 2022.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520 Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

For more information about this AD, contact Tony Koung, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3985; email: *Tony.Koung@faa.gov.*

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Service Letter 787–SL–25–025, dated September 6, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on July 26, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–17776 Filed 8–21–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0907; FRL–11174–01–R6]

Air Plan Approval; Arkansas; Revisions to Rule 19 of the Arkansas Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve portions of the revisions to the Arkansas State Implementation Plan (SIP) including revisions to the Arkansas Pollution Control and Ecology Commission's (''Commission'' or APC&EC) Rule No. 19, Rules of the Arkansas Plan of Implementation for Air Pollution Control submitted by the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) via the Arkansas Governor's Office on June 22, 2022. Most of the revisions are administrative in nature and make the SIP current with Federal rules.

DATES: Written comments must be received on or before September 21, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2022–0907, at *https://www.regulations.gov* or via email to *steib.clovis@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Clovis Steib, 214–665–7566, *steib.clovis@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Clovis Steib, EPA Region 6 Office, Infrastructure and Ozone Section, Air and Radiation Division, 214–665–7566, *steib.clovis@epa.gov.* We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

The SIP is a set of air pollution regulations, control strategies, and technical analyses developed by the state to implement, maintain, and enforce the National Ambient Air Quality Standards, or NAAQS, and to fulfill other requirements of the Clean Air Act. The NAAQS are established under section 109 of the Act, and they currently address six criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The SIP is required by Section 110 of the Act and can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

The Arkansas SIP is the air quality protection strategy implemented by the Department of Energy and Environment's Division of Environmental Quality (DEQ) pursuant to the CAA. The SIP consists of laws and rules, nonregulatory and quasi-regulatory measures, and other state enforceable requirements codified at 40 CFR 52 subpart E. The Arkansas SIP is federally enforceable. The Arkansas SIP was first approved by the EPA in 1972 (37 FR 10841). All revisions to the SIP require EPA approval.

On June 22, 2022, Arkansas submitted to the EPA revisions to the Arkansas SIP.[1] The submitted revisions address APC&EC Regulation 19, *Rules of the Arkansas Plan of Implementation for Air Pollution Control,* with corresponding chapters and appendices. The revisions restructure the regulations and organize them as rules, such that Regulation 19 becomes Rule 19, *Rules of the Arkansas Plan of Implementation for Air Pollution Control,* with corresponding chapters and appendices. The revisions also remove certain outdated provisions and update other provisions that are incorporated into Regulation 19. Specific provisions to be repealed are those in Chapter 10 of APC&EC Regulation 19 regarding the control of volatile organic compounds (VOC) from certain source categories in Pulaski County, provisions for the Clean Air Interstate Rule (CAIR) in Chapter 14, and informational provisions regarding sources eligible or subject to best available retrofit technology (BART) requirements for Regional Haze in Chapter 15.

Additionally, the submitted revisions address regulatory provisions in Chapters 1, 2, 3, 4, 5, 6, 7, 9, 11, 13, 16, 18, and Appendices A and B of Regulation 19.[2] These changes reflect the current organizational structure of ADEQ, remove outdated information, and make non-substantive formatting edits.

[1] The cover letter on the submitted revisions is dated May 12, 2022, but the submittal package was not submitted to EPA until June 22, 2022.

[2] See accompanying Technical Support Document (TSD) available in the docket for this rulemaking.

The submitted revisions to Chapter 10 also address an EPA-identified deficiency within the Arkansas SIP related to the 2015 Startup, Shutdown, and Malfunction (SSM) SIP Call for Regulation. 19.1004(H).[3] The EPA plans to address this matter in a separate **Federal Register** action.

II. The EPA's Evaluation

A. Regulation 19, Chapter 10—Control of VOCs in Pulaski County

These rules address Pulaski County because in March 1978, the EPA designated Pulaski County, Arkansas, as a nonattainment area for ozone (43 FR 8969, March 3, 1978). Pulaski County subsequently met the ozone NAAQS and in September 1984, the EPA approved the State's request to redesignate Pulaski County to attainment (49 FR 37753, September 26, 1984). Since redesignation, Pulaski County has maintained compliance with all the ozone NAAQS. In this action, we are proposing to approve revisions to Regulation 19.1001 and 19.1002 which are non-substantive. We are also proposing to approve the submitted revisions to 19.1003 through 19.1006. Although the submitted revisions to 19.1003 through 19.1006 are substantive in nature, they are superseded by more stringent federal requirements. VOC emissions are not expected to increase because existing and new sources subject to Chapter 10 in Pulaski County are subject to the more stringent federal requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The EPA's analysis of the submitted revisions, and confirmation that VOC emissions will not increase, is included in the TSD for this action. As a result, consistent with CAA section 110(l), we do not expect these revisions to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

B. Regulation 19, Chapter 14—CAIR Requirements

Provisions for the CAIR NO_X Ozone Season Trading Program were approved into the Arkansas SIP on September 26, 2007 (72 FR 54556).[4] On July 11, 2008, the U.S. Court of Appeals for the District of Columbia vacated and remanded the CAIR program to the EPA. The submitted revisions include the repeal of the Regulation 19, Chapter 14 CAIR provisions consistent with the court's decision. This revision is approvable because there are no federal requirements for the Arkansas SIP or sources in Arkansas to continue complying with the CAIR NO_X Ozone Season Trading Program or the provisions in Rule, Chapter 14.

C. Regulation 19, Chapter 15—Best Available Retrofit Technology

Arkansas Regulation 19, Chapter 15 was approved by the EPA into the SIP on March 12, 2012,[5] except for certain portions of Regulation 19.1504 and 19.1505. The submitted revisions address Regulation 19.1501, 19.1502, 19.1503, 19.1504, 19.1505, 19.1506, and 19.1507. We are proposing to approve these revisions because they fall into one or more of the following categories: (1) the revisions are non-substantive and/or are formatting edits; (2) the revisions improve the readability of the provision; (3) the revisions repeal provisions that do not contain enforceable requirements and as a result are not required to be part of the SIP; or (4) the revisions repeal provisions that are not in the approved SIP. The revisions to Chapter 15 do not repeal or relax any existing control requirements in the SIP and therefore the EPA does not anticipate any emission increases associated with the revisions to Chapter 15. Consistent with CAA section 110(l), we do not expect these revisions to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. We provide our analysis of the submitted revisions to Chapter 15 in the paragraphs that follow.

Regulation 19.1501 ''Purpose''

Regulation 19.1501 states the purpose of Regulation 19, Chapter 15, but does not contain enforceable requirements. The submitted revisions to Regulation 19.1501 provide a more precise description of the purpose of Chapter 15. Therefore, we are proposing to approve these submitted revisions to Regulation 19.1501.

Regulation 19.1502 ''Definitions''

The submitted revisions to Regulation 19.1502 are non-substantive formatting edits. We are proposing to approve the submitted revisions to Regulation 19.1502.

Regulation 19.1503 ''BART Eligible Sources''

Arkansas Regulation 19.1503 identifies the BART-eligible sources within the State. The submitted revision to Regulation 19.1503 repeals the provision in its entirety and places the subsection in reserve. Arkansas explained in Appendix A of the submitted revisions that Regulation 19.1503 consists of an informational table that does not contain enforceable requirements and is not necessary to identify the sources subject to the requirements of Chapter 15 that are in the SIP, as identified in Rule 19.1505.[6] Furthermore, the informational table in Rule 19.1503 is also contained in the SIP submittal narrative for the Arkansas Regional Haze Planning Period 1, Phase II SIP revision, which the EPA previously approved.[7] The repeal of Regulation 19.1503 does not change the State's determination of BART-eligible sources in Arkansas. Thus, we are proposing to approve the submitted revision to Regulation 19.1503.

Regulation 19.1504 ''Facilities Subject to BART''

Regulation 19.1504 consists of Regulation 19.1504(A), (B), and (C). The submitted revisions to Regulation 19.1504 repeal and move provisions and place the subsection in reserve. The submitted revisions repeal Regulation 19.1504(A) and move the provisions of Regulation 19.1504(B) and (C) to Regulation 19.1506 with edits to the language.

Arkansas explained in Appendix A of the submitted revisions that Regulation 19.1504(A) consists of an informational table that identifies the sources in Arkansas that are subject to BART but the table itself does not contain any enforceable requirements.[8] Regulation 19.1504(A) is not necessary to identify the sources subject to the requirements of Chapter 15 that are in the SIP, as those sources are identified in Regulation 19.1505.[9] Furthermore, the informational table in Regulation 19.1504(A) is also contained in the SIP submittal narrative for the Arkansas Regional Haze Planning Period 1, Phase II SIP revision, which the EPA approved

[3] See ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (80 FR 33839, June 12, 2015).

[4] Oxides of Nitrogen (NO_X) and VOC are precursors to ozone formation.

[5] *See* 77 FR 14603 (March 12, 2012).

[6] *See* ''Appendix A: Technical Support Document, Changes to the Rules of the State Implementation Plan,'' pages 5–6. Appendix A is part of the submitted revisions and is found in the docket for this proposed rulemaking.

[7] *See* 84 FR 51033 (September 27, 2019).

[8] ''Appendix A: Technical Support Document, Changes to the Rules of the State Implementation Plan,'' pages 5–6. Appendix A is part of the submitted revision and is found in the docket for this proposed rulemaking.

[9] Ibid.

in a final rule.[10] Thus, the repeal of Regulation 19.1504(A) does not change the State's determination of subject-to-BART sources in Arkansas. We are proposing to approve the revision to Regulation 19.1504(A).

Regulation 19.1504(B) contains BART compliance date requirements. The submitted revisions to Regulation 19.1504(B) move Regulation 19.1504(B) to Regulation 19.1506(A) with non-substantive revisions to the language and deletion of the portion not in the approved SIP.[11] Regulation 19.1504(C) contains provisions requiring sources subject to BART to maintain the control equipment required by Chapter 15 and to establish procedures to ensure such equipment is properly operated and maintained. The submitted revisions to Regulation 19.1504(C) move these provisions to Regulation 19.1506(B) and (C) with non-substantive revisions to the language. Moving the provisions in Rule 19.1504(B) and (C) to Rule 19.1506(A), (B) and (C) results in the consolidation of the compliance provisions for sources subject to the requirements of Chapter 15. For these reasons, we are proposing to approve the revisions to Regulation 19.1504(B) and (C).

Regulation 19.1505 ''Best Available Retrofit Technology Requirements''

Arkansas Regulation 19.1505 consists of BART emission limits for subject-to-BART sources in Arkansas that are subject to the requirements of Chapter 15. The submitted revisions make a minor amendment to the title of Regulation 19.1505, remove all provisions that are not currently in the approved SIP,[12] and restructure and make other non-substantive edits to the provisions in the approved SIP. Because of our prior disapproval,[13] the following provisions were never approved into the Arkansas SIP and thus, the State's removal of this language from its State rules is a non-substantive change: Regulation 19.1505(A)(1) and (A)(2); 19.1505(B); 19.1505(C); 19.1505(D)(1) and (D)(2); 19.1505(E)(1), (E)(2), and (E)(3); 19.1505(F)(1) and (F)(2); 19.1505(G)(1) and (G)(2); 19.1505(H); 19.1505(I)(1) and (I)(2); 19.1505(J)(1) and (J)(2); 19.1505(K); 19.1505(L); 19.1505(M)(1); and 19.1505(N)(1), (N)(2), and (N)(3). Because these submitted revisions delete previously disapproved language, we are proposing to remove our prior disapproval of the provisions of Regulation 19.1505 (77 FR 14604).

The submitted revisions also remove Regulation 19.1505(D)(3). This provision was approved by the EPA at 77 FR 14604, and therefore, the repeal of Regulation 19.1505(D)(3) is a substantive change. In a final rule published on March 22, 2021, we approved BART alternative requirements under 40 CFR 51.308(e)(2) that replaced the provision under Regulation 19.1505(D)(3).[14] Therefore, the repeal of Regulation 19.1503(D)(3) does not relax any existing requirements in the SIP. In fact, it is necessary for Arkansas to remove Regulation 19.1505(D)(3) from its State rules and the SIP given that the BART requirements contained in Regulation 19.1505(D)(3) have been replaced.[15] For this reason, we are proposing to approve the submitted revision to repeal Regulation 19.1505(D)(3).

The submitted revisions also restructure some of the remaining provisions under Regulation 19.1505, which results in greater clarity and concision of those provisions. Therefore, we are proposing to approve these revisions.

Regulation 19.1506 ''Compliance Provisions''

Regulation 19.1506 consists of compliance provisions for sources subject to the requirements of Chapter 15. The submitted revisions update and consolidate the compliance requirements that were previously in Regulation 19.1504(B) [16] and (C) with edits that are non-substantive. For these reasons, we are proposing to approve the submitted revisions to Regulation 19.1506.

Regulation 19.1507 ''Permit Reopening''

Regulation 19.1507 is a provision that makes subject-to-BART sources subject to reopening of their permit to incorporate the requirements of Regulation 19.1505. The submitted revision to Regulation 19.1507 repeals the provision in its entirety and places the subsection in reserve. Although the revision is substantive, it does not relax any existing requirements in the SIP. Arkansas explained in Appendix A of the submitted revisions that this provision is no longer relevant as the only requirements that remain in Regulation 19.1505 are based on existing permit conditions.[17] For this reason, we are proposing to approve the submitted revision to Regulation 19.1507.

D. CAA Section 110(l) Evaluation

The submitted revisions to Regulation 19 add clarity, consistency, and overall strengthen the Arkansas SIP. The revisions do not relax the current SIP approved rules and are consistent with Federal regulations. Therefore, and consistent with CAA section 110(l), we do not expect these revisions to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

III. Proposed Action

For the reasons described in this action and in the TSD, we are proposing to approve a portion of revisions to the Arkansas SIP submitted on June 22, 2022. Specifically, we are proposing to approve the following submitted revisions to Regulation 19: renaming Regulation 19 as Rule 19; revisions to Chapters 1, 2, 3, 4, 5, 6, 7, 9, 11, 13, 15, and Appendices A and B of Regulation 19. We are also proposing to approve the partial repeal of Regulation 19, Chapter 10 and repeal of Regulation 19, Chapters 14, and 16; and the new provision of Regulation 19, Chapter 18. We are proposing to approve these revisions in accordance with section 110 of the Act.

IV. Environmental Justice Considerations

The EPA reviewed demographic data for groups of populations living within Pulaski County, Arkansas. The EPA then compared the data to the State of Arkansas and the national average for each of the demographic groups. The results of this analysis are being provided for information and transparency purposes. The results of the demographic analysis indicate that that for populations living within Pulaski County, the percent people of color (persons who reported their race

[10] *See* 84 FR 51033 (September 27, 2019).

[11] Only a portion of Rule 19.1504(B) is in the approved SIP. This portion is the requirement for each source subject to BART to install and operate BART as expeditiously as practicable, but in no event later than 5 years after the EPA approval of that source's BART determination. (*See* 77 FR 14604, 14675, March 12, 2012).

[12] 77 FR 14604, 14675.

[13] 77 FR 14604, 14675.

[14] The EPA finalized approval of the State's withdrawal of the PM10 BART determination of 0.07 lb/MMBtu for Ashdown Mill #1 Power Boiler, SN–03 and approved its replacement with the PM10 BART alternative limit in the Arkansas Regional Haze Phase III SIP submittal (*See* 86 FR 15104, 15130, March 22, 2021).

[15] The current BART requirements approved in the SIP for Domtar Ashdown Mill #1 Power Boiler, SN–03 are found in Permit #0287–AOP–R22. (*See* 86 FR at 15131).

[16] As discussed earlier, only a portion of Regulation 19.1504(B) is in the approved SIP.

[17] *See* ''Appendix A: Technical Support Document, Changes to the Rules of the State Implementation Plan,'' page 6. Appendix A is part of the Arkansas SIP submittal dated May 12, 2022 and is found in the docket for this proposed rulemaking.

as a category other than white alone (not Hispanic or Latino)) is above the national average for Pulaski County; and below the national average for the State of Arkansas as a whole (49.3 and 28.7 percent, respectively versus 40.7 percent). Within people of color, the percent of the population that is Black or African American alone is significantly above the national average for Pulaski County and above the national average for the State as a whole (38.3 and 15.7 percent, respectively versus 13.6 percent), and the percent of the population that is American Indian/Alaska Native is below the national average for both Pulaski County and the State as a whole (0.5 and 1.1 percent, respectively versus 1.3 percent).

This proposed action revises portions of the Arkansas SIP including revisions to Rule 19 of the Arkansas Plan of Implementation for Air control. We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the State of Arkansas, including people of color and low-income populations. The proposed revisions will provide updates to the SIP and improve clarity in the SIP so that the public can read and understand what is currently in the SIP. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Arkansas regulations as described in Sections II, The EPA's Evaluation, and III, Proposed Action, of this preamble. These state regulations contain the air pollution control provisions for the State of Arkansas. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- 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.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' [18] The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [19]

ADEQ did not evaluate Environmental Justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an EJ analysis, as is described earlier in the section titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Carbon oxides, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 15, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–17944 Filed 8–21–23; 8:45 am]

BILLING CODE 6560–50–P

[18] See *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

[19] *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2023–0403; FRL–11259–01–R7]

Air Plan Approval; MO; Control of Emissions From Volatile Organic Liquid Storage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) related to the control of emissions from volatile organic liquid storage. The revisions to this rule include adding incorporations by reference to other state rules, adding definitions specific to the rule, revising unnecessarily restrictive or duplicative language, and making administrative wording changes. These revisions do not impact the stringency of the SIP or have an adverse effect on air quality. The EPA's proposed approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before September 21, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2023–0403 to *www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bethany Olson, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7905; email address: *olson.bethany@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Written Comments
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III. Have the requirements for approval of a SIP revision been met?
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V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2023–0403, at *www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

II. What is being addressed in this document?

The EPA is proposing to approve revisions to the Missouri SIP received on February 15, 2019, and June 10, 2021, and a supplemental submission on April 24, 2023. The revisions are to Title 10, Division 10 of the Code of State Regulations (CSR), 10 CSR 10–5.500 ''Control of Emissions from Volatile Organic Liquid Storage.'' The purpose of the state regulation is to limit the volatile organic compound (VOC) emissions from installations with volatile organic liquid storage vessels in the St. Louis 1997 eight (8)-hour ozone nonattainment area by incorporating reasonably available control technology (RACT) as required by the Clean Air Act Amendments (CAAA) of 1990. Missouri made multiple revisions to the rule. These proposed revisions add incorporations by reference to other state rules, add definitions specific to the rule, revise unnecessarily restrictive or duplicative language, and make administrative wording changes. EPA proposes to find that these revisions meet the requirements of the Clean Air Act, do not impact the stringency of the SIP, and do not adversely impact air quality. The full text of the rule revisions as well as EPA's analysis of the revisions can be found in the technical support document (TSD) included in this docket.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on the first SIP revision from June 15, 2018, to September 6, 2018, and held a public hearing on August 30, 2018. Missouri received ten comments from two sources during the comment period on 10 CSR 10–5.500. The EPA provided nine comments. Missouri responded to all comments and revised the rule based on public comments prior to submitting to EPA, as noted in the State submission included in the docket for this action. The State provided public notice on the second SIP revision from November 15, 2019, to February 6, 2020, and held a public hearing on January 30, 2018. Missouri received one comment from a staff member during the comment period. The State revised the rule purpose statement based on the comment prior to submitting to EPA. As explained above and in more detail in the technical support document which is part of this document, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is proposing to amend the Missouri SIP by approving the State's request to revise 10 CSR 10–5.500 ''Control of Emissions from Volatile Organic Liquid Storage.'' We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to finalize the incorporation by reference of the Missouri rule 10 CSR 10–5.500, with a state effective date of July 30, 2020, which regulates emissions from volatile organic liquid storage. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The Missouri Department of Natural Resources did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Dated: August 16, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

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 AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–5.500'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.500	Control of Emissions From Volatile Organic Liquid Storage.	7/30/2020	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	Section (2)(N)4 is not SIP-approved. Section (5)(F) retains a previously approved version of the state rule text.
*	*	*	*	*

* * * * *

[FR Doc. 2023–17986 Filed 8–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2023–0089; FRL–10213–01–Region 3]

Air Plan Approval; Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Hampton Roads Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Commonwealth or Virginia). This revision pertains to the Commonwealth's plan, submitted by the Virginia Department of Environmental Quality (VADEQ), for maintaining the 1997 8-hour ozone national ambient air quality standard (NAAQS) (referred to as the 1997 ozone NAAQS) in the Norfolk-Virginia Beach-Newport News (Hampton Roads), VA Area (Hampton Roads Area or Area). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 21, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2023–0089 at *www.regulations.gov*, or via email to *gordon.mike@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Om P. Devkota, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2172. Mr. Devkota can also be reached via electronic mail at *devkota.om@epa.gov*.

SUPPLEMENTARY INFORMATION: On September 9, 2022, the VADEQ submitted a revision to the Virginia SIP to incorporate a plan for maintaining the 1997 ozone NAAQS through December 31, 2032 in accordance with CAA section 175A.

I. Background

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. 44 FR 8202 (February 8, 1979). On July 18, 1997 (62 FR 38856),[1] EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. EPA set the 1997 ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 30, 2004 (69 FR 23858), EPA designated the Hampton Roads Area as moderate nonattainment for the 1997 ozone NAAQS. The 1997 Hampton Roads Ozone Maintenance Area includes the counties of Gloucester, Isle of Wight, James City, and York, as well as the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

Once a nonattainment area has three years of complete and certified air quality data that has been determined to attain the NAAQS, and the area has met the other criteria outlined in CAA section 107(d)(3)(E),[2] the state can submit a request to EPA to redesignate the area to attainment. Areas that have been redesignated by EPA from nonattainment to attainment are referred to as ''maintenance areas.'' One of the criteria for redesignation is to have an approved maintenance plan, under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the standard for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance as well as contingency measures as necessary to assure that violations of the standard will be promptly corrected.

On June 1, 2007 (72 FR 30490), EPA approved a redesignation request (and maintenance plan) from VADEQ for the Hampton Roads Area. EPA published final approval of the redesignation request and maintenance plan on June 1, 2007 (72 FR 30490), and, as of that time, the area was designated as attainment for the 1997 ozone NAAQS. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years.

EPA's final implementation rule for the 2008 ozone NAAQS revoked the 1997 ozone NAAQS and provided that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 ozone NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[3] However, in *South Coast Air Quality Management District* v. *EPA*[4] (South Coast II), the United States Court of Appeals for the District of Columbia vacated EPA's interpretation that, because of the revocation of the 1997 ozone standard, second maintenance plans were not required for ''orphan maintenance areas,'' (*i.e.,* areas like the

[1] In March 2008, EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the level for both to 0.075 ppm. 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone standards and tightened them by lowering the level for both to 0.070 ppm. 80 FR 65292 (October 26, 2015).

[2] The requirements of CAA section 107(d)(3)(E) include attainment of the NAAQS, full approval under section 110(k) of the applicable SIP, determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

[3] See 80 FR 12315 (March 6, 2015).

[4] 882 F.3d 1138 (D.C. Cir. 2018).

Hampton Roads Area) that had been redesignated to attainment for the 1997 ozone NAAQS and were designated attainment for the 2008 ozone NAAQS. Thus, states with these ''orphan maintenance areas'' under the 1997 ozone NAAQS must submit maintenance plans for the second maintenance period.

As previously discussed, CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance [5] that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. The 1992 Calcagni Memo [6] provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). See 1992 Calcagni Memo at p. 9. EPA further clarified in three subsequent guidance memos describing ''limited maintenance plans'' (LMPs) [7] that the requirements of CAA section 175A could be met by demonstrating that the area's design value [8] was well below the NAAQS and that the historical stability of the area's air quality levels showed that the area was unlikely to violate the NAAQS in the future. Specifically, EPA believes that if the most recent air quality design value for the area is at a level that is below 85% of the standard, or in this case below 0.071 ppm, then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Accordingly, on September 9, 2022, VADEQ submitted the Hampton Roads Area second maintenance plan, following the LMP guidance, and demonstrating that the area will maintain the 1997 ozone NAAQS through December 31, 2032, *i.e.,* through the entire second maintenance period. Starting from January 1, 2033, after this maintenance plan expires, the Area will no longer be bound by the general conformity requirements and transportation conformity requirements outlined in section 176 of the CAA. However, any other control programs will continue to be in effect, unless there is evidence to show that they are unnecessary for complying with the 1997 ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

VADEQ's September 9, 2022 SIP submittal outlines a plan for continued maintenance of the 1997 ozone NAAQS which addresses the criteria set forth in the 1992 Calcagni memo as follows.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive and accurate inventory of actual emissions for an attainment year which identifies the level of emissions in the area which is sufficient to maintain the NAAQS. The inventory should be developed consistent with EPA's most recent guidance. For ozone, the inventory should be based on typical summer day's emissions of oxides of nitrogen (NO_X) and volatile organic compounds (VOC), the precursors to ozone formation. In the first maintenance plan for the Hampton Roads Area, VADEQ used 2005 for the attainment year inventory, because 2005 was one of the years in the 2003–2005 three-year period when the area first attained the 1997 ozone NAAQS.[9] The Hampton Roads Area continued to monitor attainment of the 1997 ozone NAAQS in 2016. Therefore, the emissions inventory from 2016 represents emissions levels conducive to continued attainment (*i.e.,* maintenance) of the NAAQS.[10] Thus, VADEQ is using 2016 as representing attainment level emissions for its second maintenance plan. Virginia used 2016 summer day emissions from EPA's 2016 version 2.0 modeling platform [11] as the basis for the 2016 inventory presented in Table 1 in this document.

TABLE 1—2016 TYPICAL SUMMER DAY VOC AND NO_X EMISSIONS (tons/day) FOR HAMPTON ROADS AREA

Name	Source category	VOC emissions	NO_X emissions
Gloucester County	Point	0.0690	0.4076
	Nonpoint	2.1190	0.1218
	Onroad	0.7055	1.0346
	Nonroad	1.0918	3.2830
Isle of Wight County	Point	0.8257	1.4711
	Nonpoint	1.1699	0.4066
	Onroad	0.7703	1.4166
	Nonroad	0.5220	0.5769
James City County	Point	0.3748	1.3513
	Nonpoint	2.1067	0.4862
	Onroad	0.8237	1.7141
	Nonroad	1.0240	1.5179

[5] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994.

[6] ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (1992 Calcagni Memo).

[7] See ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001.

[8] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area.

[9] For more information, see EPA's June 1, 2007 ''Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Hampton Roads 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base-Year Inventory'' (72 FR 30490).

[10] The design values for the Hampton Roads maintenance area for each of the three-year averages containing 2016 are 0.064 ppm for 2014–2016, 0.065 ppm for 2015–2017, and 0.064 ppm for 2016–2018. Since these values are well beneath the 1997 ozone NAAQS of 0.08 ppm, the 2016 emissions inventory is a suitable inventory to use as an attainment inventory for this second maintenance plan.

[11] For more information, visit *www.epa.gov/air-emissions-modeling/2016v2-platform.*

TABLE 1—2016 TYPICAL SUMMER DAY VOC AND NO_X EMISSIONS (tons/day) FOR HAMPTON ROADS AREA—Continued

Name	Source category	VOC emissions	NO_X emissions
York County	Point	1.7402	12.8452
	Nonpoint	2.9341	0.2426
	Onroad	0.8814	1.8463
	Nonroad	1.5854	1.0722
City of Chesapeake	Point	1.6099	2.7698
	Nonpoint	9.3508	1.4014
	Onroad	2.8211	5.1701
	Nonroad	1.9042	3.0290
City of Hampton	Point	0.1701	0.1629
	Nonpoint	3.2443	0.3825
	Onroad	1.6943	2.8409
	Nonroad	1.1797	5.0726
City of Newport News	Point	1.3226	3.1034
	Nonpoint	6.5468	2.1701
	Onroad	2.0997	3.3499
	Nonroad	2.0554	0.9644
City of Norfolk	Point	1.4293	2.7084
	Nonpoint	8.3975	1.0968
	Onroad	2.6110	4.3803
	Nonroad	1.7455	6.4235
City of Poquoson	Point	0.00	0.00
	Nonpoint	0.2597	0.0245
	Onroad	0.1318	0.1137
	Nonroad	0.2712	0.1425
City of Portsmouth	Point	0.0177	3.7311
	Nonpoint	3.9935	0.3437
	Onroad	1.2541	1.6801
	Nonroad	0.4959	0.3991
City of Suffolk	Point	0.0478	0.0427
	Nonpoint	2.5712	0.6950
	Onroad	1.1467	3.1387
	Nonroad	0.6860	1.4919
City of Virginia Beach	Point	3.1577	0.6830
	Nonpoint	12.4218	1.4933
	Onroad	5.2219	6.3737
	Nonroad	4.0864	5.4491
City of Williamsburg	Point	0.00	0.00
	Nonpoint	0.3454	0.0984
	Onroad	0.1810	0.1919
	Nonroad	0.1640	0.1363

The data shown in Table 1 in this document is based on the 2017 National Emissions Inventory (NEI) version 2.[12] The inventory addresses four anthropogenic emission source categories: Stationary (point) sources, stationary nonpoint (area) sources, nonroad mobile, and onroad mobile sources. Point sources are stationary sources that have the potential to emit (PTE) more than 100 tons per year (tpy) of VOC, or more than 50 tpy of NO_X, and which are required to obtain an operating permit. Data are collected for each source at a facility and reported to VADEQ. Examples of point sources include municipal solid waste incinerators, landfills, and electric generating units. Nonpoint sources include emissions from equipment, operations, and activities that are numerous and in total have significant emissions. Examples include emissions from commercial and consumer products, residential wood combustion, home heating, and small commercial operations such as vehicle refinishing. The onroad emissions sector includes emissions from engines used primarily to propel equipment on highways and other roads, including passenger vehicles, motorcycles, and heavy-duty diesel trucks. The nonroad emissions sector includes emissions from engines that are not primarily used to propel transportation equipment. Examples of equipment in the nonroad category include lawn equipment, construction equipment, commercial shipping, locomotives, and pleasure craft. EPA reviewed the emissions inventory submitted by VADEQ and proposes to conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

[12] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources. The NEI is released every three years based primarily upon data provided by State, Local, and Tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA.

B. Maintenance Demonstration

In order to attain the 1997 ozone NAAQS, the three-year average of the fourth-highest daily average ozone concentrations (design value or ''DV'') at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the DV is 0.084 ppm or below. CAA section 175A requires a demonstration that the area will continue to maintain the NAAQS throughout the duration of the requisite maintenance period. Consistent with the prior guidance documents discussed previously in this document as well as EPA's November 20, 2018 ''Resource Document for 1997 Ozone NAAQS Areas: Supporting Information for States Developing Maintenance Plans'' (2018

Resource Document),[13] EPA believes that if the most recent DV for the area is well below the NAAQS (*i.e.,* below 85%, or in this case below 0.071 ppm), the section 175A demonstration requirement has been met, provided that Prevention of Significant Deterioration (PSD) requirements, any control measures already in the SIP, and any Federal measures remain in place through the end of the second maintenance period (absent a showing consistent with section 110(1) that such measures are not necessary to assure maintenance).

For the purposes of demonstrating continued maintenance with the 1997 ozone NAAQS, VADEQ provided 3-year DVs for the Hampton Roads Area from 2001 to 2021. This includes DVs for 2001–2003, 2002–2004, 2003–2005, 2004–2006, 2005–2007, 2006–2008, 2007–2009, 2008–2010, 2009–2011, 2010–2012, 2011–2013, 2012–2014, 2013–2015, 2014–2016, 2015–2017, 2016–2018, 2017–2019, 2018–2020, and 2019–2021. 2007–2009 through 2019–2021 are shown in Table 2 of this document.[14] In addition, EPA has reviewed the most recent ambient air quality monitoring data for ozone in the Hampton Roads Area, as submitted by Virginia and recorded in EPA's Air Quality System (AQS). The most recent DV (*i.e.,* 2019–2021) at monitors located in the Hampton Roads Area are also shown in Table 2 of this rulemaking action.[15] There currently are three operating ozone monitoring sites in the Hampton Roads Area, two in Suffolk City (monitors 518000004 and 518000005) and one in Hampton City (monitor 516500008). As can be seen in Table 2 in this document, DVs at all monitors located in the Hampton Roads Area have been well below 85% of the 1997 ozone NAAQS (*i.e.,* 0.071 ppm) since the 2012–2014 period. The highest DV for the 2019–2021 period at a monitor in the Hampton Roads Area is 0.058 ppm, which is well below the 1997 ozone NAAQS.

TABLE 2—RECENT 1997 OZONE NAAQS DESIGN VALUES (ppm) AT MONITORING SITES IN THE HAMPTON ROADS AREA

Jurisdiction	Hampton City	Suffolk City	Suffolk City
AQS site ID	516500008	518000004	518000005
2007–2009	.....	0.072	0.073
2008–2010	.....	0.071	0.072
2009–2011	.....	0.071	0.070
2010–2012[16]	0.076	0.073	0.071
2011–2013	0.072	0.070	0.068
2012–2014	0.067	0.064	0.065
2013–2015	0.064	0.061	0.062
2014–2016	0.064	0.060	0.061
2015–2017	0.065	0.061	0.059
2016–2018	0.064	0.062	0.059
2017–2019	0.062	0.060	0.058
2018–2020	0.058	0.058	0.056
2019–2021	0.058	0.056	0.056

Additionally, states can support the demonstration of continued maintenance by showing stable or improving air quality trends. According to EPA's 2018 Resource Document, several kinds of analyses can be performed by states wishing to make such a showing. One approach is to take the most recent DV for the area and add the maximum DV increase (over one or more consecutive years) that has been observed in the area over the past several years. For an area with multiple monitors, the highest of the most recent DVs should be used. A sum that does not exceed the level of the 1997 ozone NAAQS may be a good indicator of expected continued attainment. As shown in Table 2 in this document, the largest DV increase in the Hampton Roads Area was 0.002 ppm, which occurred between the 2009–2011 (0.071 ppm) and 2010–2012 (0.073 ppm) design value periods at one of the monitors located in Suffolk City (AQS ID 518000004). Adding 0.002 ppm to the highest DV for the 2019–2021 period (0.058 ppm at the Hampton City monitor AQS ID 516500008) results in 0.060 ppm, a sum that is still below the 1997 ozone NAAQS.

DVs at all monitors located in the Hampton Roads Area have been below 85% of the 1997 ozone NAAQS (*i.e.,* 0.071 ppm) since the 2012–2014 period. Additional supporting information that the Area is expected to continue to maintain the standard can be found in projections of future year DVs that EPA recently completed to assist states with the development of interstate transport SIPs for the 2015 8-hour ozone NAAQS. Those projections, made for the year 2023, show that the highest DV at a monitor located in the Hampton Roads Area is expected to be 0.058 ppm.[17] The Hampton Roads Area has maintained the air quality levels well below the 1997 ozone NAAQS since the Area first attained the NAAQS in the 2003–2005 timeframe.[18] Therefore, EPA proposes to determine that future violations of the

[13] This resource document is included in the docket for this rulemaking available online at *www.regulations.gov,* Docket ID: EPA–R03–OAR–2023–0089 and is also available at */www.epa.gov/sites/default/files/2018-11/documents/ozone_1997_naaqs_lmp_resource_document_nov_20_2018.pdf.*

[14] See also Figure-2 and Table 3 of VADEQ's September 9, 2022 submittal, ''Commonwealth of Virginia State Implementation Plan Revision Second Maintenance Plan 1997 Ozone National Ambient Air Quality Standards Hampton Roads Maintenance Area,'' included in the docket for this rulemaking available online at */www.regulations.gov,* Docket ID: EPA–R03–OAR–2023–0089.

[15] This data is also included in the docket for this rulemaking available online at *www.regulations.gov,* Docket ID: EPA–R03–OAR–2023–0089 and is also available at *www.epa.gov/air-trends/air-quality-design-values#report.*

[16] AQS site 516500008's design values were first available in 2010–2012 as this new site replaced a different Hampton City monitoring site that is no longer in existence. For more information see *www.epa.gov/air-trends/air-quality-design-values.*

[17] See U.S. EPA, ''Air Quality Modeling Technical Support Document for the Updated 2023 Projected Ozone Design Values'', Office of Air Quality Planning and Standards, dated June 2018, available at *www.epa.gov/sites/default/files/2018-06/documents/aq_modelingtsd_updated_2023_modeling_o3_dvs.pdf.*

[18] As explained in EPA's April 13, 2007 document proposing ''Approval and Promulgation of Air Quality Implementation Plans; Virginia; Redesignation of the Hampton Roads 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan and 2002 Base-Year Inventory for the 1997 ozone NAAQS'' (72 FR 18602), the 2003–2005 average DV for the Hampton Roads Area was 0.078 ppm.

1997 ozone NAAQS in the Hampton Roads Area are unlikely.

C. Continued Air Quality Monitoring and Verification of Continued Attainment

Once an area has been redesignated to attainment, the state remains obligated to maintain an air quality network in accordance with 40 CFR part 58, in order to verify the area's attainment status. In the September 9, 2022 submittal, VADEQ commits to continue to operate their air monitoring network in accordance with 40 CFR part 58. VADEQ also commits to track the attainment status of the Hampton Roads Area for the 1997 ozone NAAQS through the review of air quality and emissions data during the second maintenance period. EPA has analyzed the commitments in VADEQ's submittal and is proposing to determine that they meet the requirements for continued air quality monitoring and verification of continued attainment.

D. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must require that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

VADEQ's September 9, 2022 submittal includes a contingency plan for the Hampton Roads Area. Virginia has pledged to execute all actions related to the regulation of NO_X and VOC contained in the SIP for the Hampton Roads area before redesignation to attainment and demonstration of maintenance status. Once the maintenance plan expires on December 31, 2032,[19] general conformity and transportation conformity requirements will not be applicable anymore. To avoid future violation of ozone NAAQS,[20] the maintenance plan has included contingency measures that VADEQ will implement if triggered under two main scenarios.

First, if there is an actual increase in the emissions of VOC or NO_X above the inventory of the attainment year, such surges will be detected or predicted through the development of a comprehensive period tracking inventory, such as the NEI. Tracking this information is important because an increase in emissions of VOC and NO_X above the attainment year inventory could be an early warning sign of a possible NAAQS exceedance or violation. VADEQ will track the observed growth rates for vehicle miles traveled, population, and point source VOC and NO_X emissions annually. Comprehensive tracking of inventories as part of the NEI will also be developed in collaboration with EPA every three years using current EPA-approved methods for estimating emissions. In the improbable event that estimated emissions in the Hampton Roads Area increase above the attainment year budget, VADEQ will perform a complete VOC and NO_X emissions inventory assessment. If this analysis indicates that regional emissions of NO_X or VOC surpass the attainment year levels, VADEQ will put in place one or more control measures which are mentioned in Table 3 of this document but are not yet implemented.

Second, VADEQ will use recorded ozone readings to monitor for ozone NAAQS exceedances and violations. The 1997 ozone NAAQS is *exceeded* when an annual fourth-highest, eight-hour average of 0.085 ppm or higher is recorded by any ozone monitor in the area. In the unlikely event that monitor registers an exceedance, VADEQ will implement one yet unimplemented control measure listed in Table 3 in this document. The 1997 ozone NAAQS is *violated* when a three-year average of each annual fourth-highest, eight-hour average of 0.085 ppm or higher is recorded by any ozone monitor in the area. In the unlikely event that a monitor registers a violation, VADEQ will implement one yet unimplemented control measure listed in Table 3 in this document. If an ozone monitor registers a second violation after the implementation of a contingency measure in response to the first violation, VADEQ will implement one additional yet unimplemented control listed in Table 3 in this document.

TABLE 3—HAMPTON ROADS AREA SECOND MAINTENANCE PLAN CONTINGENCY MEASURES

Program	Description
OTC Architectural and Industrial (AIM) Coating Model Rule dated October 13, 2014[21].	Rule provides additional requirements reducing emissions from the AIM source category.
OTC Model Rule for Consumer Products dated May 21, 2013[22]	Rule provides additional requirements reducing emissions from the Consumer Product source category.
OTC Model Rule for Solvent Degreasing dated 2012[23]	Rule provides additional requirements reducing emissions from the solvent degreasing category.
Article 51 of 9VAC5 Chapter 40, Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations.	Application of NO_X Reasonably Available Control Technology (RACT) on facilities with a potential to emit of at least 100 tpy NO_X.
Article 51 of 9VAC5 Chapter 40, Emission Standards for Stationary Sources Subject to Case-by-Case RACT Determinations.	Application of VOC RACT on facilities with a potential to emit of at least 100 tpy VOC.

[19] The first plan for the Hampton Roads 1997 ozone NAAQS maintenance area used an end year of 2018. Therefore, this second maintenance plan must remain effective through December 31, 2028 at a minimum. Virginia chose an end year of 2032 for this second maintenance plan based on the availability of inventory information for that year. Since 2032 served as the end year of Virginia's projected maintenance demonstration inventory, the plan should remain effective through December 31, 2032. For more information, *www.epa.gov/sites/default/files/2018-11/documents/fact_sheet_1997_ozone_maintenance_areas_resource_document_nov_20_2018.pdf.*

[20] A violation of the NAAQS occurs when an area's 3-year design value exceeds the NAAQS.

[21] Model Rule Preamble: Architectural and Industrial Maintenance Coatings at *otcair.org/upload/Documents/Model%20Rules/AIM_Preamble_Model_Rule.pdf.*

[22] OTC Model Rule for Consumer Products available at *otcair.org/upload/Documents/Model%20Rules/OTC%20CP%20Model%20Rule%20Final%20Clean%202013%20Revision%20Clean.pdf.*

[23] OTC Model Rule for Solvent Degreasing 2012 available at *otcair.org/upload/Documents/Model%20Rules/2011%20OTC%20Model%20Rule%20for%20Solvent%20Degreasing.pdf.*

The following schedule applies to contingency measures should they need to be implemented due to exceedances or violations of the 1997 ozone NAAQS:

- Notification received from EPA that a contingency measure must be implemented or three months after a recorded exceedance or violation is certified.
- Applicable regulation to be adopted 6 months after this date.
- Applicable regulation to be implemented 6 months after adoption.
- Compliance with regulation to be achieved within 12 months of adoption.

EPA proposes to find that the contingency plan included in VADEQ's September 9, 2022 submittal satisfies the pertinent requirements of CAA section 175A(d). EPA also finds that the submittal acknowledges Virginia's continuing requirement to implement all pollution control measures that were contained in the SIP before redesignation of the Hampton Roads Area to attainment.

E. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(B)). EPA's conformity rule at 40 CFR part 93 requires that transportation plans, programs, and projects conform to SIPs and establish the criteria and procedures for determining whether or not they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). A MVEB is defined as ''that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions (40 CFR 93.101).''

Under the conformity rule, LMP areas may demonstrate conformity without a regional emission analysis (40 CFR 93.109(e)). However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determination, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105 and 93.112) and transportation control measure implementation in the conformity rule provisions (40 CFR 93.113).

Additionally, conformity determinations for RTPs and TIPs, must be determined no less frequently than every four years, and conformity of transportation plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, for projects to be approved, they must come from a currently conforming RTP and TIP (40 CFR 93.114 and 93.115). The Hampton Roads Area remains under the obligation to meet the applicable conformity requirements for the 1997 ozone NAAQS.

III. Proposed Action

EPA's review of VADEQ's September 9, 2022 submittal indicates that Hampton Roads Area second maintenance plan meets the CAA section 175A and all applicable CAA requirements. EPA is proposing to approve the second maintenance plan for the Hampton Roads Area as a revision to the Virginia SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.11198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.11198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.11199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998, opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot

have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

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

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 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 pertaining to Virginia's 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the Hampton Roads Area 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).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

VADEQ did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–18048 Filed 8–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0409; FRL–11232–01–OCSPP]

RIN 2070–ZA16

Phenol; Revoking Exemption From the Requirement of a Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the tolerance exemption for residues of the antimicrobial pesticide ingredient phenol when used as an inert ingredient (solvent/cosolvent) in pesticide formulations applied to growing crops. This rulemaking is proposed on the Agency's own initiative under the Federal Food, Drug, and Cosmetic Act (FFDCA) to implement a tolerance action the Agency determined was appropriate during the registration review conducted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for phenol. EPA is proposing to revoke this tolerance exemption because it corresponds to a use no longer current or registered under FIFRA in the United States.

DATES: Comments must be received on or before October 23, 2023.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0409, is available at *https://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 and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Anita Pease, Antimicrobials Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0736; email address: *pease.anita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111), *e.g.,* agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), *e.g.,* cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), *e.g.,* agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), *e.g.,* agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2023–0409, in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 23, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2023–0409, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

EPA is proposing to revoke the tolerance exemption in 40 CFR 180.920 for residues of the antimicrobial pesticide ingredient phenol when used as an inert ingredient (solvent/cosolvent) in pesticide formulations applied to growing crops, because this tolerance exemption corresponds to a use no longer current or registered under FIFRA in the United States.

B. What is the Agency's authority for taking this action?

EPA is proposing this action pursuant to its authority under section 408 of the FFDCA, 21 U.S.C. 346a. The Agency previously determined this action was appropriate during the registration review of phenol conducted under FIFRA, 7 U.S.C. 136 *et seq.*

Under FIFRA section 3(g), 7 U.S.C. 136a(g), EPA is required to periodically review all registered pesticides and determine if those pesticides continue to meet the standard for registration under FIFRA. *See also* 40 CFR 155.40(a). As part of registration review, EPA evaluates whether existing tolerances are safe, whether any changes to existing tolerances are necessary or appropriate, and whether any new tolerances are necessary. A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, authorizes the establishment, modification, and revocation of tolerances or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Residues of pesticides in or on food that are not covered by a tolerance or exemption are deemed unsafe, 21 U.S.C. 346a(a)(1). Any food containing unsafe residues is considered adulterated and may not be distributed in interstate commerce, 21 U.S.C. 331(a), 342(a)(2)(B). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA but also must be registered under FIFRA, 7 U.S.C. 136 *et seq.* Moreover, residues of food-use pesticides not registered in the United States must also be covered by a tolerance or exemption in order for commodities treated with those pesticides to be imported into the United States.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement of a tolerance only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(c)(2)(B) of the FFDCA requires EPA, when making a safety determination concerning an exemption, to take into account, among other relevant considerations, the considerations listed in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) identifies various factors, including available information on aggregate and cumulative exposure, for EPA's consideration in making a safety determination.

Section 408(e) of the FFDCA, 21 U.S.C. 346a(e), authorizes EPA to initiate a rulemaking to establish, modify, or revoke tolerances or exemptions from the requirement of a tolerance on its own initiative. Prior to issuing the final regulation, section 408(e)(2) requires EPA to issue a notice of proposed rulemaking for a 60-day public comment period, unless the

Administrator for good cause finds that it would be in the public interest to have a shorter period and states the reasons in the rulemaking.

Consistent with its obligations under FIFRA section 3(g) and FFDCA section 408, EPA has reviewed the available scientific data and other relevant information and determined it is appropriate to take the action being proposed in this rulemaking.

C. When does this action become effective?

EPA is proposing that this action become effective six months after the date of publication of the final rule in the **Federal Register**. EPA is proposing this effective date for this action to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO's) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to the requirements of the final rule.

Any commodities treated with phenol in the channels of trade following the tolerance exemption revocation shall be subject to FFDCA section 408(l)(5), 21 U.S.C. 346a(l)(5). Under this section, any residues of this pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA and the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption, unless EPA determines that consumption of legally treated food during the period of its likely availability in commerce will pose unreasonable dietary risk. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. Proposed Rule

EPA is proposing to revoke the tolerance exemption in 40 CFR 180.920 for residues of phenol when used as an inert ingredient (solvent/cosolvent) in pesticide formulations applied to growing crops. In the August 2020 Phenol and Salt Interim Registration Review Decision (available at *https://www.regulations.gov* in docket ID number EPA–HQ–OPP–2012–0810), EPA determined that there are no current registrations for pesticide products containing phenol as an inert ingredient (solvent/cosolvent) for use on growing crops, and therefore the tolerance exemption for phenol under 40 CFR 180.920 is not necessary and should be revoked. Moreover, there have been no registrations for use associated with this tolerance exemption for many years. The Agency therefore believes that existing stocks of pesticide products containing phenol for the use associated with this tolerance exemption have been exhausted and that treated commodities have cleared the channels of trade.

IV. Conclusion

Therefore, EPA is proposing to revoke the exemption from the requirement of a tolerance for residues of phenol when used as an inert ingredient (solvent/cosolvent) in pesticide products used on growing crops.

V. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke a specific tolerance exemption under its authority in FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted this type of action (*e.g.,* tolerance exemption revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866, due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Nor does it require any special considerations as required by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This proposed rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published in the **Federal Register** of December 17, 1997 (62 FR 66020) (FRL–5753–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide named in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document titled ''RFA/SBREFA Certification for Import Tolerance Revocation'' is available in the docket of this proposed rule.) Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed rule that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposed rule and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this proposed rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999). Executive Order 13132, requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This proposed rule does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175, does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 14, 2023.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.920 [Amended]

■ 2. In § 180.920, amend table 1 by removing the inert ingredient ''Phenol''.

[FR Doc. 2023–18050 Filed 8–21–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 416, 419, 424, 485, 488, 489

Office of the Secretary

45 CFR Part 180

[CMS–1786–P]

RIN 0938–AV09

Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency; Changes to Community Mental Health Centers Conditions of Participation, Proposed Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction

Correction

In proposed rule document 2023–14768 appearing on pages 49552–49921 in the issue of Monday, July 31, 2023, make the following correction:

On page 49762, Table 61 is corrected to read as set forth below:

TABLE 61—CY 2024 PROPOSED SURGICAL PROCEDURES FOR THE ASC CPL

CY 2024 CPT/HCPCS/CDT code	CY 2024 long descriptor
D4210	Gingivectomy or gingivoplasty—four or more contiguous teeth or tooth bounded spaces per quadrant.
D4211	Gingivectomy or gingivoplasty—one to three contiguous teeth or tooth bounded spaces per quadrant.
D4212	Gingivectomy or gingivoplasty to allow access for restorative procedure, per tooth.
D4260	Osseous surgery (including elevation of a full thickness flap entry and closure)—four or more contiguous teeth or tooth bounded spaces per quadrant.
D4263	Bone replacement graft—retained natural tooth—first site in quadrant.
D4270	Pedicle soft tissue graft procedure.
D4273	Autogenous connective tissue graft procedure (including donor and recipient surgical sites) first tooth, implant, or edentulous tooth position in graft.
D7111	Extraction, coronal remnants—primary tooth.
D7140	Extraction—erupted tooth or exposed root (elevation and/or forcep removal).
D7210	Surgical removal of an erupted tooth requiring removal of bone and/or sectioning of tooth and including elevation of mucoperiosteal flap if indicated.
D7220	Removal of impacted tooth—soft tissue.
D7230	Removal of impacted tooth—partially bony.
D7240	Removal of impacted tooth—completely bony.
D7241	Removal of impacted tooth—completely bony, with unusual surgical complications.
D7250	Surgical removal of residual tooth roots (cutting procedure).
D7270	Tooth reimplantation and/or stabilization of accidentally evulsed or displaced tooth.
D7310	Alveoloplasty in conjunction with extractions—four or more teeth or tooth spaces, per quadrant.
D7311	Alveoloplasty in conjunction with extractions—one to three teeth or tooth spaces, per quadrant.
D7472	Removal of torus palatinus.
D7473	Removal of torus mandibularis.
D7510	Incision and drainage of abscess-intraoral soft tissue.
D7511	Incision and drainage of abscess—intraoral soft tissue—complicated (includes drainage of multiple fascial spaces).
D7520	Incision and drainage of abscess-extraoral soft tissue.
D7550	Partial ostectomy/sequestrectomy for removal of non-vital bone.

TABLE 61—CY 2024 PROPOSED SURGICAL PROCEDURES FOR THE ASC CPL—Continued

CY 2024 CPT/HCPCS/CDT code	CY 2024 long descriptor
D7950	Osseous, osteoperiosteal, or cartilage graft of the mandible or maxilla—autogenous or nonautogenous, by report.
G0330	Facility services for dental rehabilitation procedure(s) performed on a patient who requires monitored anesthesia (*e.g.,* general, intravenous sedation (monitored anesthesia care) and use of an operating room.

[FR Doc. C1–2023–14768 Filed 8–21–23; 8:45 am]
BILLING CODE 0099–10–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 19–195; DA 23–688; FR ID 164681]

Comment Sought on Petition for Extension of Waiver of the Requirement for a Certified Professional Engineer To Certify Broadband Data Collection Availability Data

AGENCY: Federal Communications Commission.

ACTION: Petition for extension of waiver; request for comments.

SUMMARY: The Broadband Data Task Force, Wireless Telecommunications Bureau, Wireline Competition Bureau, and the Office of Economics and Analytics (Bureaus), seeks comment on a Petition for Extension of Waiver (Petition) requesting that the Bureaus renew for an additional three filing cycles the *BDC Limited Waiver.*

DATES: Comments are due on or before September 1, 2023, and reply comments are due on or before September 11, 2023.

ADDRESSES: You may submit comments, identified by WC Docket No. 19–195, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent 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.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788–89 (OS 2020).

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* or call the Consumer & Government Affairs Bureau at (202) 418–0530.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Will Holloway, Broadband Data Task Force, at *William.Holloway@fcc.gov* or (202) 418–2334.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in WC Docket No. 19–195, released on August 11, 2023. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/comments-sought-petition-waiver-engineering-certification* or by using the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Ex Parte Rules. 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: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) 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 presenters 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) of the Commission's rules. In proceedings governed by § 1.49(f) of the rules 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.

Synopsis

1. The Bureaus seek comment on a Petition filed by the Competitive Carriers Association (CCA) and USTelecom—The Broadband Association (USTelecom and, together with CCA, Petitioners). Petitioners request that the Bureaus renew for an additional three filing cycles the *BDC Limited Waiver,* which temporarily waives the requirement that Broadband Data Collections (BDC) filings be verified by a licensed Professional Engineer (PE), thus allowing BDC submissions to be certified by an otherwise qualified engineer who does not hold the PE credential.

2. The Commission's rules require that a certified PE or a corporate engineering officer review and certify the accuracy of the broadband availability data submitted by mobile and fixed providers as part of the BDC. This requirement was adopted to ensure

that filers have engaged in the analysis necessary to meet Congress's objective of developing more accurate broadband coverage data. In particular, the Commission requires each mobile and fixed service provider to include certifications as to the accuracy of its data submissions by a certified PE or corporate engineering officer, in which the engineer certifies ''that he or she has examined the information contained in the submission and that, to the best of the engineer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct and in accordance with the service provider's ordinary course of network design and engineering.'' This certification is in addition to the corporate officer certification required by the Broadband DATA Act and the Commission's *Second Order and Third Further Notice,* 86 FR 18124, April 7, 2021.

3. In the July 2022 *BDC Limited Waiver,* the Bureaus found that granting a limited waiver of the rule was ''consistent with the policy objectives of the rule because providers will still be required, under the terms of the limited waiver the Commission adopted, to have an engineer review and certify their BDC submissions to help ensure the accuracy of the broadband data they submit'' and that the limited waiver ''only modifies the engineering certification requirement to allow providers to use otherwise-qualified engineers who are not certified PEs to make the required certifications.''

4. Petitioners assert that the ''BDC process under the waiver has been effective, with no impact to the quality or accuracy of the BDC filings, and there remains an ongoing industry need for a waiver of the PE requirement.'' The Petition says the industry, particularly smaller providers, is still experiencing hardships regarding the scarcity of PE licensure in the workforce and continues to face ''significant challenges'' meeting the PE certification requirement. The Petition also asserts that broadband providers can provide accurate broadband data without certification by licensed PEs. Petitioners therefore request that the Commission renew or extend the *BDC Limited Waiver,* or otherwise grant a new waiver, of the requirement that BDC certification be completed by a licensed PE for three additional data filing cycles and continue to allow providers that do not have access to licensed PEs to certify data with an engineering professional with the same qualifications specified in the *BDC Limited Waiver.*

5. The Commission seeks comment on these and other issues raised by the Petition as they may impact both fixed and mobile broadband service providers.

Federal Communications Commission.

Amy Brett,

Chief of Staff Wireless Telecommunications Bureau.

[FR Doc. 2023–17957 Filed 8–21–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–280; RM–11957; DA 23–705; FR ID 165142]

Television Broadcasting Services Colusa, California

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by One Ministries, Inc. (Petitioner), requesting the allotment of reserved noncommercial educational (NCE) channel *2 to Colusa, California as the community's first local television service.

DATES: Comments must be filed on or before September 21, 2023 and reply comments on or before October 6, 2023.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: James L. Oyster, Esq., 108 Oyster Lane, Castleton, Virginia 22716.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Petitioner contends that Colusa is a community deserving of a new television broadcast service. In support, the Petitioner states that Colusa, with a 2020 population of 6,411 is the seat of Colusa County and known for its agricultural production. The Petitioner further states that Colusa has a mayor, mayor pro tem, and three council members; police, public works, parks and recreation, planning, fire, and utility departments; a library, airport, and numerous businesses and places of worship; and its own Zip Code. The Petitioner states its intention to file an application for channel *2, if allotted, and take all necessary steps to obtain a construction permit. The proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner's proposal would result in a first local service to Colusa under Allotment Priority (2) of the Commission's television allotment priority standard. The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *2 can be allotted to Colusa, California, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's rules. In addition, the allotment point complies with section 73.625(a)(1) of the Commission's rules as the entire community of Colusa is encompassed by the 35 dBμ contour.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 23–280; RM–11957; DA 23–705, adopted August 16, 2023, and released August 16, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a). *See* Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Amend § 73.622, by adding in the table in paragraph (j), under California, in alphabetical order the entry for ''Colusa'' to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
California	
* * * * *	
Colusa	*2
* * * * *	
* * * * *	

[FR Doc. 2023–18023 Filed 8–21–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–279; RM–11956; DA 23–703; FR ID 165046]

Television Broadcasting Services Tulare, California

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by One Ministries, Inc. (Petitioner), requesting the allotment of reserved noncommercial educational (NCE) channel *3 to Tulare, California as the community's first local television service.

DATES: Comments must be filed on or before September 21, 2023 and reply comments on or before October 6, 2023.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: James L. Oyster, Esq., 108 Oyster Lane, Castleton, Virginia 22716.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Petitioner contends that Tulare is a community deserving of a new television broadcast service. In support, the Petitioner states that Tulare, with a 2020 population of 70,733 was founded in 1872 by the Southern Pacific Railroad and is in the heart of agricultural San Joaquin Valley, halfway between Los Angeles and San Francisco.

Tulare is known for its agricultural production and home to the nation's largest single-site dairy complex. The Petitioner further states that Tulare has a mayor and five council members; police, public works, planning, engineering, and community and economic development departments; a library, school district, and numerous businesses and places of worship. The Petitioner states its intention to file an application for channel *3, if allotted, and take all necessary steps to obtain a construction permit. The proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner's proposal would result in a first local service to Tulare under Priority (2) of the Commission's television allotment priority standard. The Petitioner demonstrates, and a Bureau staff engineering analysis confirms, that channel *3 can be allotted to Tulare, California, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 23–279; RM–11956; DA 23–703, adopted August 16, 2023, and released August 16, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a). *See* Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Amend § 73.622, by adding in the table in paragraph (j), under California, in alphabetical order the entry for ''Tulare'' to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
California	
* * * * *	
Tulare	*3
* * * * *	

[FR Doc. 2023–18025 Filed 8–21–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–405; FCC 23–61; FR ID 161601]

Rules for FM Terrestrial Digital Audio Broadcasting Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopted a Notice of Proposed Rulemaking, in which it seeks comment on proposals to change the digital audio broadcasting technical rules that would permit additional FM stations to increase FM hybrid digital effective radiated power (FM Digital ERP) beyond the existing levels without the need for individual Commission authorization, as well as allowing asymmetric digital sideband operation. These specific rule changes were proposed based on two consolidated Petitions for Rule Making filed in 2019 and 2022.

DATES: Comments may be filed on or before September 21, 2023 and reply comments may be filed on or before October 6, 2023.

ADDRESSES: You may submit comments, identified by MB Docket No. 22–405, by any of the following methods:

- *Electronic Filers:* Federal Communications Commission's website: *http://apps.fcc.gov/ecfs//.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 888–835–5322.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2700; Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418–2700. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Notice of Proposed Rulemaking (NPRM), MB Docket No. 22–405; FCC 23–61, adopted on July 31, 2023, and released on August 1, 2023. The full text of this document is available for public inspection and copying via ECFS at *http://apps.fcc.gov/ecfs* and the FCC's website at *https://docs.fcc.gov/public/attachments/FCC-23-61A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The NPRM in document FCC 23–61 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act, Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. *Power Increase Petition; History of Digital FM Power Limits.* In 2002, the Commission selected in-band, on-channel (IBOC) technology, at the time developed and manufactured by iBiquity, to enable radio broadcast stations to commence digital broadcasting. At that time, the Commission adopted notification procedures allowing existing FM radio stations to begin digital transmissions immediately on an interim basis using the IBOC system. The iBiquity FM IBOC digital system includes several hybrid modes and separate all-digital modes. In the hybrid and extended hybrid modes, a station simultaneously transmits both the analog and digital signals. In the all-digital modes, the station drops the analog signal and is able to increase the capacity of the digital signal. The Commission initially limited digital operations to the hybrid digital mode, which permits the simultaneous transmission of both the analog and digital signals within the current spectral emissions mask of a single FM channel, placing redundant blocks of digital information in the sidebands on both sides of and immediately adjacent to the analog signal.

2. iBiquity and several independent parties conducted extensive field and laboratory tests of the IBOC system prior to Commission adoption. Based on the National Radio Systems Committee's (NRSC) evaluation of those test results, in December 2001 the NRSC approved the NRSC–5 standard, which specifies a digital FM effective radiated power (ERP) equal to one percent of authorized analog FM power (20 decibels below carrier or −20 dBc). Subsequently, the Commission adopted this as the maximum digital power level for the hybrid digital mode of the FM IBOC system. In 2010, the Commission's Media Bureau (Bureau) released an Order increasing the allowable power level of the FM station's digital sidebands from −20 dBc to −14 dBc, upon electronic notification to the Commission. The Bureau further allowed certain FM stations to increase digital power above −14 dBc, to up to −10 dBc, upon a showing that such power increase would comply with the formula in the Bureau's 2010 order, and therefore would not cause harmful

interference to adjacent analog FM stations.

3. Petitioners in this rulemaking proceeding state that digital FM receiver penetration continues to grow: according to petitioners, there are over 90 million autos in the U.S. with digital receivers; receiver penetration has exceeded 40% in some markets; and almost 60% of new automobiles sold in the U.S. are equipped with digital IBOC receivers. Petitioners National Association of Broadcasters (NAB) and Xperi (successor to iBiquity) contend, however, that many stations have resisted adopting IBOC technology due to the inability to replicate their analog signal coverage with digital coverage, owing to the limits placed on digital sideband power. They maintain that the Commission, by its own admission, overprotected adjacent-channel FM analog stations when implementing the allowable FM digital power table set forth in the 2010 Bureau Order, and further state that 12 years of experience with the current FM digital power levels has yielded few if any complaints of interference from hybrid digital FM transmissions. As evidence for its contentions, petitioners NAB and Xperi attached an analysis of existing digital FM stations transmitting at the current allowable limit of −14 dBc, but whose digital signal substantially overlaps that of adjacent analog FM stations. They assert that in none of these real-world situations have there been any instances of digital-to-analog interference. NAB and Xperi further attached the results of their own field test, conducted under experimental authority, using three stations in the New York market, two adjacent ''interfering'' stations and one ''interfered with'' station. In this study the adjacent-channel digital stations operated first with FM digital signals at −14 dBc, and then at −10 dBc, while recordings were made of the adjacent channel analog station under each condition. According to a panel of listeners—consisting of NAB and Xperi employees—who evaluated the recordings, there was ''no significant change or degradation of the desired [FM analog] signal when the 1st-adjacent channel interferer went from −14 dBc to −10 dBc'' even though these stations were operating at levels far in excess of the levels permitted under the current methodology.

4. *Asymmetric Sideband Petition.* The Commission's existing rules assumed that digital power would be the same on both digital sidebands. NAB, Xperi, and National Public Radio (NPR), in the 2019 Asymmetric Sideband Petition, assert that with asymmetric sidebands a digital FM station could protect one adjacent analog FM station while concurrently increasing power on the other sideband frequency in order to expand its digital coverage and building penetration. These petitioners conducted a study that they state demonstrates that many more digital FM stations could increase power above −14 dBc on at least one sideband. Out of 10,875 digital FM stations studied, petitioners contend that 6,120 could increase power to −10 dBc under the current rules, whereas if asymmetric sidebands were allowed, an additional 3,496 stations could increase one sideband to −10 dBc, with another 532 being able to increase one sideband's power to between −14 and −10 dBc. These petitioners also noted that, under the current rules, stations may only request asymmetric sidebands under an experimental authorization. They argued that the need to request experimental authorization, and the temporary nature of such authorizations, discourages use of asymmetric sidebands, which in turn limits digital FM stations to the power level needed to protect the closer or higher-powered adjacent-channel analog FM station. Petitioners thus requested that the Commission amend its rules to allow FM stations to operate with asymmetric digital sidebands, without having to request experimental authorization to do so, in order to remove unnecessary regulatory barriers and promote broader adoption of terrestrial digital FM broadcasting. The Bureau sought comment on the consolidated Power Increase Petition and Asymmetric Sideband Petition in a Public Notice released November 28, 2022.

5. After review of the two consolidated petitions for rulemaking (Power Increase Petition and the Asymmetric Sideband Petition), and the comments filed in response, the Commission concluded that the record discloses sufficient reasons to justify the institution of a rulemaking proceeding seeking further comment on these proposals. The Commission tentatively concluded that the proposals in both the Power Increase Petition and the Asymmetric Sideband Petition represent steps toward improving the terrestrial digital FM broadcast radio service. The Commission seeks comment on its proposal to allow additional stations to increase FM digital power levels, to authorize asymmetric sideband power levels without the need for experimental authorization, and to rely on existing interference mitigation and remediation processes, and notification procedures.

6. *Power Increase Petition.* The Commission proposed to amend its rules to change its power increase methodology and notification procedures, consistent with the Petition. Specifically, it proposed to change the methodology used by digital FM stations to determine whether they are eligible to increase digital FM power up to −10 dBc, or 10% of analog power. It also proposed that such increases be allowed without the need for additional individual special authorization, but upon basic notification to the Commission. It further proposed that stations notify the Commission of a power increase up to −10 dBc in the Bureau's Licensing and Management System (LMS), using the same notification procedures as currently used to notify the Commission of digital operation up to −14 dBc.

7. *Maximum Permissible FM Digital ERP Table.* The Commission proposed to amend its rules to modify the methodology a digital FM station must use to determine whether it is eligible to increase its power above −14 dBc. This modification, if adopted, would allow more stations to increase power up to −10 dBc without the requirement of submitting a contour analysis. Secondary services such as LPFM and FM translators are eligible to operate in hybrid mode. To the extent that such a secondary service station seeks to increase its digital power, it would use the same methodology set forth herein. As summarized above, currently a digital FM station may operate with digital power up to −14 dBc. Additionally, a digital FM station could apply to operate with power of up to −10 dBc (10% of analog power), pursuant to the current methodology. Petitioners asserted that the intervening dozen years of experience with the established 2010 power limits, as well as follow-up field tests and other studies, demonstrate that most digital FM stations should be able to operate at power levels of up to −10 dBc without special Commission authorization, and without causing interference to adjacent channel FM facilities. They proposed an updated table for determining maximum permissible FM Digital ERP as follows:

Proponent analog F(50,10) field strength at first adjacent station's analog 60 dBμ F(50,50) contour (symmetric sideband operation)	Maximum permissible FM digital ERP
57.9 dBμ and above	−14 dBc
56.5 dBμ to 57.8 dBμ	−13 dBc
55.6 dBμ to 56.4 dBμ	−12 dBc
54.1 dBμ to 55.5 dBμ	−11 dBc
54.0 dBμ or less	−10 dBc

8. Currently, a licensee desiring FM Digital ERP in excess of −14 dBc must calculate the station's analog F(50,10) field strength at all points on the 60 dBμ F(50,50) contour of a potentially affected first-adjacent channel analog FM station. This calculation must be done using each station's licensed analog facilities and the standard FCC contour prediction methodology. Once the most restrictive analog F(50,10) field strength of the proponent station has been determined, the licensee will use the updated table to determine the proponent station's maximum permissible FM Digital ERP.

9. Petitioners studied pairs of stations in which the digital FM station operated at −14 dBc, yet the station's signal strength at the protected contour of the adjacent analog FM station is greater than that allowed by the current methodology. Despite this, petitioners stated that none of the studied analog FM stations reported any significant interference from the digital FM stations, in spite of signal strengths higher than permitted by the current methodology. The Commission noted that it had not received any interference complaints from any of the adjacent channel stations most likely to experience interference from the stations that petitioners studied, with greater-than-normal power ratios. The Commission requests comment on the methodology or interpretation of petitioners' studies, and whether they support petitioners' claim that use of the proposed revised table will not result in harmful interference.

10. The majority of commenters supported the proposals set forth in the Power Increase Petition. Most agreed with petitioners that allowing more stations to increase digital power would assist FM digital stations to expand their digital service areas, as well as improve building signal penetration. Two commenters expressed concern about the effect of increased digital FM power on Low-Power FM (LPFM) and smaller Class A FM stations, contending that such stations serve listeners outside the protected 60 dBμ contour.

11. The Commission tentatively concluded that the record collected to date supports the proposed methodology change. The Commission initiated the process of authorizing digital broadcast operations in 1999 with the eventual goal of moving terrestrial broadcasting from an all-analog to an all-digital world. Although it stated repeatedly that there is no timetable for this eventual change to all-digital broadcast radio, and did not alter that stance in the *NPRM,* its objective is to advance the progress of digital radio without causing harmful interference or disruption to existing analog operations. This is especially true given the record evidence of increased digital FM receiver penetration, even while recognizing that such receivers are far from ubiquitous, and that the record was less complete with regard to non-automotive digital FM receiver penetration. It is this desire to encourage continued adoption of digital FM broadcast technology that informed the Commission's tentative conclusions and proposals in this *NPRM.*

12. The Commission tentatively concluded that the proposals set forth in the Power Increase Petition support the goal of furthering the progress of digital FM broadcast radio. It therefore proposed to amend its rules to change the methodology used by digital FM stations to determine whether they are eligible to operate with allowable IBOC power up to and including −10 dBc, and to permit any existing FM digital station currently operating with power below −10 dBc that satisfies the table proposed to be adopted herein, to increase allowable IBOC power without seeking prior Commission authorization and without the requirement of submitting a contour overlap analysis. It further proposed to adopt the petitioners' table for calculating maximum allowable FM IBOC power set forth above. The Commission seeks comment on this proposal. Are the contours and power levels set forth in the Maximum Permissible FM Digital ERP Table reasonable from an engineering standpoint? If not, how would commenters modify the table? To the extent that any such modifications are proposed, the Commission requests that commenters detail the engineering rationale underlying any such modifications. If commenters generally support providing greater flexibility for stations to increase their FM digital power but disagree with the use of the Maximum Permissible FM Digital ERP Table, what other methods would they suggest for calculating maximum FM digital power?

13. *Interference and Proposed Interference Remediation Procedures.* The Commission also seeks comment on whether changing the power increase methodology will create an unacceptable risk of interference to adjacent-channel stations. Most commenters agreed with petitioners that interference has not been and would not be an issue with the proposal to broaden the number of stations eligible to increase digital power levels. Petitioners, and those who concurred with them, based their contentions on the technical analyses and field studies they cited. Some commenters, however, expressed caution surrounding digital interference to FM analog stations, especially smaller stations. These commenters argued that the proposed change to the methodology could harm smaller stations such as Class A FM stations, LPFM stations, and FM translators and AM stations rebroadcasting over FM translators, as well as other entities beside FM stations, such as broadband providers.

14. The Bureau previously set forth detailed procedures to identify and remedy complaints of digital-to-analog FM interference among full-service FM broadcast stations. Those procedures require, first, that an analog FM station receiving verifiable listener complaints of digital interference within its protected contour contact the digital FM station, and that the stations cooperate to confirm the interference and attempt to eliminate it using voluntary tiered FM digital power reductions. If the stations are unable to agree on appropriate interference remediation measures, the affected analog FM licensee may file a complaint with the Bureau. Bureau staff will review each complaint and order appropriate action within 90 days of filing the complaint. If the Bureau has not acted within 90 days, the interfering station must reduce its digital power, and ongoing complaints of interference may require subsequent stepped reductions of digital power.

15. Like the petitioners and commenters, the Commission has noted few interference complaints from full-service analog FM stations resulting from adjacent-channel digital transmissions. Given the paucity of interference complaints, the Commission tentatively concluded that the interference remediation procedures outlined above will continue to suffice to handle such digital-to-analog interference complaints as may arise between full-service FM stations. These interference mitigation and remediation procedures would therefore remain in place to guard against any instances of actual interference to other facilities. The Commission seeks comment on this tentative conclusion. To the extent that commenters believe that these current procedures would be inadequate to deal with the increased power levels proposed in this NPRM, they are asked to state specifically where the current system is deficient, and describe in detail the interference identification and remediation measures they feel are needed.

16. As secondary services LPFM and FM translators stations are not eligible for the interference remediation

procedures outlined herein. Because secondary services are not protected from interference from full-service stations, the Commission did not propose to modify this approach such that secondary services can use these interference remediation procedures to claim interference from full-service stations. However, although the number of secondary service stations employing hybrid digital operation to date is small, the Commission invites comment as to whether it should adopt any digital interference remediation procedures for secondary service analog stations claiming interference from secondary service digital stations. All full-service stations, including Class A stations, may take advantage of the interference remediation procedures proposed herein.

17. Commenters may wish to address whether the station complaints described above should be based on objective criteria such as ''agreed-upon [mathematical] formulas,'' rather than listener reports. Should the number of reports of ongoing interference required (currently six) be increased or decreased? Should a complaining station be allowed instead to submit studies and/or measurements demonstrating that the digital FM signal within the complaining station's protected contour exceeds allowable limits? Additionally, how should a digital FM station that has increased its digital power be treated if and when an adjacent-channel analog FM station subsequently increases its analog power, and/or moves its facilities closer to the digital FM station? Should we give precedence to the analog FM signal? Alternatively, should the digital FM facility that now seeks a power increase be protected over a subsequent facility modification by an adjacent-channel analog FM station?

18. Two commenters raised the issue of how a digital FM station power increase would affect protection to incumbent stations, expressing concern about its impact on LPFM and other smaller stations. They argued that protection to the 60 dBμ contour is insufficient for analog FM stations on adjacent channels that, they contend, have listenership well beyond that contour. The Commission tentatively concluded that there is no need to provide protection from actual interference outside the protected contour of an analog FM station from the digital signal of a full-service FM station, and seeks comment on this conclusion. Should protection of incumbent analog FM stations on adjacent channels be increased beyond the 60 dBμ contour and, if so, to what contour? Commenters are asked to give detailed evidence for or against increasing the level of protection to analog FM stations on adjacent channels from increased FM digital sideband power proposals. Commenter Press Communications, LLC (Press), offered a number of proposals to remedy what it sees as the problems the Power Increase Petition would cause to smaller, coastal FM stations, including: (i) allowing such stations to move up to three miles inland under certain conditions; (ii) adopting a universal analog 60 dBμ protection in Zone I for all co-, first-, and second-adjacent analog Class A to Class B station-to-station separations; and (iii) extending protection beyond the 60 dBμ contour for Class A stations to the 45 dBμ contour or even a 50 dBμ Longley-Rice contour. While noting that Press's proposed solutions appear to be geographically targeted and class-specific, the Commission invites comment on Press's proposals. Finally, the Commission invites comment as to the potential effect of the proposed change in the methodology for calculating digital FM power levels on all stakeholders utilizing the 88–108 MHz frequency band, whether they are broadcasters or providers of other services.

19. *Superpowered FM Stations.* The Commission proposed to continue to limit the power level for previously authorized superpowered FM stations to the station's class maximum. One commenter noted that allowing a legacy digital superpowered FM station meeting the proposed new table to increase its digital ERP up to −10 dBc, or 10% of the analog ERP could allow certain stations to increase digital power to above the class maximum, resulting in harmful interference. The Commission tentatively concluded that a superpowered station's digital ERP should continue to be limited to the class maximum provided in 47 CFR 73.211 and 73.511. Thus, it proposed that a superpowered FM station seeking to increase its digital power above −14 dBc may request experimental authorization or special temporary authorization (STA) to do so, and the staff would review such requests on a case-by-case basis. The Commission solicits comment on this conclusion and proposal, and requests that commenters opposing this view detail the reasons why they believe that a digital FM station whose power greatly exceeds its class maximum will not cause excessive interference to adjacent channel analog facilities.

20. *Notification of FM Digital Power Increase.* The Commission seeks comment on the type of notification, if any, that should be required of a digital FM station increasing digital power, and whom should be notified. One commenter urged that any adopted notification procedures also include a provision that the FM digital station increasing power notify the licensees of first-adjacent channel FM stations at least 30 days prior to implementation of the power increase, but in no event after the power increase has already taken place. The International Association of Audio Information Services (IAAIS), representing radio reading services that use analog FM station sub-carriers to provide audio versions of publications for print-disabled individuals, likewise requested that a host station increasing digital power to −10 dBc provide written notification to any radio reading services on that host station's sub-carriers, as well as to all radio reading services broadcasting over any adjacent channel stations' sub-carriers.

21. Under the current system, stations increasing symmetric digital sideband power to levels up to −14 dBc need to submit LMS Form 2100, Schedule 335–FM, FM Digital Notification (Schedule 335–FM), without any further showings or analysis to be submitted to the staff for approval. The digital FM station must electronically notify the Media Bureau of increased power FM digital operation within 10 days of commencement of operations at increased power. Although these notifications are available to the public from the FCC's database, the staff takes no action on the notifications, and they do not appear in the Commission's public notices of broadcast applications or broadcast actions. Symmetric digital operation at power levels between −14 dBc and −10 dBc currently require both notification on Schedule 335–FM and a showing that the contours generated do not overlap with the protected contours of adjacent-channel FM stations. Such showings are confirmed by the staff. Under the Commission's proposal herein, such showings would no longer be required for power increases up to −10 dBc—the station seeking a power increase would only have to provide notification by filing Schedule 335–FM, and the staff would neither grant nor deny such notification. The Commission tentatively concluded that this notification-only procedure should be sufficient for digital FM stations increasing digital sideband power the additional 4 dB it proposes to allow in the NPRM, and seeks comment on this conclusion. It likewise tentatively concluded that Schedule 335–FM notification should be required for any digital FM station permanently reducing

digital power, and further tentatively concluded that any such notification of digital FM power reduction be accompanied by a short statement of the reason(s) for the power reduction (*e.g.,* interference complaints, inadequate signal coverage, etc.), and seeks comment on this tentative conclusion.

22. Although the filing of Schedule 335–FM does not generate a separate LMS Public Notice, all filed LMS forms are searchable, and are thus available to the public using the LMS ''Search'' function. The Commission thus seeks comment on whether this accessibility should provide adequate notice to other stations and interested parties that a first-adjacent channel FM digital station is increasing its digital power. It seeks comment on whether Schedule 335–FM filings in LMS will provide adequate notice or if it should adopt any other notification procedure. Commenters holding differing views should explain why the Commission should require additional specific notice, *i.e.,* to first-adjacent stations or entities other than the Commission, than is currently required. Should it require direct notice to all potentially affected first-adjacent channel FM stations in addition to that provided by the notification filed in LMS? Should potential direct notice to first-adjacent channel FM stations be given a certain period of time, such as 30 days, before the digital station is allowed to implement the digital power increase? In the alternative, should the station increasing digital power be required not only to file Schedule 335–FM, but further be obliged to wait a certain period of time before implementing the power increase, so as to give interested parties an opportunity to comment and/or object? The Commission asks that commenters provide reasons for their positions regarding notice, and further to provide specifics as to both the type of notice that should be given and the key recipients of that notice.

23. IAAIS expressed concerns about digital FM sideband power and its effects on radio reading services. Radio reading services, using primarily volunteer staff, provide valuable services by reading daily and weekly newspapers, magazines, current books, and other programs of interest to blind, visually impaired, physically disabled, and other print-disabled persons, who cannot easily access or consume written media. While these important services employ a variety of methods to deliver their content, the majority of IAAIS members broadcast over analog FM radio subcarriers. With regard to IAAIS's concerns about the effect of increased digital FM sideband power on such subcarriers, even absent a general requirement of direct notice of digital power increase to potentially affected stations, should such radio reading services receive special notification from the station proposing to increase digital power, whether that is the station hosting the radio reading service or a nearby adjacent channel station? If so, what form should that direct notice take? If, after reviewing comments, the Commission determines that a station increasing digital power must notify all first-adjacent channel stations of the increase, should it further require that any first-adjacent channel station receiving such notice notify any radio reading service(s) that it hosts?

24. *Asymmetric Sideband Petition.* The Commission proposed to grant blanket authorization to digital FM stations to originate digital transmissions at different power levels on the upper and lower digital sidebands without having to request experimental authorization. As with any digital FM power increase resulting from the proposed revised power table, discussed above, it proposed that a digital FM station need only notify us of asymmetric sideband operation by filing notification (Schedule 335–FM) in the Bureau's LMS database.

25. *Asymmetric Sideband Operation/Interference Issues.* Currently, digital FM stations must use the same ERP on both the upper and lower digital sidebands. Thus, as pointed out by petitioners, any digital FM station's digital power was limited to that needed to protect the nearer of the adjacent channel analog FM stations, regardless of whether there was a need to limit power on the other sideband. Petitioners contended that allowing calculation of the maximum allowable digital FM ERP on a per-sideband basis allows such stations to optimize their digital signal coverage while still protecting analog FM stations on adjacent channels. For example, a digital FM station with an analog station only on the first adjacent channel above its frequency could selectively reduce power on the upper sideband to avoid causing interference, while maintaining or even increasing digital ERP on the lower sideband to enhance signal coverage without interfering with a nearby station. Alternatively, a digital FM station in the same situation could maintain its digital ERP on the upper sideband while increasing power on the lower sideband. The 2022 Power Increase Petition proposed a new formula to calculate maximum digital power per sideband, updated to comport with the Power Increase Petition proposal. The proposed new method for calculating per-sideband FM Digital ERP yields the following table:

Proponent analog F(50,10) field strength at first adjacent station's analog 60 dBμ F(50,50) contour (asymmetric sideband operation)	Maximum permissible FM digital ERP
54.9 dBμ and above	−14 dBc
53.5 dBμ to 54.8 dBμ	−13 dBc
52.6 dBμ to 53.4 dBμ	−12 dBc
51.1 dBμ to 52.5 dBμ	−11 dBc
51.0 dBμ or less	−10 dBc

26. When operating in symmetric mode, each digital sideband contributes exactly half of the total authorized digital power for that station. For example, a station that is authorized to operate in symmetric mode with a total digital power of −10 dBc operates with half that power (−13 dBc) in each digital sideband. When a station operates in asymmetric mode with one digital sideband having more power than the other, it is necessary to ensure that each sideband is limited to the appropriate contour-limited value from the table, and that the total digital power in both sidebands together does not exceed the total amount of digital power that would be authorized if the station were operating in symmetric mode. Accordingly, the Effective Radiated Power at each sideband must be adjusted so that the total sideband powers do not exceed the total power that would be authorized for that station operating in symmetric sideband mode.

27. Those commenters that addressed the Asymmetric Sideband Petition uniformly supported it, although Press, which filed ex parte presentations after the commenting period expired, questioned whether these proposals, if adopted, would actually protect adjacent FM analog stations to the extent it believed is required. Many of the supporters noted that eliminating the need to seek experimental authorization for asymmetric sideband operation would encourage more stations to adopt this operational mode.

28. Given the general lack of commenter objection and the record as presented by the petitioners and certain commenters, the Commission proposed to authorize asymmetric sideband operation for FM digital broadcasters operating at any power level, without the need first to seek experimental authorization. As with any potential FM digital power increase, the Commission proposed that a digital FM station seeking to operate with asymmetric sidebands must notify the Bureau using Schedule 335–FM. It reiterated that the filing of Schedule 335–FM with the

Commission does not trigger the release of a separate Public Notice in LMS, but that, like all LMS forms, the filing is searchable and thus available to members of the public using the LMS ''Search'' function. The Commission therefore seeks comment on whether notification to the Commission should suffice to provide notice to other interested parties, including adjacent channel stations. To the extent that commenters believe that more or different notice should be required, it asks that they specify the type of notice and the reasons why form availability in LMS is not sufficient. It further tentatively concluded that Schedule 335–FM notification should be required for any digital FM station that permanently reverts to symmetric sideband operation from asymmetric sideband operation, and further tentatively conclude that any such notification of return to symmetric sideband operation be accompanied by a short statement of the reason(s) for this action. The Commission seeks comment on this tentative conclusion.

29. Likewise, the Commission believed that the interference mitigation and remediation procedures established in 2010 should be sufficient to remedy any reports of inter-station interference as a result of asymmetric sideband operation. It observed that asymmetric sideband operation per se should not cause an increase in interference or complaints thereof, as stations employing such operation are already protecting the closer of the adjacent stations to their sideband frequencies, and the only power increases should be toward adjacent channel stations that are more distant, either physically or by frequency. To the extent that commenters believe that more stringent interference mitigation and remediation procedures are required, the Commission asks that such commenters detail the measures they deem necessary as well as the precise reasons why the current procedures are inadequate.

30. *Other Issues: Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment. Such individuals include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. Section 1 of the Communications Act of 1934 as amended provides that the FCC ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.''. Specifically, the FCC seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Procedural Matters

Ex Parte Rules

31. The proceeding this NPRM initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules, 47 CFR 1.1200 *et seq.* 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 (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the ex parte presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 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 47 CFR 1.1206(b). In proceedings governed by 47 CFR 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.

Initial Regulatory Flexibility Analysis

32. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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 Small Business Administration (SBA).

33. As required by the RFA, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of the NPRM. The Commission will send a copy of this entire NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need For, and Objectives of, the Proposed Rules

34. In the NPRM, the Commission proposes to revise its methodology for determining whether a digital FM station may increase the effective radiated power (ERP) on its digital sidebands; to allow a digital FM station to implement or increase digital ERP from 14 dB below the analog carrier ERP (expressed as −14 dBc) to −10 dBc, without the need to do more than notify the Commission of such operation by FCC form; and to allow a digital FM station to operate with different power levels on its upper and lower digital sidebands, without first having to seek experimental authorization for such operation. The Commission initiated the NPRM in response to two Petitions for Rulemaking that were consolidated by the Media Bureau (Bureau) because the proposed rule changes both relate to improving digital FM signal quality and minimizing the effect of the digital FM station signal on adjacent channel FM transmissions. In the earlier of the two petitions, filed December 9, 2019, petitioners National Association of Broadcasters (NAB), Xperi Corporation (Xperi), and National Public Radio (NPR) request blanket authorization to set digital power at different levels on each digital sideband, thus allowing a digital FM station to protect, for example, an analog FM station on a lower first adjacent channel, while enabling an increase in digital power on the upper sideband where there is no adjacent analog FM station or a more distant adjacent station. In the second petition, filed October 26, 2022, NAB and Xperi request that the FCC adopt an updated methodology to determine digital FM power levels for stations seeking to exceed the currently authorized FM digital effective radiated power (ERP) of −14 dBc. The Commission seeks comment on whether the rule changes proposed, based on the Asymmetric Sideband Petition and Power Increase Petition, would serve the public interest by providing digital FM stations with the ability to increase power and, concomitantly, increase coverage area, building penetration, and provide a more robust digital signal. Petitioners, and most commenters on the petitions, maintain that the current method for determining digital FM power overprotects analog FM stations on adjacent frequencies from digital interference, and that higher digital FM power levels would enable digital FM stations to more closely replicate their analog FM coverage with digital coverage. With regard to the Asymmetric Sideband Petition, petitioners contend that allowing calculation of the maximum allowable digital FM power on a per-sideband basis allows such stations to optimize their digital signal coverage while still protecting analog FM stations on adjacent channels. For example, a digital FM station with an analog station only on the first adjacent channel above its frequency could selectively reduce power on the upper sideband to avoid causing interference, while maintaining or even increasing digital power on the lower sideband to enhance signal coverage without interfering with a nearby station. Alternatively, a digital FM station in the same situation could maintain its digital power on the upper sideband while increasing power on the lower sideband.

35. The Commission seeks comment on the following issues relating to digital FM station operations: (1) to change the methodology used by digital FM stations to determine whether they are eligible to increase digital FM ERP up to −10 dBc, or 10% of analog power, upon basic notification to the Commission and without the need for additional individual special authorization; (2) to allow a power increase up to −10 dBc by notifying the Commission in the Bureau's Licensing and Management System (LMS), utilizing the same notification procedures as currently used; (3) whether changing the method for calculating whether a digital FM station can increase its digital power will create an unacceptable risk of interference to adjacent-channel stations; (4) whether to continue to limit the power level for previously authorized superpowered FM stations to their class maximum; (5) the type of notification, if any, we should require of a digital FM station increasing digital power, and whom should be notified; (6) whether the interference mitigation and remediation procedures currently used for inter-station digital FM interference should be sufficient to remedy any reports of interference to FM broadcast stations or other spectrum users as a result of a station's increase in its digital power; (7) whether to grant blanket authorization to digital FM stations to originate digital transmissions at different power levels on the upper and lower digital sidebands without having to request experimental authorization; and (8) whether the interference mitigation and remediation procedures currently used for inter-station digital FM interference should be sufficient to remedy any reports of inter-station interference as a result of asymmetric sideband operation.

B. Legal Basis

36. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324.

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

37. 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, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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.

38. *Radio Stations.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

39. The Commission estimates that as of March 31, 2023, there were 4,472 licensed commercial AM radio stations and 6,681 licensed commercial FM radio stations, for a combined total of 11,153 commercial radio stations. Of this total, 11,151 stations (or 99.98%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2023, there were 4,219 licensed noncommercial (NCE) FM radio stations, 1,999 low power FM (LPFM) stations, and 8,939 FM translators and

boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

40. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

41. *Low Power FM Stations.* The SBA small business size standard for Radio Stations applies to low power FM stations. The Radio Stations industry comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms in this industry operated during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Therefore, based on the SBA's size standard we conclude that the majority of low power FM stations are small.

42. Additionally, according to Commission data as of March 31, 2023, there were 1,999 Low Power FM licensed broadcast stations and 8,939 FM Translator Stations. The Commission does not compile and otherwise does not have access to financial information for these stations that would permit it to determine how many of the stations would qualify as small entities under the SBA size standard. However, given that low power FM stations and FM translators and boosters are very small and limited in their operations and unlikely to have annual receipts anywhere near the SBA small size standard, we will presume that these licensees qualify as small entities under the SBA size standard.

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

43. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the NPRM and consider whether small entities are affected disproportionately by any such requirements. As discussed above, the NPRM seeks comment on changes to the Commission's rules governing digital FM broadcast stations. Allowing some broadcasters that are small entities to increase digital FM power, or to operate with asymmetric sideband power, as proposed in the NPRM would be a voluntary process. Each FM station that meets the proposed requirements can make an individual decision about whether operating with higher digital power and/or asymmetric sideband power is a feasible technical and economic upgrade option. The Commission does not propose to compel, but rather merely to authorize, the proposed digital power increases and operations. The NPRM proposes new mandatory reporting, recordkeeping, and compliance requirements for small entities that are FM licensees and choose to increase their power and/or adopt asymmetric sideband operation. We note that the adoption of the proposed rules may require modification of current requirements and processes for small entities that choose to implement these operational changes, and may require modification of FCC forms, including but not limited to, FCC Form 2100, Schedule 335–FM, which is the form currently used to notify the Commission of the initiation of digital operations. The NPRM thus may impose additional obligations or expenditure of resources on small businesses that elect to modify their digital service, and may require small entities to hire professionals to comply with the proposed rules.

44. The NPRM seeks comment on the notification and interference mitigation and remediation obligations of digital FM stations, including small entities. For example, the proposal to amend the Commission's rules to modify the methodology a digital FM station must use to determine whether it is eligible to increase its power above −14 dBc, if adopted, would reduce compliance obligations for small entities by allowing them to increase power up to −10 dBc without submitting a contour analysis. Small entity stations that seek to increase digital sideband power by the addition of 4 dB would need to notify the Commission by filing Schedule 335–FM. At this time the Commission cannot quantify the cost of compliance for small entities that choose to modify their operations pursuant to the NPRM proposals. However, the Commission expects the information it receives in comments to help it identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the NPRM.

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

45. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed 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 and reporting requirements under the rule for such 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 such small entities.''

46. The NPRM considers a voluntary process by which some FM stations may operate at increased digital power and/or with differing power levels on each digital sideband. According to commenters, the proposal would benefit digital FM broadcasters and listeners alike by promoting greater adoption of FM digital transmission systems. Commenters also assert that adoption of the NPRM proposals would increase the robustness of the digital FM broadcast service by improving stations' signal quality, including building penetration and allowing a digital FM licensee to

expand its digital service area to approximate more closely its analog service area. Other commenters caution that the proposed change may harm small entities by causing surrounding interference for smaller stations such as Class A FM stations, LPFM stations, and stations broadcasting over FM translators.

47. In the NPRM, the Commission considers specific steps it could take and alternatives to the proposed rules that could minimize potential economic impact on small entities that might be affected by the proposed rule change, as well as any other rule changes that may be required. For example, to avoid increasing burdens on digital FM broadcasters, the Commission proposes that any notification of increases in digital FM ERP and/or initiation of asymmetric sideband operation be made by filing FCC Form 2100, Schedule 335–FM, in the searchable LMS database. This is the same form currently used to notify the Commission of the initiation of digital operations. Under the proposed rule changes fewer stations would be required to submit a contour study with Schedule 335–FM, as is currently the case for digital FM stations proposing digital power levels above −14 dBc. Therefore, the administrative impact of the proposed rule changes will be similar to that of existing digital FM service, will be less burdensome for most digital FM broadcasters, and thus is not likely to have an additional adverse economic impact on small entities.

48. The Commission also considers alternatives to its current interference remediation procedures, including whether station complaints should be assessed based on listener complaints or based on studies and/or measurements demonstrating that a digital FM signal within the complaining station's protected contour exceeds allowable limits. Another alternative considered in relation to interference that may impact small entities is whether protection of incumbent analog FM stations on adjacent channels should be increased beyond the 60 dBμ contour. The Commission tentatively concluded that this protection is not necessary, however, it also considered whether this protection should be increased and, if so, to what contour. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the NPRM.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

49. None.

50. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Ordering Clauses

51. Accordingly, *it is ordered*, pursuant to § 1.407 of the Commission's rules, 47 CFR 1.407, that the Petition for Rulemaking of the National Association of Broadcasters, Xperi Corporation, and National Public Radio filed on Dec. 9, 2019 and the Petition for Rulemaking of the National Association of Broadcasters and Xperi Corporation filed on Oct. 26, 2022 *are granted.*

52. *it is further ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324 this Notice of Proposed Rulemaking *is adopted.*

53. *it is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Proposed Rules

For the reasons discussed in this preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Amend § 73.310 by revising paragraphs (a) and (b) to read as follows:

§ 73.310 FM technical definitions.

(a) *Frequency modulation.* The following definitions pertain to frequency modulation, as defined in § 73.310(a)(17).

(1) *Antenna height above average terrain (HAAT).* HAAT is calculated by: determining the average of the antenna heights above the terrain from 3 to 16 kilometers (2 to 10 miles) from the antenna for the eight directions evenly spaced for each 45° of azimuth starting with True North (a different antenna height will be determined in each direction from the antenna): and computing the average of these separate heights. In some cases less than eight directions may be used. (See § 73.313(d).) Where circular or elliptical polarization is used, the antenna height above average terrain must be based upon the height of the radiation of the antenna that transmits the horizontal component of radiation.

(2) *Antenna power gain.* The square of the ratio of the root-mean-square (RMS) free space field strength produced at 1 kilometer in the horizontal plane in millivolts per meter for 1 kW antenna input power to 221.4 mV/m. This ratio is expressed in decibels (dB). If specified for a particular direction, antenna power gain is based on that field strength in the direction only.

(3) *Auxiliary facility.* An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (*e.g.,* where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (See § 73.1675).

(4) *Center frequency.* The term ''center frequency'' means:

(i) The average frequency of the emitted wave when modulated by a sinusoidal signal.

(ii) The frequency of the emitted wave without modulation.

(5) *Composite antenna pattern.* The composite antenna pattern is a relative field horizontal plane pattern for 360 degrees of azimuth, for which the value at a particular azimuth is the greater of the horizontally polarized or vertically polarized component relative field values. The composite antenna pattern is normalized to a maximum of unity (1.000) relative field.

(6) *Composite baseband signal.* A signal which is composed of all program and other communications signals that frequency modulates the FM carrier.

(7) *Effective radiated power.* The term ''effective radiated power'' means the product of the antenna power

(transmitter output power less transmission line loss) times:

(i) The antenna power gain, or

(ii) the antenna field gain squared. Where circular or elliptical polarization is employed, the term effective radiated power is applied separately to the horizontal and vertical components of radiation. For allocation purposes, the effective radiated power authorized is the horizontally polarized component of radiation only.

(8) *Equivalent isotropically radiated power (EIRP).* The term ''equivalent isotropically radiated power (also known as ''effective radiated power above isotropic) means the product of the antenna input power and the antenna gain in a given direction relative to an isotropic antenna.

(9) *FM Blanketing.* Blanketing is that form of interference to the reception of other broadcast stations which is caused by the presence of an FM broadcast signal of 115 dBμ (562 mV/m) or greater signal strength in the area adjacent to the antenna of the transmitting station. The 115 dBμ contour is referred to as the blanketing contour and the area within this contour is referred to as the blanketing area.

(10) *FM broadcast band.* The band of frequencies extending from 88 to 108 MHz, which includes those assigned to noncommercial educational broadcasting.

(11) *FM broadcast channel.* A band of frequencies 200 kHz wide and designated by its center frequency. Channels for FM broadcast stations begin at 88.1 MHz and continue in successive steps of 200 kHz to and including 107.9 MHz.

(12) *FM broadcast station.* A station employing frequency modulation in the FM broadcast band and licensed primarily for the transmission of radiotelephone emissions intended to be received by the general public.

(13) *Field strength.* The electric field strength in the horizontal plane.

(14) *Free space field strength.* The field strength that would exist at a point in the absence of waves reflected from the earth or other reflecting objects.

(15) *Frequency departure.* The amount of variation of a carrier frequency or center frequency from its assigned value.

(16) *Frequency deviation.* The peak difference between modulated wave and the carrier frequency.

(17) *Frequency modulation.* A system of modulation where the instantaneous radio frequency varies in proportion to the instantaneous amplitude of the modulating signal (amplitude of modulating signal to be measured after pre-emphasis, if used) and the instantaneous radio frequency is independent of the frequency of the modulating signal.

(18) *Frequency swing.* The peak difference between the maximum and the minimum values of the instantaneous frequency of the carrier wave during modulation.

(19) *Multiplex transmission.* The term ''multiplex transmission'' means the simultaneous transmission of two or more signals within a single channel. Multiplex transmission as applied to FM broadcast stations means the transmission of facsimile or other signals in addition to the regular broadcast signals.

(20) *Percentage modulation.* The ratio of the actual frequency deviation to the frequency deviation defined as 100% modulation, expressed in percentage. For FM broadcast stations, a frequency deviation of ±75kHz is defined as 100% modulation.

(21) *Previously authorized superpowered FM station.* An FM station authorized to operate with facilities that exceed the Effective Radiated Power/Height Above Average Terrain limitations of §§ 73.211 or 73.511 for their specific class.

(b) *Stereophonic sound broadcasting.* The following definitions pertain to stereophonic sound broadcasting, as defined in § 73.310(b)(8).

(1) *Cross-talk.* An undesired signal occurring in one channel caused by an electrical signal in another channel.

(2) *FM stereophonic broadcast.* The transmission of a stereophonic program by a single FM broadcast station utilizing the main channel and a stereophonic subchannel.

(3) *Left (or right) signal.* The electrical output of a microphone or combination of microphones placed so as to convey the intensity, time, and location of sounds originating predominately to the listener's left (or right) of the center of the performing area.

(4) *Left (or right) stereophonic channel.* The left (or right) signal as electrically reproduced in reception of FM stereophonic broadcasts.

(5) *Main channel.* The band of frequencies from 50 to 15,000 Hz which frequency-modulate the main carrier.

(6) *Pilot subcarrier.* A subcarrier that serves as a control signal for use in the reception of FM stereophonic sound broadcasts.

(7) *Stereophonic separation.* The ratio of the electrical signal caused in sound channel A to the signal caused in sound channel B by the transmission of only a channel B signal. Channels A and B may be any two channels of a stereophonic sound broadcast transmission system.

(8) *Stereophonic sound.* The audio information carried by plurality of channels arranged to afford the listener a sense of the spatial distribution of sound sources. Stereophonic sound broadcasting includes, but is not limited to, biphonic (two channel), triphonic (three channel) and quadrophonic (four channel) program services.

(9) *Stereophonic sound subcarrier.* A subcarrier within the FM broadcast baseband used for transmitting signals for stereophonic sound reception of the main broadcast program service.

(10) *Stereophonic sound subchannel.* The band of frequencies from 23 kHz to 99 kHz containing sound subcarriers and their associated sidebands.

* * * * *

■ 3. Amend § 73.402 by adding paragraph (i) to read as follows:

§ 73.402 Definitions.

* * * * *

(i) *Asymmetric sideband operation.* For digital FM stations, the use of different power levels on the upper and lower digital sidebands in a hybrid or extended hybrid DAB system.

■ 4. Amend § 73.404 by adding paragraphs (e) through (g) to read as follows:

§ 73.404 IBOC DAB operation.

* * * * *

(e) All FM stations transmitting hybrid IBOC signals may operate with total effective radiated power of up to −14 dBc. No station may operate its digital carriers with a total effective radiated power in excess of −10 dBc. A station using symmetric sidebands planning to operate with a total radiated power in excess of −14 dBc must confirm compliance with Table 1 below by calculating the signal strength of its analog signal at the first adjacent station's 60 dBμ contour. All calculations must be made using the standard FCC contour prediction methodology.

TABLE 1 TO PARAGRAPH (e)—MAXIMUM PERMISSIBLE FM DIGITAL ERP FOR SYMMETRIC SIDEBAND OPERATION

Proponent analog F(50,10) field strength at first adjacent station's analog 60 dBμ F(50,50) contour (symmetric sideband operation)	Maximum permissible FM digital ERP (dBc)
57.9 dBμ and above	−14
56.5 dBμ to 57.8 dBμ	−13
55.6 dBμ to 56.4 dBμ	−12
54.1 dBμ to 55.5 dBμ	−11
54.0 dBμ or less	−10

(f) FM stations may transmit hybrid IBOC signals with asymmetric power on

the digital sidebands, as defined in § 73.402(i). Where asymmetric operation is used, the Effective Radiated Power at each sideband must be adjusted so that the total sideband powers do not exceed the total power that would be authorized for the station operating in symmetric sideband mode. A station using asymmetric sidebands planning to operate with a radiated power in excess of −17 dBc on either sideband (upper or lower) must confirm compliance with Table 1 below by calculating the signal strength of its analog signal at the respective (upper or lower) first adjacent station's 60 dBμ contour. All calculations must be made using the standard FCC contour prediction methodology.

TABLE 1 TO PARAGRAPH (f)—MAXIMUM PERMISSIBLE FM DIGITAL ERP FOR ASYMMETRIC SIDEBAND OPERATION

Proponent analog F(50,10) field strength at the upper or lower first adjacent station's analog 60 dBμ F(50,50) contour (asymmetric sideband operation)	Maximum permissible FM digital ERP for the respective (upper or lower) sideband (dBc)
54.9 dBμ and above	−17
53.5 dBμ to 54.8 dBμ	−16
52.6 dBμ to 53.4 dBμ	−15
51.1 dBμ to 52.5 dBμ	−14
51.0 dBμ or less	−13

(g) The digital effective radiated power of a previously authorized superpowered FM station, as defined in § 73.310(a)(7) and (a)(21), must be limited to the class maximum set forth in §§ 73.211 and 73.511.

■ 5. Amend § 73.406 by adding paragraphs (d)(5) through (8) to read as follows:

§ 73.406 Notification.

* * * * *

(d) * * *

(5) If applicable, for FM stations planning to operate with symmetric sidebands in excess of −14 dBc, a certification that the proposed FM digital Effective Radiated Power is permitted, using the table set forth in Table 1 to § 73.404(e). Certifications must be based on the most restrictive analog field strength of the proponent at any nearby first-adjacent channel station's 60 dBμ contour.

(6) If applicable, for FM stations employing asymmetric sideband operation as defined in § 73.402(i), a certification that the proposed digital sideband power on each sideband conforms to the Maximum Permissible FM Digital ERP set forth in Table 1 to § 73.404(f), and that the total digital sideband power will not exceed the total power if the digital sideband operation were symmetric.

(7) Any digital FM station permanently reducing digital power must notify the Commission of such digital power reduction on Form 2100, Schedule 335–FM. Any such notification of digital FM power reduction must include a short statement of the reason(s) for the power reduction.

(8) Any digital FM station permanently discontinuing asymmetric sideband operation and returning to symmetric sideband operation must notify the Commission of such return to symmetric sideband operation on Form 2100, Schedule 335–FM. Any such notification of discontinuing asymmetric sideband operation must include a short statement of the reason(s) for such action.

[FR Doc. 2023–17423 Filed 8–21–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 245

[Docket No. FRA–2022–0019, Notice No. 3]

RIN 2130–AC91

Certification of Dispatchers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: On May 31, 2023, FRA published an NPRM proposing to require railroads to develop written programs for certifying dispatchers and to submit those written certification programs to FRA for approval prior to implementation. On July 5, 2023, FRA published a notice extending the comment period by 30 days. By this notice, FRA is extending the NPRM's comment period by an additional 15 days.

DATES: The comment period for the NPRM, scheduled to close on August 30, 2023, is extended until September 14, 2023.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2022–0019, Notice No. 1, may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC91). Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Curtis Dolan, Railroad Safety Specialist, Dispatch Operating Practices, telephone: (470) 522–6633 or email: *curtis.dolan@dot.gov;* or Michael C. Spinnicchia, Attorney Adviser, Office of the Chief Counsel, telephone: (202) 493–0109 or email: *michael.spinnicchia@dot.gov.*

SUPPLEMENTARY INFORMATION: On July 24, 2023, FRA provided information in the rulemaking docket about the accidents that were analyzed by FRA in the regulatory impact analysis.[1] In an August 5, 2023, petition, the American Short Line and Regional Railroad Association (ASLRRA) requested a 30-day extension of the NPRM's [2] comment period to analyze the information and its impact on ASLRRA's member railroads.

The comment period for this NPRM is scheduled to close on August 30, 2023.[3] As FRA is partially granting ASLRRA's request, the comment period is now extended 15 days to September 14, 2023.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *https://www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact

[1] *https://www.regulations.gov/document/FRA-2022-0019-0022.*

[2] 88 FR 35574 (May 31, 2023).

[3] 88 FR 42907 (July 5, 2023).

the agency for alternate submission instructions.

Authority: 49 U.S.C. 20103, 20107, 20162, 21301, 21304, 21311; 28 U.S.C. 2461 note; 49 CFR 1.89; and Pub. L. 110–432, sec. 402, 122 Stat. 4884.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2023–18033 Filed 8–21–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 246

[Docket No. FRA–2022–0020, Notice No. 3]

RIN 2130–AC92

Certification of Signal Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: On May 31, 2023, FRA published an NPRM proposing to require railroads to develop written programs for certifying signal employees and to submit those written certification programs to FRA for approval prior to implementation. On July 5, 2023, FRA published a notice extending the comment period by 30 days. By this notice, FRA is extending the NPRM's comment period by an additional 15 days.

DATES: The comment period for the NPRM, scheduled to close on August 30, 2023, is extended until September 14, 2023.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2022–0020, Notice No. 1, may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC92). Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: (816) 516–7168 or email: *Gabe.Neal@dot.gov;* or Kathryn Gresham, Attorney Adviser, Office of the Chief Counsel, telephone: (202) 577–7142 or email: *Kathryn.Gresham@dot.gov.*

SUPPLEMENTARY INFORMATION: On July 28, 2023, FRA provided information in the rulemaking docket about the accidents that were analyzed by FRA in the regulatory impact analysis.[1] In an August 5, 2023, petition, the American Short Line and Regional Railroad Association (ASLRRA) requested a 30-day extension of the NPRM's [2] comment period to analyze the information and its impact on ASLRRA's member railroads.

The comment period for this NPRM is scheduled to close on August 30, 2023.[3] As FRA is partially granting ASLRRA's request, the comment period is now extended 15 days to September 14, 2023.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *https://www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Authority: 49 U.S.C. 20103, 20107, 20162, 21301, 21304, 21311; 28 U.S.C. 2461 note; 49 CFR 1.89; and Pub. L. 110–432, sec. 402, 122 Stat. 4884.

[1] *https://www.regulations.gov/document/FRA-2022-0020-0010.*

[2] 88 FR 35632 (May 31, 2023).

[3] 88 FR 42907 (July 5, 2023).

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2023–18034 Filed 8–21–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2023–0001]

RIN 1652–AA69

49 CFR Parts 1500, 1530, 1570, 1572, 1580, 1582, 1584

Vetting of Certain Surface Transportation Employees

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of proposed rulemaking (NPRM); Extension of comment period.

SUMMARY: On May 23, 2023, the Transportation Security Administration (TSA) published a notice of proposed rulemaking (NPRM) proposing security vetting of certain public transportation, railroad, and over-the-road-bus (OTRB) employees. Through this notice, TSA is extending the comment period to October 1, 2023, to provide additional time for the public to submit comments.

DATES: The comment period for the NPRM published at 88 FR 33472 (May 23, 2023), is extended from August 21, 2023, to October 1, 2023.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system. To avoid duplication, please use only one of the following methods:

- *Electronic Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS. Comments must be postmarked by the date indicated above.
- *Fax:* (202) 493–2251.

See the **SUPPLEMENTARY INFORMATION** section for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT:

For program questions: Victor Parker, Surface Division, Policy, Plans, and Engagement, TSA–28, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6002; telephone (571) 227–1039; email *VettingPolicy@tsa.dhs.gov.*

For legal questions: Christine Beyer, Chief Counsel's office, TSA–2, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598—6002; telephone (571) 227–2484; facsimile (571) 227–1380; email *tsa.surface.vetting@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period Extension

On May 23, 2023, TSA issued its NPRM entitled Vetting of Certain Surface Transportation Employees (88 FR 33472), and provided the public 90 days to submit comments on the proposal, or until August 21, 2023. Interested parties have requested an extension of the public comment period to give them additional time to respond to the NPRM. While TSA believes that the current 90-day comment period is sufficient for full and meaningful public participation, TSA agrees to extend the comment period to October 1, 2023, to allow the public an additional period to prepare and file comments.

Request for Comment

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action, as well as on TSA's collections of information under the Paperwork Reduction Act as described further below. See the **ADDRESSES** section above for information on where to submit comments.

Submitting Comments

With each comment, please identify the docket number at the beginning of your comments, reference a specific portion or section of the rulemaking, explain the reason for any recommended change, and include supporting data. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material electronically, by mail, or fax as provided under the **ADDRESSES** section, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard or envelope on which the docket number appears and we will mail it to you.

All comments, except those that include confidential or sensitive security information (SSI) [1] will be posted to *https://www.regulations.gov,* and will include any personal information you have provided. Should you wish your personally identifiable information redacted prior to filing in the docket, please clearly indicate this request in your submission to TSA. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Certain Sensitive Information Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, SSI, or protected critical infrastructure information to the public regulatory docket. Comments containing this type of information should be submitted separately from other comments, appropriately marked as containing such information, and submitted by mail to the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. TSA will take the following actions for all submissions containing SSI:

- TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access.
- TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents.
- TSA may include a redacted version of the comment in the public docket.
- TSA will treat requests to examine or copy information that is not in the public docket as any other request under the Freedom of Information Act (5 U.S.C. 552) and the Department of Homeland Security's (DHS) Freedom of Information Act regulation found in 6 CFR part 5.

Reviewing Docket Comments and Documents

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual, association, business entity, labor union, *etc.,* who submitted the comment. For more about privacy and the docket, review the Privacy and Security Notice for the Federal Docket Management System at *https://www.regulations.gov/privacyNotice,* as well as the System of Records Notice DOT/ALL 14—Federal Docket Management System (73 FR 3316, January 17, 2008) and the System of Records Notice DHS/ALL 044—eRulemaking (85 FR 14226, March 11, 2020).

You may review TSA's electronic public docket at *https://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review items in TSA's public docket, you may visit this facility between 9 a.m. and 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This DOT facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE, Washington, DC 20590.

Availability of Published Rulemaking Documents

You can find an electronic copy of this rulemaking using the internet by accessing the Government Publishing Office's web page at *https://www.govinfo.gov/app/collection/FR/to* view the daily published **Federal Register** edition or accessing the Office of the Federal Register's web page at *https://www.federalregister.gov.* Copies are also available by contacting the individual identified for ''General Questions'' in the **FOR FURTHER INFORMATION CONTACT** section.

Stacey Fitzmaurice,

Executive Assistant Administrator, Operations Support.

[FR Doc. 2023–18080 Filed 8–18–23; 11:15 am]

BILLING CODE 9110–05–P

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2023–0069; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BE77

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Toothless Blindcat and Widemouth Blindcat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the toothless blindcat (*Trogloglanis pattersoni*) and widemouth blindcat (*Satan eurystomus*), two cavefish species from the Edwards Aquifer in Bexar County, Texas, as endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the toothless blindcat and widemouth blindcat. After a review of the best available scientific and commercial information, we find that listing both species is warranted. If we finalize this rule as proposed, it would extend the Act's protections to these species. We have determined that designation of critical habitat is not prudent.

DATES: We will accept comments received or postmarked on or before October 23, 2023. 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 a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 6, 2023.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2023–0069, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2023–0069, U.S. Fish and Wildlife Service, MS: PRB/3W, 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 *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0069.

FOR FURTHER INFORMATION CONTACT: Karen Myers, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 1505 Ferguson Lane, Austin, TX 78754; telephone 512–937–7371. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the toothless blindcat and widemouth blindcat both meet the definition of an endangered species; therefore, we are proposing to list both as such. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the toothless blindcat and the widemouth blindcat as endangered species under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because 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. We have determined that the toothless blindcat and widemouth blindcat are endangered due to the threat of mortality from groundwater well pumping (Factor E).

The toothless blindcat and the widemouth blindcat occupy a limited range, and populations of both species have likely been severely reduced since the introduction of groundwater wells in the late 19th to early 20th centuries. The lethal discharge of the species through groundwater wells could potentially impact the populations directly, with an estimated cumulative loss of thousands of individuals. Additionally, the assumed life history traits (such as increased age at first reproduction, lower numbers of reproductively active females, reduced numbers of eggs, slower growth rates, and longer life spans) of both species make them more susceptible to long-term impacts on demographic structure in the form of lower numbers of sexually mature fish, reduced reproductive output, and diminished recruitment of younger individuals.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. We have determined that designating critical habitat for the toothless blindcat and widemouth blindcat is not prudent because the main driver of both species' status is direct mortality resulting from groundwater well pumping (Factor E). The wells constructed in blindcat habitat are not affecting the species through habitat destruction or modification; instead, it is the capture, entrainment, and death of individuals due to uptake from groundwater well pumping that threatens the species. Since we have determined that the present or threatened destruction, modification, or curtailment of both species' habitats or range is not a threat to the toothless blindcat or the widemouth blindcat, we determine that designation of critical habitat is not prudent for the species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or

information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, ranges, 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 ranges, including distribution patterns and the locations of any additional populations of these species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for these species, their habitats, or both.

(2) Threats and conservation actions affecting these species, including:

(a) Factors that may be affecting 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.

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species.

(c) Existing regulations or conservation actions that may be addressing threats to these species.

(3) Additional information concerning the historical and current status of these species.

(4) Information regarding our determination that designating critical habitat for the toothless blindcat and widemouth blindcat is not prudent.

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, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

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**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. 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 *https://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 *https://www.regulations.gov.*

Our final determinations may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that one or both of these species is threatened instead of endangered, or we may conclude that one or both of these species does not warrant listing as either an endangered species or a threatened species. In our final rule, we will clearly explain our rationale and the basis for our final decisions, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. 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** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

We identified the toothless blindcat and widemouth blindcat as category 2 candidates in our December 30, 1982, candidate notice of review (CNOR) (47 FR 58454). Category 2 candidates were defined as taxa for which we had information indicating that proposing to list the species was possibly appropriate, but for which substantial data were not available to biologically support a proposed rule. Both species remained so designated in subsequent CNORs (50 FR 37958, September 18, 1985; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In our February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of category 2 species as candidates; therefore, the toothless blindcat and widemouth blindcat were no longer candidate species.

In August 1995, we received a petition from the American Society of Ichthyologists and Herpetologists (ASIH) and the Desert Fishes Council. The petition was to list three species, including the toothless blindcat and widemouth blindcat (ASIH 1995, entire). Subsequently, in 1998, we published a 90-day finding that the petition did not present substantial information indicating that these species warranted listing (63 FR 48166; September 9, 1998).

On June 25, 2007, we received a petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians) to list 475 species, including the toothless blindcat and widemouth blindcat, in the southwestern United States as endangered or threatened species and to designate critical habitat under the Act (Forest Guardians 2007, entire). On December 16, 2009, we published a partial 90-day finding (74 FR 66866) on 192 species from that petition; in that document, we announced that the petition presented substantial information that listing the toothless blindcat and widemouth blindcat may be warranted.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the toothless blindcat and widemouth blindcat. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act,

we solicited independent scientific review of the information contained in the toothless blindcat and widemouth blindcat SSA report (Service 2022, entire). We sent the SSA report to six independent peer reviewers and received four responses. Results of this structured peer review process can be found at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2023–0069. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review, above, we received comments from four peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the content of the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the SSA. One peer reviewer questioned assumptions related to groundwater well mortality and habitat connectivity. Our review of the best available information regarding the impact of anthropogenic mortality (such as well mortality) on fish species similar to the toothless and widemouth blindcats (that is, fish species that are subterranean, are long-lived, and have reduced reproductive capacity) supports the findings of the SSA.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the toothless blindcat (*Trogloglanis pattersoni*) and widemouth blindcat (*Satan eurystomus*) is presented in the SSA report (Service 2022, entire).

The toothless blindcat and widemouth blindcat are cavefish endemic to the San Antonio segment of the Edwards Aquifer in Bexar County, Texas. They inhabit a deep, inaccessible subterranean region of the aquifer, with all known specimens of both species having been collected from groundwater wells at depths at or greater than 308 meters (m) (1,010 feet (ft)). The toothless blindcat and the widemouth blindcat are members of the catfish (Siluriformes) family Ictaluridae, and are the only members of their respective genera, *Trogloglanis* and *Satan* (Arce-H et al. 2017, pp. 406–407, 415).

The toothless blindcat and widemouth blindcat occur in a very deep portion of the San Antonio segment of the Edwards Aquifer, where they can likely move through the groundwater flowing through a system of interconnected subterranean conduits (Ford and Williams 2007, pp. 103–106, 112–114; Culver and Pipan 2009, pp. 5–8; Veni 2012, pp. 603–608; White 2012, pp. 383–386). These caves and conduits are formed in the rock layers of the Edwards Aquifer through dissolution by groundwater (Livingston et al. 1936, pp. 72–73; Petitt and George 1956, p. 16; Maclay and Small 1986, p. 61).

Due to their deep subterranean habitat, the toothless blindcat and widemouth blindcat exhibit several stygomorphic (adaptations to subterranean conditions) characteristics, including depigmentation, absence of fully developed eyes, and short lateral line canals (Lundberg 1982, pp. 77–78; Langecker and Longley 1993, pp. 978–980; Lundberg et al. 2017, pp. 163–164). Blindcats lack scales and possess eight barbels (whisker-like sensory organs) arranged around the snout and mouth (Eigenmann 1919, p. 398; Hubbs and Bailey 1947, pp. 5, 10; Lundberg 1982, p. 16; Burr et al. 2020, p. 42). The toothless blindcat and widemouth blindcat appear to be among the smallest known catfishes, reaching total lengths of up to 103.8 millimeters (mm) (4.1 inches (in)) and 136.9 mm (5.4 in), respectively (Hubbs and Bailey 1947, pp. 8–10, 12–14; Suttkus 1961, pp. 62–63; Lundberg 1982, pp. 10–11; Langecker and Longley 1993, p. 977; Burr et al. 2020, p. 26).

The toothless blindcat lacks teeth, and its jaw is thin and papery with a funnel-like mouth positioned ventrally below the snout (Hubbs and Bailey 1947, pp. 5, 11–12; Lundberg 1982, pp. 15–16). The widemouth blindcat possesses well-developed teeth, a robust jaw, and a larger mouth positioned transversely at the depressed and flat snout (Hubbs and Bailey 1947, p. 5). From their jaw and mouth morphology, as well as specimen stomach contents, we infer that the toothless blindcat is a detrivore that feeds on biofilm and other organic material, whereas the widemouth blindcat is likely an opportunistic predator capable of taking sizeable prey (Longley and Karnei 1978a, pp. 31, 34; Lundberg et al. 2017, pp. 160, 162).

There is documentation of toothless blindcat individuals being expelled from eight wells and widemouth blindcat individuals from five wells, with overlapping expulsions at two wells (Zara Environmental 2020, pp. 11–12; Diaz 2021, p. 30). Wells that have produced the species are relatively close, with an average distance between wells of 4.5 kilometers (km) (2.8 miles (mi)) for the toothless blindcat and 6.3 km (4.0 mi) for the widemouth blindcat (Service 2022, p. 45). Given the potential for hydrogeological connectivity, the species likely exist as single sympatric subterranean populations. Well depth ranges from 308 m (1,010 ft) to 582 m (1,909 ft) (Zara Environmental 2020, pp. 14–23), making these species some of the deepest known cavefish (Trajano 2001, p. 140; Fišer et al. 2014, p. 976). These wells are distributed along a southwest to northeast trending line through Bexar County, roughly paralleling the southeastern boundary of the aquifer's artesian zone. The artesian zone of the Edwards Aquifer is where hydraulic pressure of groundwater forces water to the surface, where the water escapes through springs, seeps, or wells drilled into the aquifer (Lindgren et al. 2004, pp. 35, 39–40).

The southeastern extent of the artesian zone represents the limit of freshwater in the Edwards Aquifer (Hovorka et al. 1995, p. 3; Sharp and Smith 2019, pp. 151–152). Groundwater from the aquifer's artesian zone is considered high-quality with low dissolved solids ranging from 300 to 500 milligrams/liter (mg/l) (Petitt and George 1956, p. 76; Maclay et al. 1980, p. 8). To the southeast of the artesian zone, dissolved solids increase and the groundwater becomes progressively more saline (Groschen 1993, pp. 2, 7; Groschen and Buszka 1997, pp. 1–3). The contact point where freshwater (*i.e.,* <1,000 mg/l dissolved solids) generally meets saline water (*i.e.,* >1,000 mg/l) is termed the ''freshwater/saline-water interface'' (Arnow 1959, p. 40; Maclay et al. 1980, p. 10; Groschen 1993, p. 2; Groschen and Buszka 1997, pp. 1, 3). All wells where blindcats have been expelled occur just to the northwest of the freshwater/saline-water interface on the freshwater side.

Neither blindcat species has ever been directly observed in its natural subterranean habitat, but we can infer the species' needs from their location and from the life-history of other cavefish species. Subterranean habitat for the toothless blindcat and widemouth blindcat appears to be centered in an area of greater aquifer permeability in Bexar County (Maclay 1995, pp. 26–27; Hovorka et al. 1996, pp. 50, 54–57; Hovorka et al. 2004, p. 19). Concentrated groundwater flow in this area has likely resulted in the formation of enlarged faults, fractures, and cavernous openings that provide suitable physical habitat for the blindcats (Lindgren et al. 2004, pp. 16).

The area along the freshwater/saline-water interface is likely an area of focused groundwater movement due to

greater porosity and permeability in that area (Maclay and Small 1986, p. 66; Hovorka et al. 1996, pp. 50, 54–57; Worthington 2003, pp. 16, 20, 23–24; Hovorka et al. 2004, pp. 19, 42; Lindgren et al. 2004, pp. 11, 15, 17–21, 26). We infer the importance of this location for these species from the hydraulic connectivity and the existence of aquifer food resources at great depth near this interface (Birdwell and Engel 2009, pp. 153–155; Engel and Randall 2011, pp. 313–314, 318; Hutchins et al. 2013, pp. 254–255; Bishop et al. 2014, pp. 90–91; Hutchins et al. 2016, pp. 1535–1539). Due to the historical absence of human-related contamination, we also infer that the toothless blindcat and widemouth blindcat are adapted to and require groundwater of a certain quality from the Edwards Aquifer that is relatively free of anthropogenic contaminants.

Longevity and reproduction of the toothless blindcat and widemouth blindcat is not known but can be inferred from other cavefish species. Cavefishes are generally characterized by life history traits such as increased age at first reproduction, lower numbers of reproductively active females, reduced numbers of eggs, slower growth rates, and longer life spans (Poulson 1963, pp. 266, 268, 275; Trajano 1997, p. 367; Trajano 2001, pp. 152–153; Trajano and Bichuette 2007, p. 114; Niemiller and Poulson 2010, pp. 220–227, 232–235; Secutti and Trajano 2021, p. 103). Estimated lifespans of other cavefish range from 8 to 45 years (Niemiller and Poulson 2010, p. 226; Trajano 1997, p. 367; Trajano 2001, pp. 151–152; Trajano and Bichuette 2007, p. 114; Secutti and Trajano 2021, p. 103).

Because the blindcats are cavefish, we assume that age at first reproduction for the toothless blindcat and widemouth blindcat is likely older than 2 years of age, and the age at reproductive maturity is likely 6 years of age or older; this is older than the age at first reproduction for surface catfish species and similar to or older than the age of reproductive maturity for the northern cavefish (Niemiller and Poulson 2010, p. 221). Also, like other cavefishes (Niemiller and Poulson 2010, pp. 221–222), we assume that only a fraction (3 percent to 13 percent) of female toothless blindcats and widemouth blindcats produce offspring on an annual basis. Clutch size is likely comparable to the small clutches produced by *Noturus* species (fewer than 200 eggs). Adult toothless blindcats and widemouth blindcats probably reach significant ages for catfishes, with maximum ages of multiple decades (more than 25 years). The toothless blindcat and widemouth blindcat inhabit a subterranean system that is well-buffered from immediate seasonal changes. However, seasonality of reproduction cannot be dismissed, as these fish may respond to periods of high or low groundwater flow in relation to aquifer recharge.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following 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.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of these species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the viability of the toothless blindcat and the widemouth blindcat, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified these species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated both individual species' life-history needs. The next stage involved an assessment of the historical and current condition of each species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2023–0069 on *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the toothless blindcat and the widemouth blindcat and their resources, and the threats that influence these species' current and future condition, in order to assess these species' overall viability and the risks to that viability.

Species Needs

Adequate Population Size

Both species of blindcats are assumed to have potentially numbered in the tens of thousands of individuals historically (Trajano 2001, pp. 145–146; Service 2022, pp. 43–44). Due to the toothless blindcat being in a lower trophic level as a detrivore and the widemouth blindcat being in a higher trophic level as a predator, we assume the population of the widemouth blindcat is smaller than that of the toothless blindcat (Trajano 2001, p. 145). Adequate population size at sufficient density is needed for both species to access mates for reproduction and withstand stochastic events. Mortality events in long-lived, reproductively constrained fish populations can have prolonged impacts on population demographics, including reduced numbers of sexually mature fish, reduced reproductive output, and diminished recruitment of younger individuals (Adams 1980, p. 7; Heppell et al. 2005, pp. 213–214, 217; Graening et al. 2010, pp. 74–75; Whiterod et al. 2018, pp. 622–626). Representation among various age-classes is needed to support recruitment of sexually mature adults to maintain adequate population sizes (Adams 1980, pp. 2–7; Poulson 2001, pp. 354–357; Hsieh et al. 2010, pp. 167–176).

Intact and Interconnected Subterranean Void Space

The toothless blindcat and widemouth blindcat inhabit subterranean voids of sufficient size and connectivity within the Edwards Aquifer. The species' occurrence from multiple wells along a southwest to northeast trending line in Bexar County suggests that the ranges of both species might be relatively continuous. Subterranean networks of water-filled conduits can facilitate gene flow through the water-filled voids of aquifers (Chippindale 2009, pp. 8–9; Vörös et al. 2018, p. 217; Corbin 2020, p. 75; Falniowski et al. 2021, pp. 4979–4980, 4985–4986; Grego and Pešić 2021, pp. 68, 73–74). Both fish species use these connected areas for dispersal, foraging, and reproduction (Service 2022, pp. 29–37, 44–45).

Adequate Groundwater Quantity

Sufficient volumes of groundwater are needed to fill subterranean void space and provide dispersal corridors for the species within a narrow band of the Edwards Aquifer. The region of the aquifer these species inhabit is an area of significant groundwater flow (Maclay and Small 1986, p. 66; Hovorka et al. 1996, pp. 50, 54–57; Worthington 2003, pp. 16, 20, 23–24, 31–32; Hovorka et al. 2004, pp. 19, 42; Lindgren et al. 2004, pp. 11, 15, 17–21, 26).

Suitable Water Quality

Over millions of years, both the toothless blindcat and widemouth blindcat have evolved to very deep aquifer conditions, including the water quality at these depths. Thus, they likely need water quality that matches natural aquifer conditions, including a pH of 7–8, a consistent temperature around 28 degrees Celsius (°C) (82 degrees Fahrenheit (°F)), specific conductivity between 465–482 microsiemens per centimeter (µS/cm), and relatively free of contaminants (Karnei 1978, pp. 115–116; Service 2022, pp. 37–41).

Chemolithoautotrophic Food Web

Subterranean systems at great depths and without direct connections to the surface are often isolated from surface sources of organic matter (Akob and Küsel 2011, p. 3534; Hubalek et al. 2016, pp. 2447–2448; Itävaara et al. 2016, pp. 4, 6–8). Instead, food webs in these settings may be based on microbial production of organic carbon from inorganic materials in a process termed chemolithoautotrophy (Engel 2007, pp. 187–188). Microbes involved in chemolithoautotrophy include a wide range of bacteria and fungi adapted to

the extreme conditions (such as high pressure and high salinity) of the deep subsurface (Amend and Teske 2005, pp. 145–147; Engel 2007, p. 188; Akob and Küsel 2011, pp. 3534, 3236; Itävaara et al. 2016, pp. 3–4, 20–22). The toothless blindcat is believed to be a detrivore that feeds on bacterial biofilms. The widemouth blindcat is hypothesized to be a predator that feeds on groundwater invertebrates and potentially suitably sized toothless blindcats. For both species to persist, they need a functional chemolithoautotrophic food web in an undegraded condition. Because groundwater in the Edwards Aquifer originates from precipitation and stream runoff, infusion of surface-borne nutrients to toothless blindcat and widemouth blindcat habitat cannot be discounted and may play some role in the deep aquifer food web. However, no accounts detailing surface-borne nutrient presence at great aquifer depth have been published to date.

Summary of Threats

We reviewed the potential threats that could be currently affecting the toothless blindcat and the widemouth blindcat. In this proposed rule, we will discuss only those threats in detail that could meaningfully impact the status of either species (a more in-depth analysis of all potential threats can be found in the SSA report (Service 2022, pp. 54–61, 87–95). We conducted a thorough analysis of threats to groundwater quality in terms of degradation due to pollutants and other contaminants and threats to groundwater quantity in the form of pumping and climate change. We found that while these threats may impact the species, they are not likely to have effects at the population or species level. For example, groundwater contamination has the potential to impact the toothless blindcat and widemouth blindcat (Service 2022, pp. 60–61). However, because of the depth of the species' habitat and the thick impermeable rock layer covering it, groundwater contamination is not a primary threat for the status of the toothless blindcat or the widemouth blindcat. Similarly, because of the depth of the species' habitat, groundwater quantity to support habitat for the fishes has not experienced change from historical conditions. Aquifer water levels where the blindcats reside show no evidence of long-term decline, even at times of prolonged drought and unregulated pumping (Maclay 1995, pp. 48, 52; Lindgren et al. 2004, 40–41, 45). In addition, management of groundwater withdrawals from the San Antonio segment has been in place since the late 1990s (National Research Council 2015, pp. 24–27, 29, 32–36; National Academies of Sciences, Engineering, and Medicine 2018, pp. 7–8, 109, 152; Hardberger 2019, pp. 193–194; Payne et al. 2019, p. 199) and pumped volumes have decreased since 2008 (Service 2022, pp. 80–81). Flow protection measures are in place that principally protect the two largest spring systems in the region (Comal Spring and San Marcos Spring systems), but those measures also benefit water levels deeper in the aquifer. We also note that, while competition with exotic species was identified in our 90-day finding (74 FR 66866; December 16, 2009) as a potential threat, a thorough review of the literature and consultation with experts revealed no evidence of exotic species competing with or otherwise impacting either species. The primary threat affecting the status of the toothless blindcat and the widemouth blindcat is mortality through groundwater well uptake (Factor E).

Groundwater Wells

Prior to well drilling and extraction of groundwater from the Edwards Aquifer in the late 19th century, the toothless blindcat and widemouth blindcat were unaffected by anthropogenic surface activities given the substantial depth of their habitat and the layers of impermeable rock that separated that habitat from the surface. Extraction of groundwater from wells represented a new and nearly constant stressor impacting both species' populations. Well mortality is currently the most direct and observable anthropogenic agent of mortality for both species. No toothless blindcat or widemouth blindcat expelled from groundwater wells has survived for any extended period, and many specimens are ejected mangled and dead due to battering as they are forced to the surface.

In Bexar County, the drilling of wells to meet public supply and irrigation demands began in the late 1880s (Livingston et al. 1936, p. 87; Petitt and George 1956, p. 44). The existence of the toothless blindcat and widemouth blindcat was only documented through individual fish expelled from groundwater wells in the early 20th century (Eigenmann 1919, pp. 397, 399–400; Hubbs and Bailey 1947, pp. 1, 4–11). More than 1,500 wells were drilled in Bexar County by 1953, with 250 wells being large capacity (*i.e.,* 25–76 centimeters (cm) (10–30 in) in diameter) (Petitt and George 1956, p. 44; Maclay 1995, p. 43), with additional large capacity wells drilled during the 1950s across the City of San Antonio and Bexar County (Petitt and George 1956, p. 47; Arnow 1959, pp. 24, 29). Until 1996, groundwater extraction in Bexar County was completely unregulated, with no restrictions on well capacity, volumes of water discharged, or groundwater waste (Miller 2005, pp. 172–173; Gulley 2015, p. 2; Mace 2019, p. 208). From 1939 to 2000, annual groundwater withdrawals increased by an average of 5,550,660 cubic meters (m^3) (4,500 acre-feet (ac-ft)) per year (Lindgren et al. 2004, pp. 35–36). As of September 28, 2022, the Texas Water Development Board (2022, unpaginated) lists 307 active wells, at depths of more than 300 m (984 ft), that access the artesian zone of the Edwards Aquifer in Bexar County.

The additive effect of anthropogenic mortality on cavefishes has been studied for only a few taxa. Cavefish exhibit delayed maturity, reduced fecundity, low mortality, and longer lifespans (Pianka 1970, p. 592; Bichuette and Trajano 2021, p. 2). Because cavefish have few offspring, the loss of individuals can have a substantial effect on the population; any fish that is killed does not survive to reproduce and contribute individuals to the population in the future. The Ozark cavefish (*Amblyopsis rosae*) is one example of the long-lasting impact of anthropogenic mortality. After the impact of human threats, populations of this species skewed towards older individuals with few younger fish present (Service 1989, p. 7; Graening et al. 2010, pp. 74–75). It was not until the 2000s, after a multi-decade period of recovery following the legal prohibition against collection, that a larger proportion of younger Ozark cavefish began to appear in populations, indicating the cessation of adult capture and the successful recruitment of juvenile fish (Graening et al. 2010, pp. 74–75).

Several deep-sea fishes also have similar life-history traits as cavefishes, including production of fewer and larger eggs, delayed sexual maturity, extended longevities, and roles as top predators in their respective systems (Poulson 2001, pp. 350, 357). Deep-sea fishes have been better studied regarding their response to anthropogenic mortality in the form of fishing (Adams 1980, pp. 1–2). Taxa such as orange roughy (*Hoplostethus atlanticus*), Patagonian toothfish (*Dissostichus eleginoides*), and other deep-sea species are very sensitive to overfishing (Adams 1980, pp. 4–5; Heppell et al. 2005, pp. 211–212). Fishing operations often target adult size classes that are slow to recruit into populations, which can lead to decreased egg production (Heppell et al. 2005, pp. 213–214, 217). As a result, deep-sea fish populations are slow to recover (*i.e.,* multiple decades) from

harvesting pressure due to reduced reproductive capacity (Adams 1980, p. 7; Whiterod et al. 2018, pp. 622–626).

The toothless blindcat and widemouth blindcat are among the oldest cavefishes in North America (Arce-H et al. 2017, pp. 421, 425). Both species, which are some of the deepest dwelling among known cavefishes, evolved over millions of years to inhabit very deep aquifer conditions (Trajano 2001, p. 140; Fišer et al. 2014, p. 976). The environmental stressors that typically affect and influence shallow subterranean systems (such as flooding, drying of cave passages/streams, and reduced surface nutrient input) are presumed to not operate, or are muted, at the depths where the blindcats occur. The deep artesian zone of the Edwards Aquifer provides a stable nutrient source (chemolithoautotrophy), consistent water quality (decades old groundwater), and very attenuated responses to climatic changes (temperature changes) on the surface. Given their long evolutionary history, the toothless blindcat and widemouth blindcat have life history traits that make them comparable to, if not more sensitive than, most other cavefishes in their response to increased loss of individuals from their populations.

While cavefish collection and deep-sea fishing removes larger size-class fish, loss of toothless blindcats and widemouth blindcats to groundwater pumping is plausibly size-indiscriminate. Wells extracting groundwater have the potential to remove blindcats at all life stages given that motile life stages move through water-saturated voids and are thus likely pelagic. Blindcats observed or collected from groundwater wells have been juveniles to adults. No eggs or smaller size classes (*e.g.,* larvae or fry) of either species have been reported to date. It is unlikely that eggs or larvae are not expelled from wells along with juveniles and adults. Rather, as larger individuals of both species are often severely mangled as they are forced up wells, it is probable that similarly transported eggs and larvae are physically destroyed and not visually discernable.

Additionally, unlike discrete collection and fishing events, groundwater pumping operates over much longer and sustained time frames given demands for groundwater. On an annual basis, wells may operate for several continuous months during the growing season for agricultural irrigation or nearly year-round for industrial and public water supply. The operational lifespan of many Bexar County wells is several decades long (*e.g.,* more than 60 years; Service 2022, pp. 70–80). Consequently, there has likely been very limited opportunity for cessation of this stressor where wells intercept toothless blindcat and widemouth blindcat habitat. In essence, groundwater wells may constitute near-permanent population sinks that can result in the mortality of most blindcats at all life stages. Loss of immature and adult individuals would constrain population growth through reductions in egg production and recruitment of mature adults. The impact of groundwater well mortality on toothless blindcat and widemouth blindcat populations could be substantial, with the potential to expel substantial numbers of toothless blindcats and widemouth blindcats over their operational lifespans (see *Current Condition,* below; Longley and Karnei 1978a, p. 36; Longley and Karnei 1978b, p. 39; Service 2022, pp. 74–79).

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on these species. To assess the current and future condition of these species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

In the early 1990s, federal litigation (*Sierra Club* v. *Secretary of the Interior,* No. MO–91–CA–069, U.S. District Court for the Western District of Texas) directed the Service to make determinations regarding minimum spring flows and aquifer levels necessary to support listed species occurring in the Comal Spring and San Marcos Spring systems. The Service produced a recovery plan with that guidance in 1996 (Service 1996, entire). Another outcome of litigation was the creation, in 1993, of the Edwards Aquifer Authority by the State of Texas to manage groundwater withdrawals (by nonexempt wells) from the San Antonio segment of the Edwards Aquifer (National Research Council 2015, pp. 24–26; Hardberger 2019, pp. 193–194; Payne et al. 2019, p. 199). The regulatory area of the Edwards Aquifer Authority includes all or a portion of Bexar, Comal, Hays, Medina, and Uvalde Counties.

The Edwards Aquifer Authority developed a habitat conservation plan, approved by the Service in 2013, which provides measures to minimize and mitigate take of the nine listed species related to covered activities (National Research Council 2015, pp. 27, 29, 32–36; RECON Environmental, Inc. 2021, pp. 3–55–3–67). Covered activities include groundwater withdrawals for drinking water supplies and irrigation as well as recreational activities (National Research Council 2015, pp. 32–36; RECON Environmental, Inc. 2021, pp. 2–1–2–16).

The voluntary minimization and mitigation measures of the plan are based on maintaining sufficient minimum flows at Comal Spring and San Marcos Spring to sustain listed species during a reoccurrence of prolonged drought conditions (National Research Council 2015, pp. 32–36; National Academies of Sciences, Engineering, and Medicine 2018, pp. 67–68; Service 2022, p. 64). A review of the Edwards Aquifer Habitat Conservation Plan suggests that flow protection measures, including groundwater modeling efforts, appear to be effective in meeting flow requirements of covered species (National Academies of Sciences, Engineering, and Medicine 2018, pp. 7–8, 109, 152). Additionally, volumes of groundwater pumped from the San Antonio segment of the Edwards Aquifer have decreased since 2008 (Service 2022, pp. 64–65).

The toothless blindcat and widemouth blindcat are not included in the habitat conservation plan because the plan's actions are most applicable to spring-dwelling species that inhabit upper portions of the Edwards Aquifer (RECON Environmental, Inc., pp. 1–9). However, protection of sustained flow at the Comal Spring and San Marcos Spring systems does provide overarching protection for species that inhabit deep portions of the San Antonio segment. Persistence of surface discharge at those spring systems suggests that deeper levels of the aquifer have not been appreciably reduced and remain water-saturated (Maclay 1995, pp. 48, 52; Lindgren et al. 2004, 40–41, 45).

An additional conservation measure is land protection efforts by the City of San Antonio's Edwards Aquifer Protection Program (Stone and Schindel 2002, pp. 38–39; Carnett 2022, unpaginated). In 2000, San Antonio passed Proposition 3, an initiative to fund the acquisition (fee-simple and conservation easements) of open space

to protect the contributing and recharge zones of the aquifer in Bexar County (Romero 2018, p. 2). That program was reapproved in 2005, 2010, and 2015, with additional funds to acquire open space (Reilly and Carter 2018, pp. 1–3–1–5). The effort was later expanded to acquire lands in Medina and Uvalde Counties that contain larger portions of the Edwards Aquifer's contributing and recharge zones (Romero 2018, pp. 5–6, 8). The dedicated sales tax expired in 2021, with 97,124 hectares (240,000 acres) acquired under the Edwards Aquifer Protection Program (Carnett 2022, unpaginated). The City of San Antonio recently approved an alternative funding stream to support land acquisitions through the commitment of $100 million over 10 years (Carnett 2022, unpaginated). Protection of open space has the potential to reduce the impacts of development (for example, run-off from impervious cover, fertilizer applications, and wastewater) and maintain aquifer recharge (Reilly and Carter 2018, pp. 3–2, 3–6; Romero 2018, pp. 5–6).

Several other entities also have measures to protect groundwater from contamination. These entities include the Edwards Aquifer Authority's Aboveground Storage Tank Program, Agricultural Secondary Containment Assistance Program, and Abandoned Well Program, among others (Edwards Aquifer Authority 2022, unpaginated). The San Antonio Water System implemented several water quality protection measures including development regulations (City of San Antonio Code of Ordinances, chapter 34, article VI, division 6, Aquifer Protection Ordinance No. 81491) for properties over the contributing and recharge zones, review of building permits and master development plans, regulation of underground storage tanks, and commercial/industrial compliance (San Antonio Water System 2022, unpaginated).

Current Condition

To assess the current conditions of the toothless blindcat and widemouth blindcat, we established analysis units immediately around well sites with documented records of the toothless blindcat or widemouth blindcat (''immediate area analysis units''), as well as a larger area encompassing these smaller units (''potential area of occurrence'') in order to assess threats to the fishes in a more spatially extensive area with a potentially contiguous subterranean system of voids within the aquifer. Neither of these units define populations but rather geographic areas we presume are areas of potential occupancy or areas that are important to or could influence both species' survival. The SSA report further details the methodology and rationale for creating these units (Service 2022, pp. 67–68).

Eight wells that historically produced toothless blindcat (six wells) and widemouth blindcat (four wells; two of which overlap with the toothless blindcat wells) have either been capped, plugged, or destroyed. Three wells that produced toothless blindcats (one of which also produced widemouth blindcats) are presumed to still operate, as we do not have access to the wells to confirm, nor do we have evidence to the contrary. Including these three wells, the immediate area analysis units contain a combined total of 27 active groundwater wells. Most of these wells are for agricultural irrigation or public water supply. The average age of these wells is 68 years, with the oldest well drilled in 1933 and the latest in 1985. Seventeen wells in the analysis units have been abandoned, plugged, or destroyed, including historical blindcat wells. Besides the documented blindcat wells in the analysis units, only 1 of the 24 active wells has ever been sampled for blindcats due to lack of access.

In the larger potential area of occurrence, a total of 82 active groundwater wells are established, including the active blindcat wells. Most of these wells are used for irrigation, public water supply, and industrial purposes. Primary water uses of the remaining wells are for aquaculture, domestic purposes, and livestock. Average age of active wells is 66 years, with the earliest wells drilled in 1915 and most recent in 2020. There are 36 abandoned, plugged, or destroyed wells in the potential area of occurrence. The four wells that have been sampled in this area showed no evidence of either blindcat species (Karnei 1978, pp. 68–70; Zara Environmental 2010, p. 68; 2020, p. 10).

Well Mortality Estimates

Researchers who have sampled groundwater wells for the toothless blindcat and widemouth blindcat have developed catch-per-unit-effort estimates for their sampling efforts (Longley and Karnei 1978a, pp. 35–36; 1978b, pp. 36, 38–40; Zara Environmental 2020, pp. 23–27). Catch per unit effort was expressed as volume of groundwater exiting a well to produce one individual of either species. Available estimates were based on surveys of toothless blindcat and widemouth blindcat populations that had already been subjected to several decades of unregulated groundwater extraction. The status of both blindcat species' populations prior to groundwater pumping is unknown, although it is known that both species experienced mortality once wells were established. It is plausible that, at the time of survey efforts (late 1970s and 2008 to 2014), toothless blindcat and widemouth blindcat population resiliency had already been diminished to some extent from past well mortality.

We assume that a higher catch per unit effort at a well, or lower volume of groundwater required to produce a single individual, may reflect larger blindcat populations. The highest catch per unit effort for both the toothless blindcat and widemouth blindcat comes from estimates for the Artesia Pump Station Well, with one toothless blindcat caught with every 65,000 m^3 (53 ac-ft) of groundwater and one widemouth blindcat caught with every 129,515 m^3 (105 ac-ft) of groundwater (see Table 1 below; Longley and Karnei 1978a, pp. 35–36; 1978b, pp. 36, 38–40).

We apply those estimates of catch per unit effort to estimate blindcat well mortality. These estimates of blindcat well mortality do not account for variability in distribution and extent of suitable blindcat habitat, fish abundances by site, well size and discharge capacity, periods of discharge (intermittent or constant), location of well casing relative to potential habitat, and reporting of discharged volumes. Complete data on those and other variables are not available.

Estimates of well mortality also only apply to assumed losses of larger juvenile and adult fishes. Catch per unit effort has never been developed for larvae and very small juveniles. The following estimates of well mortality will therefore be underestimates, as no data exist on loss of those life stages. Research on other cavefishes and deep-sea fishes with similar life history traits suggests that sustained loss of individuals, especially sexually mature fish, can result in reduced population sizes and changes in demographic structure.

To estimate average annual mortality, we examined pumped groundwater volume data available for 51 wells in the potential area of occurrence between the years of 2010 to 2017 (Edwards Aquifer Authority 2021, unpaginated). Using the annual average volume of groundwater pumped from all 51 wells, 10,401,411 m^3 (8,433 ac-ft), multiplied by the estimated catch per unit effort, 159 toothless blindcats and 80 widemouth blindcats may have been expelled from wells annually. This is likely an underestimate of losses, as it does not

include losses of other immature stages, such as larvae or fry. These numbers could be higher still considering the remaining active wells for which pumped data are not available. Abandoned and plugged wells would have also contributed to past mortality during their operational lifespans.

Most wells in the potential area of occurrence have been in operation for multiple decades (average age of 66 years). To illustrate the potential total loss of blindcats to wells operated over several decades, we assigned the average annual volume discharged (calculated from three wells from 2010 to 2017) to all wells for all years between the completion of a well to 2021 (the latest year for which data were available). As we assume the blindcats have long lifespans, the likelihood that individuals will encounter the capture zone of an active groundwater well increases over time. Wells operating over several decades, and discharging relatively moderate volumes of groundwater, could result in the loss of over a thousand toothless blindcats and several hundred widemouth blindcats per individual well (see Table 1 below, Service 2022, p. 77).

TABLE 1—ESTIMATED POTENTIAL LOSS OF TOOTHLESS BLINDCATS AND WIDEMOUTH BLINDCATS TO GROUNDWATER WELLS

Species	Volume to produce one individual	Individuals lost per year per well	Total estimated number of individuals lost in 51 wells within potential area of occurrence
Toothless blindcat	65,000 m^3 (53 ac-ft)	159	535,194
Widemouth blindcat	129,515 m^3 (105 ac-ft)	80	269,280

Estimates are for the wells within the potential area of occurrence with water volume data (n = 51), given operational lifespan (average age of 66 years), and catch per unit effort reported for Artesia Pump Station Well (Longley and Karnei 1978a, pp. 35–36; 1978b, pp. 36, 38–40).

In addition to the estimated loss from moderate capacity wells, greater capacity wells have been drilled in or near the potential area of occurrence, but data are lacking regarding their historical discharge volumes. The following mortality estimates for larger capacity wells further illustrate the potential impact high volume wells could have on blindcat numbers over decades of operation.

In 1941, San Antonio Public Service Company Well 4 was drilled to a depth of 314 m (1,032 ft) (Livingston 1942, p. 1; Petitt and George 1956, p. 47). That well is approximately 2.4 km (1.5 mi) to the northeast of Bexar Metropolitan Water District Well (a widemouth blindcat locality) and 7.5 km (4.7 mi) to the southwest of the Artesia Pump Station Well (a toothless blindcat and widemouth blindcat locality). It is conceivable that blindcat habitat extended to that location, although the well has never been sampled for either fish species.

Flow at San Antonio Public Service Company Well 4 has been recorded at 1.05 m^3 per second (m^3/sec) (37 cubic feet per second (ft^3/sec)) (Livingston 1942, pp. 3–4). Flow at that rate over 12 months would result in discharge of 33,134,800 m^3 (26,863 ac-ft) of groundwater and potentially 507 toothless and/or 266 widemouth blindcats per year. If that well operated at that capacity over its 81-year operational lifespan, 41,055 toothless blindcats and 20,723 widemouth blindcats could have potentially been expelled from the well. Well 4 is still in operation based on Texas Water Development Board records.

In 1891, the first of a series of 20 to 30 cm (8 to 12 in) diameter wells were drilled in what would become the Market Street Pump Station (Ewing 2000, pp. 13, 15, 22; Eckhardt 2016, unpaginated). The 1891 well was 271 m (890 ft) deep and produced 4,144,499 m^3 (3,360 ac-ft) of groundwater per year (Ewing 2000, pp. 13, 22). Three additional wells were drilled in 1894, one well with an annual pumped capacity of 7,598,248 m^3 (6,160 ac-ft) and two wells at 4,144,499 m^3 (3,360 ac-ft) (Ewing 2000, p. 22). The total annual pumping capacity of these four wells would have been 20,031,745 m^3 (16,240 ac-ft). If blindcats entered the capture zones of these wells, 305 toothless blindcats and 155 widemouth blindcats could have been discharged per year.

By 1924, the Market Street pump station had 12 wells with a combined capacity of pumping 59,404,485 m^3 (48,160 ac-ft) per year (Ewing 2000, p. 15). The pump station's 1924 capacity of 59,404,485 m^3 (48,160 ac-ft) could have resulted in the discharge of 9,086 toothless blindcats and 4,587 widemouth blindcats over a 10-year period. At that same rate, from 1924 to 2022, 89,051 toothless blindcats and 44,491 widemouth blindcats would have been expelled from wells over that 98-year period. The Market Street pump station is still in operation today with several large capacity wells (Eckhardt 2016, unpaginated).

While these scenarios of blindcat losses due to wells are hypothetical estimates, they provide insight into the scale of well mortality for the toothless blindcat and widemouth blindcat. We know that both species are ejected by groundwater wells and die. It is evident that wells extracting water from the artesian zone remove blindcats and that large capacity wells have the potential to expel thousands of individuals over a well's operational lifespan. However, the location and depth of wells influence their ability to affect blindcat populations; only certain wells will intercept areas occupied by toothless and/or widemouth blindcats. That said, very productive groundwater wells likely intercept larger water-filled voids that would serve as blindcat habitat (Maclay 1995, p. 43).

Conclusions

The most significant stressor to populations of the toothless and widemouth blindcats is mortality due to groundwater pumping. Individuals of both species are forced up artesian and pumped wells where they are physically damaged and killed. Wells with long operational lifespans could have resulted in the deaths of thousands to tens of thousands of individuals. All life stages of the blindcats are expected to experience mortality due to the action of groundwater wells. The greatest loss of

blindcats potentially occurred from the early 1940s into the early 1960s, when the largest number of groundwater wells were drilled in the potential area of occurrence within the Edwards Aquifer.

The widemouth blindcat has not been observed from any well since 1984. Due to groundwater pumping, the species may have declined to undetectable numbers (Ferretti et al. 2008, pp. 960–962) or become functionally extinct (*i.e.,* permanent reproductive failure prior to true extinction; Ricciardi et al. 1998, p. 617; Delord 2007, p. 659; Bull et al. 2009, p. 419; Roberts et al. 2017, p. 1193). Toothless blindcats, however, have been taken from the Aldridge 209 Well most years between 2008 and 2013 and from 2020 to 2022. The species appears to be persisting in this area but seemingly in low numbers. Between 2008 and 2013, material potentially representing 13 individual toothless blindcats was taken from the Aldridge 209 Well (Zara Environmental 2020, pp. 11, 18–20). Between 2021 and 2022, material potentially comprising four toothless blindcats was taken from the same well (Diaz 2021, p. 29). Whether abundance of the species at that site has declined over the well's 67-year operational lifespan is unknown. We assume that numbers of the toothless blindcats at the Aldridge 209 Well are likely lower than prior to 1955, when the well was first drilled. The next most recent records for the toothless blindcat are at Tschirhart Well in 2010. The status of both species at other wells is unknown, as they remain unsampled since the late 1970s to 1980s due to lack of sampling access.

While pumping has resulted in the directly mortality of both species, groundwater quantity to support habitat for the fishes has not experienced change from historical conditions. In contrast to surface aquifer levels, which occasionally decline, the exceedingly deep aquifer water levels where the fishes reside show no evidence of long-term decline, even at times of prolonged drought and unregulated pumping (Maclay 1995, pp. 48, 52; Lindgren et al. 2004, 40–41, 45). In addition, management of groundwater withdrawals from the San Antonio segment has been in place since the late 1990s (Service 2022, pp. 62–66) and pumped volumes have decreased since 2008 (Service 2022, pp. 64–65). Flow protection measures are in place that principally protect the Comal Spring and San Marcos Spring systems, but those measures also benefit water levels deeper in the aquifer. Groundwater contamination does not appear to have been a widespread or prevalent stressor for either species. In terms of drinking water standards, contaminants in the San Antonio segment occur in relatively low concentrations. The presence of contaminants also decreases with depth in the aquifer where older water is less affected by contamination. Complete analyses of the impact of the threats of groundwater quantity, climate change, and contamination on the toothless blindcat and the widemouth blindcat can be found in the SSA report (Service 2022, pp. 81–85).

Based on available information, we expect that the resiliency of both species' populations has been reduced from pre-1950 levels, the period of new groundwater well establishment in the analysis unit. Although populations of the toothless blindcat and widemouth blindcat have been postulated as large (Longley and Karnei 1978a, p. 36; 1978b, p. 39; Trajano 2001, pp. 145–146), the extensive estimated mortality from groundwater wells has likely taken a toll on those potential numbers. Additionally, because the toothless blindcat and the widemouth blindcat exist as single sympatric subterranean populations, both species effectively lack redundancy and have limited representation. This places the toothless and widemouth blindcats at greater risk from stochastic events and anthropogenic stressors, such as groundwater well mortality. Well mortality has likely reduced the abundance of both blindcats. Furthermore, the life history traits of both species suggest that sustained loss of individuals, especially sexually mature fish, can result in reduced population sizes and changes in demographic structure in the form of lower numbers of sexually mature fish, reduced reproductive output, and diminished recruitment of younger individuals.

Future Condition

As part of the SSA, we evaluated the future conditions of the toothless blindcat and widemouth blindcat by examining the most plausible future projections for human population growth, groundwater demands, and climate change. Our projections show ongoing well mortality through groundwater pumping, but no significant change to toothless blindcat and widemouth blindcat habitat due to groundwater quality and quantity (Service 2022, pp. 81–86). Because we determined that the current conditions of both species are consistent with an endangered species (see Determination of the Toothless Blindcat's and Widemouth Blindcat's Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2022, pp. 86–95) for the full analysis of future scenarios.

Determination of the Toothless Blindcat's and Widemouth Blindcat's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following 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.

Status Throughout All of Their Ranges

We find that mortality resulting from the pumping of groundwater wells (Factor E) is the primary threat to both species. The species occupy a limited range, and populations of both species have likely been severely reduced since the introduction of groundwater wells in the late 19th to early 20th century. There are currently 82 active groundwater wells in the potential area of occurrence (Service 2022, p. 72). No toothless blindcat or widemouth blindcat expelled from groundwater wells has survived for any extended period, and many specimens are ejected mangled and dead due to battering as they are forced to the surface. Discharge and sampling data indicate an individual well operating over several decades (that is, since the 1950s), and discharging relatively moderate volumes of groundwater could conservatively result in losses of over a thousand toothless blindcats and several hundred widemouth blindcats.

These losses of individual fish to groundwater wells over time suggest that both species were, and will continue to be, impacted from actively pumped wells. Although population sizes for the toothless blindcat and widemouth blindcat may have historically been large, we project that

thousands to tens of thousands of fish have been lost to groundwater wells since the early 1900s, and that the resiliency of both species' populations has been reduced. Both the toothless blindcat and the widemouth blindcat are long-lived and pelagic, and thus more likely to encounter a well over their lifespan and be captured by well uptake. These species have life-history traits that limit reproductive capacity and recruitment, as documented in other cavefish species. These same traits make the blindcats more susceptible to long-lasting population impacts from well mortality losses.

The widemouth blindcat has not been observed at a well since the mid-1980s, and toothless blindcat has only been expelled from a single groundwater well multiple times between 2008 and 2013 and from 2020 to 2022. The toothless blindcat thus appears to be persisting at this location in low numbers. Well mortality has likely reduced the abundances of both blindcats along with effects on demographic structure in the form of lower numbers of sexually mature fish, reduced reproductive output, and diminished recruitment of younger individuals. Given these impacts and the limited range of both species, it is unlikely that even relatively robust populations of the toothless blindcat and widemouth blindcat could indefinitely sustain continued losses from well mortality. Both species have limited redundancy and representation, making the loss of resiliency from well mortality particularly detrimental.

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we conclude that both species have experienced and continue to experience the deleterious impacts of well mortality to such an extent that both species are currently in danger of extinction, rather than at some point in the foreseeable future. Therefore, both species meet the Act's definition of an endangered species rather than that of a threatened species. Thus, after assessing the best available information, we determine that both the toothless blindcat and the widemouth blindcat are in danger of extinction throughout all of their ranges.

Status Throughout a Significant Portion of Their Ranges

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the toothless blindcat and widemouth blindcat are in danger of extinction throughout all of their ranges and accordingly did not undertake an analysis of any significant portion of their ranges. Because the toothless blindcat and widemouth blindcat warrant listing as endangered throughout all of their ranges, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), which vacated the provision of 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 37578; July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that both the toothless blindcat and widemouth blindcat meet the Act's definition of an endangered species. Therefore, we propose to list both the toothless blindcat and the widemouth blindcat as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of 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, including the Service, 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. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. 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.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''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. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Austin 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 ranges may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the

academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the toothless blindcat and widemouth blindcat. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the toothless blindcat and widemouth blindcat are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (see 50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any 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 critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the toothless blindcat and the widemouth blindcat that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the U.S. Department of Agriculture as well as 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, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service field office (see **FOR FURTHER INFORMATION CONTACT**, above) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed any of the following: (1) Import endangered wildlife into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) endangered wildlife within the United States or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is the policy of the Services, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. 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 the species proposed for listing.

At this time, we are unable to identify specific activities that would or would not be likely to result in a violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions or already excepted through our regulations at 50 CFR 17.21 (*e.g.,* any person may take endangered wildlife in defense of his own life or the lives of others). As discussed above, certain activities that are prohibited under section 9 may be permitted under section 10 of the Act. Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. 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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

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 each Federal action agency 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 designated 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 also 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. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must 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 data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

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.

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 from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the 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, or other species conservation planning efforts if new information available at the time of those 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 Secretary may, but is not required to, determine that a

designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed above, there are no significant habitat-based threats that currently, or would in the future, limit habitat for the toothless blindcat and the widemouth blindcat. The present or threatened destruction, modification, or curtailment of the blindcats' habitat or range is not a threat to the species. In light of the particular circumstances of these two species, we have determined that designation of critical habitat is not prudent. We reach this conclusion largely because of the nature of the main threat for these species: direct mortality resulting from groundwater well pumping (Factor E). The wells constructed in these blindcats' habitat are not affecting the species through habitat destruction or modification; instead, it is the capture, entrainment, and death of individuals due to the pumping of groundwater wells that is a threat to the species. Designation of critical habitat would not provide any additional protective measures or benefits that address this specific threat. In addition, the designation of critical habitat would not provide otherwise unavailable information to guide conservation efforts for these species. Therefore, a designation of critical habitat would not be advantageous for these species.

Since we have determined that the present or threatened destruction, modification, or curtailment of both species' habitat or range is not a threat to the toothless blindcat and the widemouth blindcat, in accordance with 50 CFR 424.12(a)(1), we determine that designation of critical habitat is not prudent for the toothless blindcat and the widemouth blindcat.

Required Determinations

Clarity of the Rule

We are required by E.O.s 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 **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.

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 (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 federally recognized Tribes on a government-to-government basis. In accordance with Secretary's 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. No Tribal lands were identified within the range of the toothless blindcat or widemouth blindcat.

References Cited

A complete list of references cited in this proposed rule is available on the internet at *https://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

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 § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding entries for ''Blindcat, toothless'' and ''Blindcat, widemouth'' in alphabetical order under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
FISHES				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
Blindcat, toothless	*Trogloglanis pattersoni*	Wherever found	E	[**Federal Register** citation when published as a final rule].
Blindcat, widemouth	*Satan eurystomus*	Wherever found	E	[**Federal Register** citation when published as a final rule].
*	*	*	*	* * *

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–17667 Filed 8–21–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2023–0112; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BE94

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Tennessee Clubshell, Tennessee Pigtoe, and Cumberland Moccasinshell

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list three Tennessee and Cumberland River basin mussel species, the Tennessee clubshell (*Pleurobema oviforme*), Tennessee pigtoe (*Pleuronaia barnesiana*), and Cumberland moccasinshell (*Medionidus conradicus*), as endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the three species. After a review of the best available scientific and commercial information, we find that listing the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell as endangered species is warranted. If we finalize this rule as proposed, it would extend the Act's protections to these species.

DATES: We will accept comments received or postmarked on or before October 23, 2023. 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 a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 6, 2023.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2023–0112, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2023–0112, U.S. Fish and Wildlife Service, MS: PRB/3W, 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 *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2023–0112.

FOR FURTHER INFORMATION CONTACT: Janet Mizzi, Field Supervisor, U.S. Fish and Wildlife Service, Asheville Ecological Services Field Office, 160 Zillicoa St., Asheville, NC 28801; telephone 828–258–3939. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell meet the Act's definition of an endangered species; therefore, we are proposing to list them as such. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This document proposes to list the Tennessee clubshell (*Pleurobema oviforme*), Tennessee pigtoe (*Pleuronaia barnesiana*), and Cumberland moccasinshell (*Medionidus conradicus*) as endangered species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because 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. We have determined that the primary threats to all three species are large impoundments, urban development, energy development, and agriculture, which have altered natural flow regimes and/or diminished water and substrate quality (Factor A).

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the

scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, ranges, 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 ranges, including distribution patterns and the locations of any additional populations of these species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for these species, their habitats, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting 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;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species; and

(c) Existing regulations or conservation actions that may be addressing threats to these species.

(3) Additional information concerning the historical and current status of these species, including whether any of the species may warrant listing as a threatened species or may not warrant listing.

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, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a 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 **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. 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 *https://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 *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that any of these species are threatened instead of endangered, or we may conclude that any of these species do not warrant listing as either an endangered species or a threatened species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. 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** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell, as endangered or threatened species under the Act. In response to the petition, we published a partial 90-day finding on September 27, 2011 (76 FR 59836), in which we announced our finding that the petition contained substantial information indicating that listing may be warranted for numerous species, including the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell. This document serves as both our 12-month warranted petition finding and our proposed rule to list these species.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. After the SSA report was completed, the methodology used to evaluate the status of the three species was published in a peer-reviewed journal (Fitzgerald et al. 2021, entire).

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the SSA report. The Service sent the SSA report to three independent peer reviewers and received one response. Results of this structured peer review process can be found at *https://www.regulations.gov* and the Asheville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). In preparing this proposed rule, we incorporated the results of this review, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from one peer reviewer on the draft SSA report. We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding the information contained in the SSA report. The peer reviewer agreed with our assessment of the status of the three mussel species. All substantive comments from the peer reviewer concerned the omission of coal mining as an important threat to the three species and included a recommendation to add references from peer-reviewed literature that illustrate the impact coal mining has had on freshwater mussels

in the species' ranges. To address the reviewer's comment, in this proposed rule, we clarify that our modeling approach focuses on rangewide drivers of population conditions and does not capture some site-specific threats with high consequences, such as coal mining. Coal mining drainage affects, very roughly, less than half the historical range of the three species. Because a little more than half of that range lacks coal mining impacts, mining does not explain rangewide patterns of population condition and was not included in the final model. Our SSA report explains that the negative effects of mining on mussels in this region have been well-documented, and the risk posed by this threat must be considered in addition to the model estimates presented, particularly for watersheds in the upper Tennessee and Cumberland River basins. As recommended by the peer reviewer, in this proposed rule, we include references from peer-reviewed literature that explain how coal mining has affected mussels in the range of the three mussel species.

I. Proposed Listing Determination

Background

General Mussel Biology

Freshwater mussels, including the three species that are the subjects of this proposed rule, have a complex reproduction process involving parasitic larvae, called glochidia, that are wholly dependent on host fish. Mussels release sperm into the water column, which is taken in by the female, wherein fertilization and development of glochidia occurs in a restricted portion of the gills, called the brood pouch or marsupium. When mature, the glochidia are released to the water column to attach on the gills, head, or fins of fishes. Glochidia die if they fail to attach to a host fish, attach to an incompatible fish species, or attach to the wrong location on a host fish (Neves 1991, p. 254; Bogan 1993, p. 599). Once attached to the host, glochidia draw nutrients from the fish's tissue as they develop (Arey 1932, pp. 214–215). Time to development, from attachment of glochidia to maturation, ranges from just over 1 week to 6 weeks or more (Parmalee and Bogan 1998, p. 8).

Depending on the species, mussels are either short-term or long-term brooders. In short-term brooders, fertilization occurs in the spring or summer and glochidia are released shortly after they are fully developed. In long-term brooders, fertilization occurs in late summer or fall, and developed glochidia are held over winter and released in the following spring or summer (Haag 2012, pp. 39–40). Mature glochidia drop off their hosts and, if they settle in suitable habitat on the stream bottom, continue the remainder of their existence as free-living mussels. Newly released glochidia are juveniles that are reproductively immature but otherwise resemble adults, with both halves (valves) of the shell developed and poised for growth.

Freshwater mussels are relatively sedentary and, under their own power, capable of moving only short horizontal distances, typically up to a few yards or less in a year (Haag 2012, pp. 34–35). Given mussels' limited mobility, host fish are their primary mode of dispersal, and the hosts are essential for maintaining population connectivity. Host specificity varies, with some mussel species being compatible with a few fish species while others can transform from glochidia to juveniles on several fish species.

Tennessee Clubshell

A thorough review of the taxonomy, life history, and ecology of the Tennessee clubshell is presented in the SSA report (Service 2020, pp. 3–7).

Attaining a maximum length of approximately 90 millimeters (mm) (4 inches (in)), the Tennessee clubshell is oval to triangular shaped and has a tawny to brown shell, usually with wide, broken green rays (Williams et al. 2008, p. 542). It occurs in the Tennessee and Cumberland River drainages in Alabama, Georgia, Kentucky, North Carolina, Tennessee, and Virginia (see figure 1, below). Favoring moderately swift currents, it is found in riffles and shoals of small streams to large rivers, in a mixture of sand, gravel, and cobble substrates.

The Tennessee clubshell has a lifespan of 30 years on average but may live to 50 years. Age at maturity ranges from 4 to 6 years. In total, 10 host fish species in the minnow and darter families have been documented by observations of either attachment or metamorphosis of glochidia (Service 2020, pp. 5–6). As a short-term brooder, the Tennessee clubshell spawns in the spring and releases glochidia mid-July through early August.

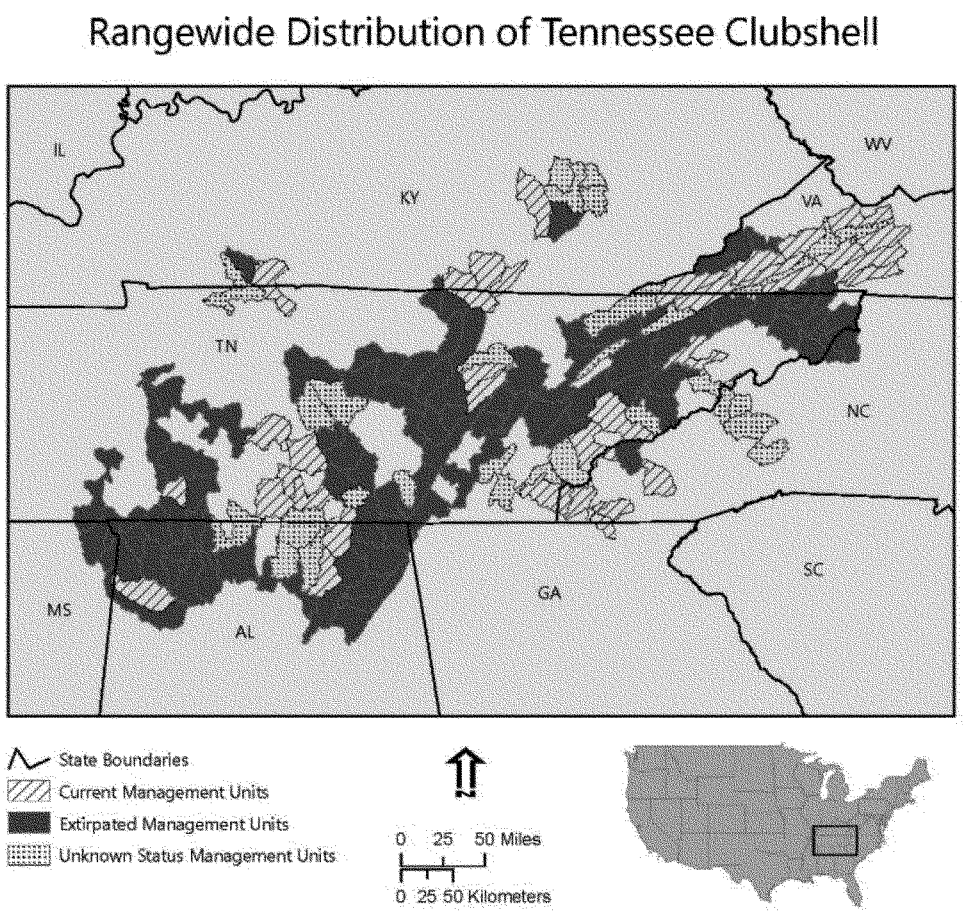

Figure 1. Tennessee clubshell range map. Management units are 10-digit hydrologic unit code (HUC) watersheds (HUC-10).

Tennessee Pigtoe

A thorough review of the taxonomy, life history, and ecology of the Tennessee pigtoe is presented in the SSA report (Service 2020, pp. 3–7).

Attaining a maximum length of 95 mm (3.7 in), the Tennessee pigtoe's shape varies from oval to subtriangular or subquadrate, and its shell is yellowish or brown, sometimes with dark green rays (Williams et al. 2008, p. 585). It occurs in the Tennessee River drainage, in Alabama, Georgia, North Carolina, Tennessee, and Virginia (see figure 2, below). It is presumed extirpated from Mississippi, where it was known to occur only in Bear Creek, in Tishomingo County. Unlike the Tennessee clubshell and Cumberland moccasinshell, the Tennessee pigtoe does not occur in the Cumberland River drainage. It is found in moderate current, and rarely in pools and slackwaters, in small streams to large rivers, in a mixture of sand, gravel, and cobble substrates.

The Tennessee pigtoe has a lifespan of 30 years on average but may live to 50 years. Age at maturity ranges from 4 to 6 years. As a short-term brooder, it spawns in the spring and releases glochidia mid-July through early August. The host fishes are unknown for this species but likely are the same as or similar to those of the Tennessee clubshell.

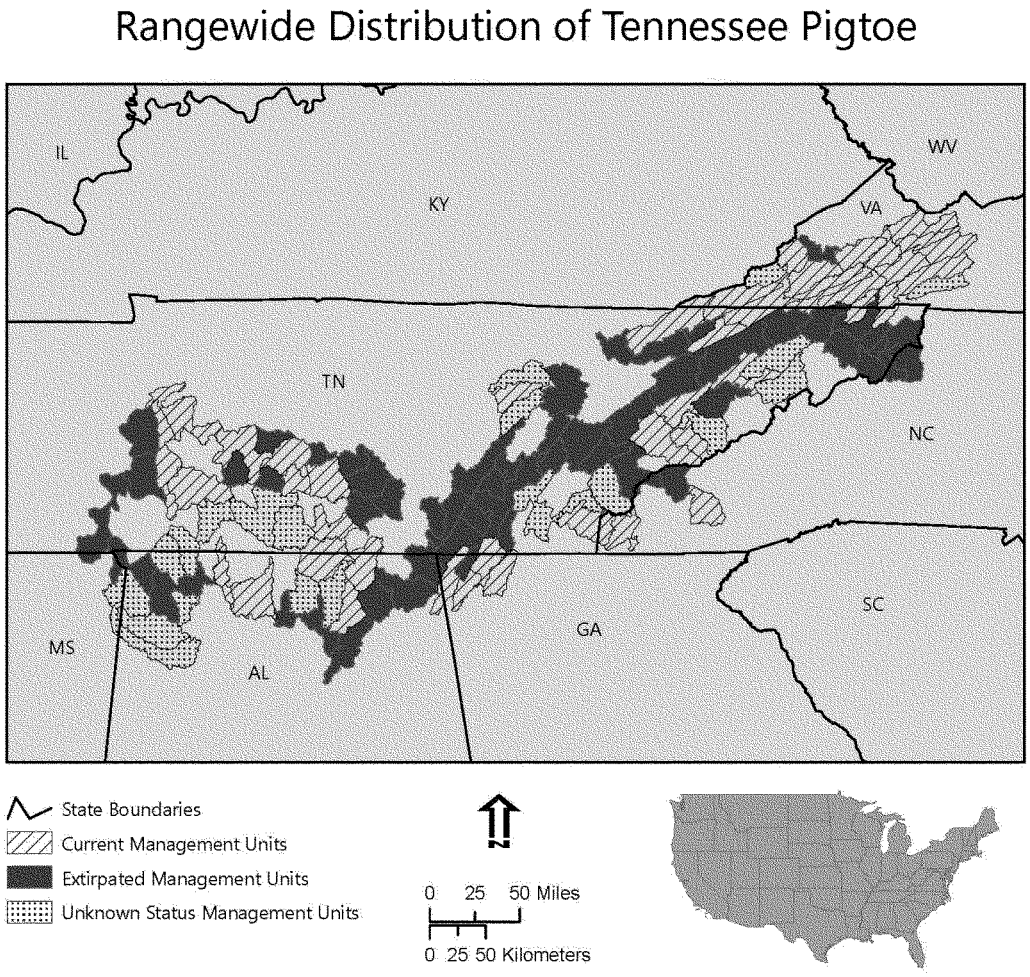

Figure 2. Tennessee pigtoe range map. Management units are 10-digit hydrologic unit code (HUC) watersheds (HUC-10).

Cumberland Moccasinshell

A thorough review of the taxonomy, life history, and ecology of the Cumberland moccasinshell is presented in the SSA report (Service 2020, pp. 3–7).

Attaining a maximum length of 60 mm (2.4 in), the Cumberland moccasinshell is elliptical shaped, slightly bowing or arching with age. Its shell is yellowish to tawny or brown and usually covered in green rays, and the posterior of the shell is usually marked with small ridges (Williams et al. 2008, p. 434). The Cumberland moccasinshell occurs in the Tennessee and Cumberland River drainages in Alabama, Georgia, Kentucky, Tennessee, and Virginia (see figure 3, below). It is presumed extirpated in North Carolina. Favoring strong currents, it is found in riffles and shoals of streams ranging from headwaters to medium-sized rivers amongst gravel, cobble, boulder, and occasionally sand and gravel substrates. It is sometimes found under large flat rocks or cracks in bedrock.

The Cumberland moccasinshell has a lifespan of approximately 10 years on average, with a maximum reported age of 24 years, based on shells from the Clinch River in Virginia and Tennessee (Scott 1994, pp. 16, 71). Age at maturity ranges from 1 to 3 years (Zale and Neves 1982, p. 19; T. Lane 2023, pers. comm.). Fish hosts include at least four (possibly six) species in the darter genus, *Etheostoma* (Service 2020, pp. 5–6). As a long-term brooder, the Cumberland moccasinshell spawns mid-July and releases glochidia sporadically September through November, with peak releases occurring January through May (Zale and Neves 1982, p. 25).

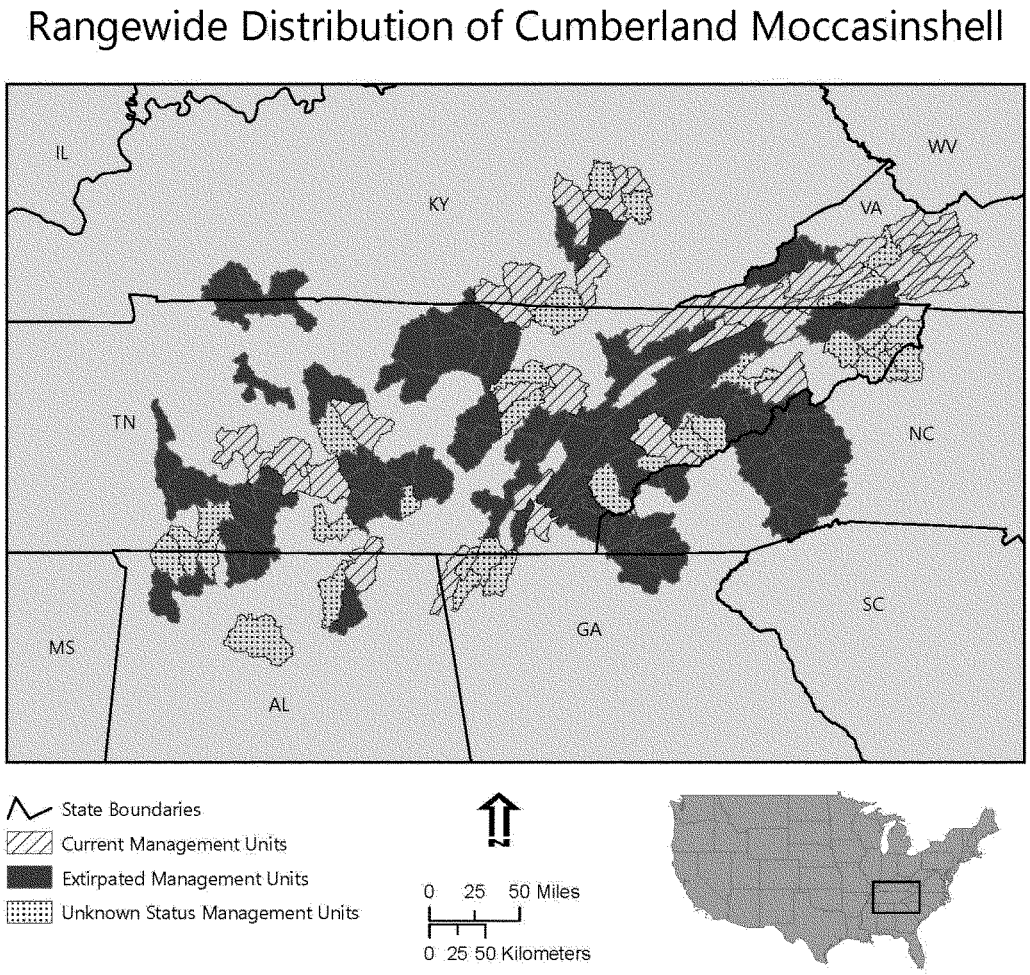

Figure 3. Cumberland moccasinshell range map. Management units are 10-digit hydrologic unit code (HUC) watersheds (HUC-10).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following 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.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals

through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of these species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether these species should be proposed for listing as endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the viability of the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years, reduced birth rates), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical or biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. For each of the three species, during the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R4–ES–2023–0112 on *https://www.regulations.gov* and at the Service's Environmental Conservation Online System species profile pages: *https://ecos.fws.gov/ecp/species/3254; https://ecos.fws.gov/ecp/species/9887;* and *https://ecos.fws.gov/ecp/species/9881.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of these species and their resources, and the threats that influence the species' current and future conditions, in order to assess the species' overall viability and the risks to that viability.

Species Needs

The Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell share similar habitat needs, preferring riffles, shoals, and high gradient streams with stable substrates composed predominantly of coarse sand, gravel, and cobble. Most often, the three species are found in habitat less than 3 feet (0.9 meter) deep, in small to medium-sized rivers. Larger, more inflated shell types of Tennessee clubshell and Tennessee pigtoe inhabited large rivers prior to impoundment (Ortmann 1918, pp. 534–538, 550–555), but representation of these shell types has been lost, as both species, in addition to the Cumberland moccasinshell, require free-flowing streams and are not viable (do not successfully reproduce) in large impoundments, such as those along the mainstem Tennessee and Cumberland rivers. Known and likely fish hosts needed by each mussel species for reproduction are noted above (see *General Mussel Biology*).

Analysis Units

For all three species, in our SSA, we used U.S. Geological Survey (USGS) 10-digit hydrologic unit codes (HUCs, or watersheds; see figures 1–3, above) as analysis units for threats, current conditions, and future conditions. These analysis units were selected because they reflect relative differences in hydrologic conditions (*e.g.,* separation by major impoundments), and they were at the finest spatial scale for which mussel survey data were available.

Threats

We provide information regarding present and future influences, including both positive and negative, on the three

mussels' current and future viability, including large impoundments, urban development, energy development, and agriculture, which have altered natural flow regimes and/or diminished water and substrate quality (Factor A). The existing regulatory mechanisms (Factor D) have not been adequate to arrest the decline of the species. Additional threats, including nonnative competitors and pathogens (which may be responsible for enigmatic declines in some streams), likely have had negative effects on the three mussel species, as described in the SSA report and in a peer-reviewed publication on the SSA methodology (Fitzgerald et al. 2021, entire). These additional threats may negatively affect individuals of the species, but, unlike the primary threats, these additional threats do not affect the species' overall viability. Further, our analysis did not indicate that climate change is a primary threat to the three species. While the rangewide effects of climate change are likely to worsen in the future as droughts and storms are projected to become more intense, the primary threats (large impoundments, urban development, energy development, and agriculture) are the main driver of the three species' status currently and into the future.

We used a regression model to identify the threats affecting the species. The model estimated the relative effects of a set of candidate predictor variables (threats) on the mussels' current conditions (see table 1, below). The threat variables retained for the regression analysis were those that best predicted mussel persistence at the rangewide scale. The analysis revealed the primary threats influencing current conditions of the three species are erosion and sedimentation from urban development and hydrologic alteration from large reservoirs and urban development. Mean runoff, another variable that reflects the impacts of erosion and sedimentation, was identified as a primary threat only to the Cumberland moccasinshell; its influence on the other two mussel species was not statistically significant.

Several threats (candidate variables in the model) were considered as potential influences on current condition but were excluded from the regression analysis because they decreased the model's ability to detect the primary threats acting on the three mussel species rangewide (see table 1, below). However, some of the excluded threats negatively affect the three mussel species at smaller scales. In some watersheds in the upper Tennessee Basin and Cumberland Basin, energy development, which includes coal mining, natural gas, and oil extraction, has been identified as key threats to mussels that have reduced habitat (see ''Energy Development—Coal, Natural Gas, and Oil,'' below).

TABLE 1—SUMMARY OF MAJOR THREATS IDENTIFIED FOR THREE FRESHWATER MUSSEL SPECIES, INCLUDING PROXY VARIABLES CONSIDERED AND VARIABLES RETAINED IN THE FINAL MODEL OF CURRENT CONDITIONS OF THE THREE MUSSEL SPECIES

[Service 2020, p. 11]

Threats	Proxy variables considered	Variables in final model
Hydrologic alteration	Reservoir surface area	Included.
	Percentage developed land use	Included.
	Number and density of dams	Not included.
Erosion and sedimentation	Coefficient of variation mean monthly precipitation	Included.
	Percentage developed land use	Included.
	Mean runoff	Included.
	Density of agriculture (crops and pastureland)	Included.
	Soil erodibility index	Not included.
Climate change	Coefficient of variation mean monthly precipitation	Included.
	Mean monthly air temperature	Not included.
Nutrient and chemical pollution	Percentage developed land use	Included.
	Density of agriculture (crops and pastureland)	Included.
	Percentage of mining land use and number of mines	Not included.
	Stream km impaired (EPA 303(d) and TMDL lists [1])	Not included.
Nonnative competitors	No suitable proxy for competitive effects identified	Not included.

[1] Section 303(d) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) authorizes the Environmental Protection Agency (EPA) to assist States, Territories, and authorized Tribes in listing impaired waters and developing total maximum daily loads (TMDLs) for these waterbodies. A TMDL establishes the maximum amount of a pollutant allowed in a waterbody and serves as the starting point or planning tool for restoring water quality.

Large Impoundments

Our analysis identified large impoundments (indicated by reservoir surface area) as a rangewide threat to the three mussel species. The Tennessee Valley Authority operates 31 large dams in the Tennessee River system and one large dam (Great Falls Dam) in the Cumberland system (TVA Recreation Map website, 2023) and the U.S. Army Corps of Engineers operates 10 large dams in the Cumberland system (USACE Nashville District website, 2023). The effects of dams on aquatic habitats and freshwater mussels are well-documented (Watters 2000, p. 261), and extinction and extirpations of North American freshwater mussels can be traced to impoundment and inundation of riffle habitats in all major river basins of the central and eastern United States (Haag 2009, p. 107).

Dams disrupt population connectivity and alter water quality. After a dam has been constructed, upstream the channel becomes deeper, flow decreases dramatically, and fine sediments accumulate on the channel bottom, which eliminates shoal and riffle habitats needed by the three mussel species, as well as many others, and their host fishes. Downstream of dams, natural flow regimes are disrupted by alternating low flow releases and pulses of scouring flows (Hardison and Layzer 2001, p. 79), reduced water temperatures, reduced dissolved oxygen, and changes in fish assemblages. Mussels may survive in cold tailwaters but may not be able to reproduce, as was shown for native washboard mussels (*Megalonaias nervosa*) in the mainstem Cumberland River (Heinricher and Layzer 1999, entire). In a Cumberland River tributary, Caney Fork, the extirpation of several mussel species, including Cumberland moccasinshell, was attributed mainly to cold tailwater temperatures from Center Hill Dam (completed in 1948) and

alteration of channel morphology from peaking flows, and no live mussels were found within 7.5 mi (12 km) of the dam outfall (Layzer et al. 1993, pp. 69–70).

Developed Land Use/Urbanization

For all three mussel species, development and urbanization contribute to habitat degradation and loss. Freshwater mussel populations may experience reduced abundance, species richness, reproduction, growth, and survival stemming from the impacts of urbanization on water and habitat quality (Diamond and Serveiss 2001, p. 4716; Gangloff et al. 2009, p. 198; Cao et al. 2013, pp. 1212–1214; Gillis et al. 2017, pp. 674–679). The threats analysis in our SSA found the estimated probability of extirpation for all three species approaches 100 percent when developed land area is between 9 and 15 percent of the total land area in a watershed (Service 2020, p. 61). The term ''development'' refers to urbanization of the landscape, including (but not limited to) land conversion for residential, commercial, and industrial uses and the accompanying infrastructure. Urbanization effects may include alterations to water quality, water quantity, and instream and streamside habitat (Ren et al. 2003, p. 649; Wilson 2015, p. 424). The effects on habitat also include variability in streamflow, typically increasing the extent and volume of water entering a stream after a storm and decreasing the time it takes for the water to travel over the land before entering the stream (Giddings et al. 2009, p. 1).

In urbanized environments, storm drains deliver large volumes of water to streams much faster than would naturally occur, often resulting in flooding and bank erosion that reshape the channel and cause substrate instability. Increased, high-velocity discharges can cause species living in streams (including mussels) to become stressed, displaced, or killed by fast-moving water and the debris and sediment carried in it. Once floodwaters recede, displaced individuals may be left stranded out of the water, and fine sediments transported to the stream settle on coarser substrates, which may damage or destroy areas of mussel habitat. During storm events, contaminants in urbanized environments (*e.g.,* gasoline, oil drips, fertilizers) accumulated on impervious surfaces may be washed directly into streams.

Energy Development—Coal, Natural Gas, and Oil

Extraction of coal, natural gas, and (to a lesser extent) oil is common in the Cumberland and Upper Tennessee River basins and has been associated with mussel declines in several watersheds (Layzer and Anderson 1992, entire; Warren and Haag 2005, entire; Johnson et al. 2014, p. 890; TDEC 2014, p. 62; Zipper et al. 2016, pp. 612–613; Ahlstedt et al. 2016, p. 13). Examples of energy development impacts in the range of the three mussels include high levels of copper, manganese, and zinc, metals that can be toxic to freshwater mussels, found in sediment samples from both the Clinch and Powell Rivers. Both rivers receive runoff from active, reclaimed, and abandoned coal mine sites. In Cumberland Basin streams, including Buck Creek, Horse Lick Creek, Little South Fork, and Rockcastle River, there was a clear correlation between surface mines, increased metal concentrations downstream, and the extirpation of some mussel species (Layzer and Anderson 1992, pp. 91–96). In the upper Powell River, Virginia, coal mining has almost eliminated the mussel fauna; sediment pore water from the riverbed contains levels of contaminants potentially toxic to mussels, particularly selenium and copper (Timpano et al. 2023, p. 13).

Natural gas and oil extraction is a threat to freshwater mussels in the Upper Tennessee Basin and Cumberland Basin. In addition to the general impacts of erosion and sedimentation from forest clearing for access roads and installing drill pads, spills from (brine) disposal ponds at gas wells or end-of-pipe discharges from brine treatment facilities can reduce freshwater mussel abundance and diversity, as well as increase mortality. These effects have been observed in the Allegheny River (Patnode et al. 2015, p. 55), a watershed outside the range of the three mussel species, but within the Ohio Basin, which contains the Tennessee River and Cumberland River.

Agriculture

Agricultural activities are common throughout the range of the three mussel species and have impacted watersheds in the species' historical and current ranges. The advent of intensive row crop agriculture is a potential factor in freshwater mussel decline and species extirpation in the eastern United States (Peacock et al. 2005, p. 550). Nutrient enrichment from fertilized crops and livestock is a threat commonly associated with negative effects on aquatic biota and can increase ammonia concentrations, to which freshwater mussels are particularly sensitive. In addition, agricultural pesticides, including herbicides, fungicides, insecticides, and their surfactants and adjuvants, are highly toxic to juvenile and adult freshwater mussels (Bringolf et al. 2007, p. 2,092). Concentrations of these contaminants from fields or pastures may be at levels that can affect an entire population, especially given the highly fragmented distributions of the three mussel species.

Agricultural land use has been associated with decreased freshwater mussel diversity, growth, and survival in North American streams. A temporal analysis of freshwater mussel populations in Iowa streams showed declines in mussel species richness, and local extirpations corresponded with agricultural intensity and forest clearing of the riparian zone (Poole and Downing 2004, pp. 121–124). In those Iowa streams, the segments with the highest substrate diversity exhibited the lowest declines in species richness, indicating homogenization of substrates from sedimentation is a freshwater mussel stressor. Further, species richness increased or was unchanged where agriculture was less than 25 percent of the land use. Another study, in Minnesota streams, revealed decreases in mussel abundance and richness corresponding with increases in agricultural land use (Hornbach et al. 2019, p. 1,833). In Kentucky, streams in proximity to row crop agriculture were associated with higher values of contaminants (pesticides and fertilizers), and growth of caged mussels in those streams was low in comparison with most other streams, where row crops were a minor land use (Haag et al. 2019, pp. 761–763). One of the streams in the study with high row crop land use was the Red River, in the historical range of the Cumberland moccasinshell and with one current low-condition population of the Tennessee clubshell. The abnormally low growth rates observed in the streams in proximity to high row crop land use usually presage early mortality observed in mussel hatchery settings (Haag et al. 2019, p. 765).

Agencies such as the U.S. Department of Agriculture's Natural Resources Conservation Service, along with State soil and water conservation districts, provide technical and financial assistance to farmers and private landowners. Additionally, county resource development councils and university agricultural extension services disseminate information on the importance of minimizing land use impacts, specifically the effects of agricultural practices, on aquatic resources. These programs help identify opportunities for conservation through projects such as exclusion fencing and alternate water supply sources, which

help decrease nutrient inputs and keep livestock off stream banks and shorelines, thus reducing erosion. However, the overall effectiveness of these programs over a large scale is unknown given the three mussel species' wide distribution and varying agricultural intensities.

Effects of the agricultural activities within the ranges of the three mussel species, including diminishment of water quality and habitat deterioration, are not often detected until after the sedimentation and/or pesticide and herbicide inputs occur. In summary, many effects of agricultural practices are pervasive across the ranges of the three mussel species and are a factor in their historical decline and localized extirpations.

Contaminants

Three of the land uses identified as threats to the three mussel species (urban development, energy development, and agriculture) contribute contaminants to stream habitats, which can degrade water and substrate quality and adversely impact individuals and populations. Although chemical spills and other point sources of contaminants may directly result in mussel mortality, widespread decreases in density and diversity may result in part from the subtle, pervasive effects of chronic, low-level contamination (Naimo 1995, p. 354).

The effects of contaminants such as metals, chlorine, and ammonia on juvenile mussels are profound (Augspurger et al. 2003, p. 2,571; Bartsch et al. 2003, p. 2,566). Among 69 aquatic organisms, the EPA reported freshwater mussels (from tests on juveniles and glochidia) were the taxonomic group most sensitive to ammonia (U.S. EPA 2013, pp. 24–27), which is a common contaminant in sewage plant discharges and agricultural runoff. Juvenile mussels may readily ingest contaminants adsorbed to sediment particles (Newton and Cope 2007, p. 276), and, unlike adults, they feed in sediment pore water rather than on surface water (Yeager et al. 1994, p. 221). Unionized ammonia in pore water was clearly associated with recruitment failure in populations of eastern elliptio (*Elliptio complanata*) mussels in the wild and was at concentrations far below those found to be toxic in laboratory experiments (Strayer and Malcom 2012, pp. 1,787–1,788).

Mussel glochidia are sensitive to some toxicants (Goudreau et al. 1993, p. 221; Jacobson et al. 1997, p. 2,386; Valenti et al. 2005, p. 1,243). Even at low levels, certain heavy metals may inhibit glochidial attachment to fish hosts. Contaminants have been shown to affect mussel glochidia on the Clinch River (Goudreau et al. 1993, p. 221; Jacobson et al. 1997, p. 2,386; Valenti et al. 2005, p. 1,243), which harbors some of the best condition populations of the three species, particularly the Cumberland moccasinshell.

Cadmium, chromium, copper, mercury, and zinc can negatively affect biological processes of all mussel life stages (Havlik and Marking 1987, pp. 4–9; Naimo 1995, p. 355; Jacobson et al. 1997, p. 2,389; Valenti et al. 2005, p. 1,243). Chronic mercury contamination from a chemical plant on the North Fork Holston River destroyed a diverse mussel fauna downstream of Saltville, Virginia (Brown et al. 2005, p. 1,459). Copper and zinc contamination originating from wastewater discharges at a coal-fired electric power plant is one of the sources of mussel declines in a reach of the Clinch River (Zipper et al. 2014, p. 9). Despite localized improvements since these rivers initially were contaminated, metals have remained in sediments, affecting recruitment and densities of the mussel fauna for decades thereafter (Price et al. 2014, p. 12; Zipper et al. 2014, p. 9).

Threats Summary

In summary, the primary threats have curtailed the habitat and range of the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell, via flow alterations caused by large impoundments and diminishment of water and substrate quality caused by various land development activities. These threats, which result in both contamination and the physical disruption of surface waters and substrates, are the source of negative impacts to freshwater mussel fauna, including the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell.

Current Conditions

The current resiliency of the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell was analyzed using demographic and spatial distribution criteria (see table 2, below). Data for the criteria are from quantitative and qualitative mussel surveys reported in peer-reviewed literature, agency reports, and museum databases (Service 2020, p. 8). Resiliency was classified as low, medium, or high in the 10-digit HUC watersheds in each mussel species' historical range. Demographic criteria consisted of categories of abundance or density, and evidence of recent recruitment (inferred from the presence of individuals less than or equal to 30 mm in shell length). Distribution criteria were based on stream distance occupied within a watershed.

TABLE 2—CRITERIA FOR CLASSIFYING CURRENT CONDITIONS OF POPULATIONS WITHIN WATERSHEDS

[Service 2020, p. 10]

Condition	Demographic criteria		Distribution criteria	Probability of persistence [2]
	Abundance [1]	Reproduction		
High	Abundant	Evidence of reproduction	Occurs in more than 50 river km	>0.75
	Common	Increasing population trend or evidence of reproduction.		
Medium	Abundant	Decreasing population trend or no evidence of reproduction.	Occurs in 10–50 river km	0.25–0.75
	Common	No information available.		
	Rare	Evidence of recent reproduction.		
Low	Common	Decreasing trend or no evidence of reproduction.	Occurs in less than 10 river km	<0.25
	Rare	Decreasing trend or no evidence of reproduction.		
	Presence-absence data only.			

TABLE 2—CRITERIA FOR CLASSIFYING CURRENT CONDITIONS OF POPULATIONS WITHIN WATERSHEDS—Continued

[Service 2020, p. 10]

Condition	Demographic criteria		Distribution criteria	Probability of persistence [2]
	Abundance [1]	Reproduction		
Unknown	Historical records of occurrence in watershed with no surveys in past 30 years.		Subwatershed (HUC10) lacking site-specific surveys in watershed (HUC8) of known occurrence.	
Extirpated	No live or fresh dead individuals collected in surveys within the past 30 years.		No areas known to be currently occupied within watershed.	

[1] In this column, abundant is defined as more than 500 individuals reported or densities greater than 0.70 per square meter (m^2); common is defined as 100–500 individuals reported or densities between 0.10–0.70/m^2; and rare is defined as fewer than 100 individuals reported or densities fewer than 0.10/m^2.

[2] Probability of persistence represents expected risk of extirpation over 30 years (roughly 3 generations), with numeric estimates selected based on best professional judgment of freshwater mussel experts.

Mussel records were considered current if they included detection of live individuals or fresh dead shells (with soft tissue attached) since 1988. Watersheds containing only records before 1988 were considered extirpated if recent surveys had not encountered live individuals or no suitable habitat was available (*e.g.,* large impoundments), and unknown if no recent surveys (since 1988) were conducted. This approach represents an underestimate of decline, as only watersheds with confirmed records were considered historically occupied. Because early surveys did not always record exact localities and many watersheds faced hydrologic alterations prior to comprehensive sampling, actual historical ranges (still confined to the Cumberland and/or Tennessee Basin) were likely greater than those represented in figure 2 of the SSA report (Service 2020, p. 13). In addition, sampling has not occurred in a standardized manner, and many watersheds with unknown current conditions may reflect experts' opinions that these regions are unlikely to support viable populations (*i.e.,* sample selection bias). This suggests that upper values of estimated range reductions (74 percent, 76 percent, and 62 percent for the Cumberland moccasinshell, Tennessee clubshell, and Tennessee pigtoe, respectively) may better represent current conditions of these species (see table 3, below). Early surveys of freshwater mussels often recorded qualitative descriptions of abundance (*e.g.,* rare, common, widespread) that make direct comparison of current abundance estimates impossible; however, it is widely accepted in the literature that dramatic reductions from historical abundance have occurred throughout the ranges of these species.

In the absence of sufficient genetic data to confirm spatial population structure, we treated each watershed as a population for our analyses of species conditions. Watersheds were nested within two major units of representation, the Cumberland River basin and the Tennessee River basin. For each of the three species, redundancy was characterized by the number of populations, and, in our analysis, range loss incorporates redundancy as the portion of watersheds where the species is extirpated (see table 3, below). Although populations in low condition contribute to redundancy values, they have minimal influence on population resiliency and species representation. Low-condition populations are not, or are barely, recruiting individuals to found new generations and, therefore, are functionally extirpated.

TABLE 3—CURRENT RESILIENCY OF ALL WATERSHEDS (POPULATIONS), AND RANGE LOSS (PERCENT OF WATERSHEDS WHERE EXTIRPATED)

Species	Current resiliency					Range loss (percent)
	Extirpated	Low	Medium	High	Unknown	
Tennessee clubshell	83	28	4	3	29	58–76
Tennessee pigtoe	51	32	8	3	20	42–62
Cumberland moccasinshell	87	22	3	9	29	56–74

Tennessee Clubshell—Current Conditions

The Tennessee clubshell historically occurred throughout the Tennessee and Cumberland River basins. Currently, it occupies 35 to 64 watersheds, compared to 147 historically, reflecting a range reduction of 58 to 76 percent. Most extant populations of the species are classified as low condition (28), with only three populations classified as high condition and four populations classified as medium condition, indicating species condition is currently low (see table 3, above). Rangewide, there are three redundant populations with high resiliency, which are likely to withstand the effects of stochastic events, and five redundant populations with medium resiliency, which may withstand the effects of a stochastic event. The 28 low-condition (low resiliency) populations have little capacity to withstand the effects of a stochastic event and do not contribute to species redundancy or the species' capacity for withstanding catastrophic events. While the Tennessee clubshell persists in the Tennessee River basin, it is on the verge of extirpation from the entire Cumberland River basin, with only 5 low-condition populations (low resiliency) and 16 extirpated populations. Extirpation of the species from this basin would result in a 50 percent loss in representation, as the Tennessee clubshell would be lost from one of the two major ecological settings (representation units) in its range.

Representation has been further diminished by reductions in connectivity between mainstem and tributary streams, which contribute to reduced size and genetic isolation of Tennessee clubshell populations.

Tennessee Pigtoe—Current Conditions

The Tennessee pigtoe was once a common species throughout the Tennessee Basin. Currently, it occupies 43 to 63 watersheds, compared to 114 historically, reflecting a range reduction of 42 to 62 percent. Most extant populations of the species are classified as low condition (32), with only three populations classified as high condition and eight populations classified as medium condition, indicating species condition is currently low (see table 3, above). Rangewide, there are three redundant populations with high resiliency, which are likely to withstand the effects of stochastic events, and eight redundant populations with medium resiliency, which may withstand the effects of a stochastic event. The 32 low-condition (low resiliency) populations have little capacity to withstand the effects of a stochastic event and do not contribute to species redundancy or the species' capacity for withstanding catastrophic events. Representation of the Tennessee pigtoe has declined, as populations in the mainstem Tennessee River are extirpated and the connectivity between tributaries is disrupted by impoundments, which has diminished population interaction necessary for maintenance of genetic diversity.

Cumberland Moccasinshell—Current Conditions

The Cumberland moccasinshell historically occurred throughout the Tennessee and Cumberland River basins. Currently it occupies 34 to 63 watersheds, compared to 150 historically, reflecting a range reduction of 56 to 74 percent. Most extant populations of the species are classified as low condition (22), with nine populations classified as high condition and three populations classified as medium condition, indicating species condition is currently low (see table 3, above). With nine populations in high condition and two populations in medium condition in the Tennessee Basin, redundancy in the basin may buffer against stochastic events. However, these populations are concentrated in Upper Tennessee Basin tributaries, mainly the Clinch-Powell watershed, with seven high condition populations, and one high condition population in the Holston watershed. The Duck River watershed, in the lower Tennessee Basin, has one high-condition and two medium-condition populations. The low-condition populations in the rest of the Tennessee Basin lack resiliency and have little capacity to withstand effects of environmental stochasticity. Because there are no populations with high resiliency, and only one population with medium resiliency in the Cumberland basin ecological setting, and smaller-scale ecological settings outside the Upper Tennessee and Duck basins only contain populations with low resiliency, Cumberland moccasinshell representation, or its potential for adapting to environmental change, is diminished.

Current Risk Profiles

We used the model parameters estimated in the current conditions analysis (*i.e.,* the relative effects of each stressor) to model the probability that a watershed would be classified as extirpated, low, medium, or high based on historical land-use and climate patterns. These probabilities discussed in the ''Future Conditions'' section of our SSA report (Service 2020, pp. 16–20) represent the species' present (or baseline; *i.e.,* current) risk profile with no additional climate or land-use changes. The baseline modeling, based on threats alone, measures the present extirpation risk to all populations regardless of their current condition. For example, there may be populations that have a comparatively high demographic and distributional condition, but due to significant stressors that are already acting on the population, such as large impoundments and isolation, they also have a high probability of extirpation. Additionally, because low-condition populations contain few individuals or display little evidence of recruitment), they have an inherently high risk of extirpation within several generations. Importantly, these baseline estimates are not impacted by uncertainty in future climate or land-use scenarios because they derive from currently observed patterns across the landscape. These baseline probabilities are assumed valid over the next 10 years. Therefore, we used the current or baseline probability to assess the current risk of extirpation or low condition to each of the three mussel species (see table 4, below).

The current risk of being classified as extirpated or low condition for all three species was similar. For Tennessee clubshell, the average current risk of being classified as extirpated or low condition is 0.71 and 0.23, respectively. In addition, nearly all populations of Tennessee clubshell may be at high risk of being classified as extirpated or low condition due to current land use. For Tennessee pigtoe, the average current risk of being classified as extirpated or low condition is 0.54 and 0.34, respectively. In addition, all populations of Tennessee pigtoe were more likely than not to be classified as extirpated or low condition based on current patterns of land use within watersheds. For Cumberland moccasinshell, the average current risk of being classified as extirpated or low condition is 0.72 and 0.16, respectively. The current risk of being classified as extirpated or low condition was similarly high for Cumberland moccasinshell populations in the lower Tennessee and throughout the Cumberland Basin as described for Tennessee pigtoe; however, the upper Tennessee Basin currently contains eight populations classified as high condition that may have lower risk of becoming extirpated or low condition populations compared to other regions.

TABLE 4—AVERAGE CURRENT PROBABILITY (BASELINE OR CURRENT RISK PROFILE) OF SPECIES CONDITION ACROSS ALL WATERSHEDS GIVEN CURRENT THREATS

Species	Extirpated	Low	Medium	High
Tennessee Clubshell	0.71	0.23	0.04	0.03
Tennessee Pigtoe	0.54	0.34	0.06	0.05
Cumberland Moccasinshell	0.72	0.16	0.04	0.08

Future Conditions

Because we determined that the current condition of the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell is consistent with an endangered species (see Determination of Status for the Three Mussel Species, below), we are not presenting the results of the future

scenarios in this proposed rule. However, above, we present the baseline or current risk profile results as these were used in the determination of the three species' status. Please refer to the SSA report (Service 2020, pp. 16–21) for the full analysis of future scenarios.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the three species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the three species. To assess the current and future condition of the three species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. For each of the three species, because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

Existing conservation measures directly benefiting the three mussel species are limited. Five percent or less of the currently occupied area for all three species is within protected areas managed for biodiversity conservation (Service 2020, pp. 27–29). While the percent of areas receiving some level of protection is slightly greater (15 percent or less), many of these areas are subject to mining and other extractive uses detrimental to freshwater mussels. Compared to currently extant populations of the three species, the percentage of protected area is similar for extirpated populations, suggesting the levels of protection observed are not adequate to prevent local extirpations.

Reintroductions have been attempted for at least three populations of Cumberland moccasinshell using individuals translocated from the Clinch River at Kyles Ford, Tennessee, to other rivers in the State. Between 2010 and 2015, 1,100 individuals were stocked in the Emory River, and 3,539 individuals were stocked in the Nolichucky River (Phipps et al. 2018, pp. 27–41). Populations of the Cumberland moccasinshell in both rivers are currently in low condition and do not appear to be reproducing based on 2016 surveys. An additional 800 individuals were stocked in the Hiwassee River in 2012 (Phipps et al. 2018, pp. 26–27), but reintroduction efforts were not successful, and this population is currently considered extirpated. It is possible that cold-water discharges from Apalachia Dam, which is operated as a peaking hydropower facility, have reduced the reintroduction potential of mussel species in the Hiwassee River. Unnatural thermal regimes continue to affect populations of Tennessee clubshell in the Hiwassee River and freshwater mussels below other hydropower dams in the Tennessee River basin (Layzer and Scott 2006, p. 488).

States vary in level of protection provided to freshwater mussels in general. The State of Virginia has statutory protection for freshwater mussels. State wildlife management agencies in Alabama, Tennessee, North Carolina, and Kentucky have protective regulatory measures prohibiting the take or possession of freshwater mussels without a scientific collector's permit. Freshwater mussel species are only protected in Georgia if they are listed under the Act. Accordingly, they currently may be taken with a fishing license or commercial fishing license. A variety of additional ''designations'' or status descriptions are assigned to the three species within States of occurrence; however, these do not indicate State statutory protections, nor are they associated with habitat or restoration priorities.

Determination of Status for the Three Mussel Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following 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.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effects of the threats under the Act's section 4(a)(1) factors, we found that the three mussel species have declined significantly in distribution and abundance. The primary broadscale threats, development (as urbanization) and large impoundments, and more localized threats, including energy development and agriculture, have reduced available habitat, curtailing the range of the three species (Factor A). All three species have experienced substantial reductions in their current distributions compared to historical ranges.

Our SSA modeled the current probability (*i.e.,* baseline or current risk profile) that the species' status within various watersheds would be extirpated, low, medium, or high (see table 4, above) based on historical land-use and climate patterns, which account for the rangewide primary threats as discussed above. Together, the model (baseline or current risk profile) and current population conditions analysis (which is based on observations in the wild and current threats) informed our determination as to whether each species is in danger of extinction throughout all or a significant portion of its range (*i.e.,* whether each species meets the definition of an endangered species under the Act). Our determinations for each species are discussed below.

Tennessee Clubshell—Status Throughout All of Its Range

The Tennessee clubshell historically occurred throughout the Tennessee and Cumberland River basins. Most extant populations of the Tennessee clubshell are in low condition (have low resiliency) and exhibit little to no reproduction. Recruitment of new generations to the low-condition populations is very unlikely, and, as such, they are functionally extirpated, with little resistance to stochastic events, and they are unlikely to recover under the chronic stresses of current and projected threats. The three high-condition populations are restricted to the upper Tennessee River basin, in the Clinch River (two watersheds) and Hiwassee River (one watershed). In the Cumberland Basin representation unit, 5 populations are in low condition, and 16 are extirpated. As discussed above, while the Tennessee clubshell persists in the Tennessee River basin, it is on the verge of extirpation from the entire

Cumberland River basin, with only 5 low-condition populations and 16 extirpated populations. Extirpation of the species from this basin would result in a 50 percent loss in representation. Representation has been further diminished by reductions in connectivity between mainstem and tributary streams, which contribute to reduced size and genetic isolation of Tennessee clubshell populations.

Because species viability is bolstered by having a broad spatial distribution across ecological settings (representation) and a sufficient number of resilient populations (redundancy), the restriction of few resilient populations to one region, in comparison to the broader distribution of populations historically, indicates species viability is currently low. In addition, the average current risk of extirpation (0.71) or low condition (0.23) across all watersheds for the Tennessee clubshell is high. Given the preponderance of low condition populations that are likely functionally extirpated throughout the species' range and the extent of urban development and large impoundments throughout the range, as well as more localized threats, including energy development and agriculture, the Tennessee clubshell is in danger of extinction throughout its range. Unlike a threatened species, which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, the Tennessee clubshell is in danger of extinction throughout its range now, owing to the low condition of most populations and their current high risk of extirpation resulting from current threats. Thus, after assessing the best available information, we determine that Tennessee clubshell is in danger of extinction throughout all of its range.

Tennessee Clubshell—Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the Tennessee clubshell is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Tennessee clubshell warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), which vacated the provision of 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'' (Final Policy; 79 FR 37578, July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status for the Tennessee Clubshell

Our review of the best available scientific and commercial information indicates that the Tennessee clubshell meets the Act's definition of an endangered species. Therefore, we propose to list the Tennessee clubshell as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Tennessee Pigtoe—Status Throughout All of Its Range

Once a common species in the Tennessee Basin, most extant populations of the Tennessee pigtoe are in low condition (have low resiliency) and exhibit little to no reproduction. Recruitment of new generations to the low-condition populations is very unlikely, and, as such, they are functionally extirpated, with little resistance to stochastic events, and they are unlikely to recover under the chronic stresses of current and projected threats. Two of the three high-condition populations are in the upper part of the basin, in a Clinch River subwatershed and one of the river's tributaries, Copper Creek. The other high-condition population is in the lower Tennessee system, in the Duck River basin. Eight populations are in medium condition and distributed among lower, middle, and upper Tennessee Basin watersheds.

The Tennessee pigtoe may have sufficiently resilient populations (redundancy) spread over a large enough area to withstand a catastrophic event due to the occurrence in eight watersheds by either a high-condition or medium-condition population (three high-condition and eight medium-condition). However, populations in the mainstem Tennessee River, where the phenotype with a larger, more inflated shell only occurred, are extirpated. In addition, numerous large impoundments on the mainstem Tennessee and several of its tributaries prevent gene flow between populations, which is necessary for maintaining representation. The average current risk of extirpation across all watersheds for the Tennessee pigtoe is high (0.54) based on current patterns of land use within the watersheds. Therefore, the 11 populations in high and medium condition may be at high risk of becoming extirpated or low condition in the future given current land use and population trajectories. While the reduction in range (42 to 62 percent) appears slightly smaller for the Tennessee pigtoe when compared to the Cumberland moccasinshell and the Tennessee clubshell, this may reflect the Tennessee pigtoe's endemism to the Tennessee Basin and naturally smaller distribution rather than differences in the species' response to major stressors. Given the extent of urban development and large impoundments, and more localized but widespread threats of energy development and agriculture, most populations of the Tennessee pigtoe are in low condition such that they are at high risk of extirpation. Unlike a threatened species, which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, the Tennessee pigtoe is in danger of extinction throughout its range now, owing to the low condition of most populations and their current high risk of extirpation resulting from current threats. Thus, after assessing the best available information, we determine that the Tennessee pigtoe is in danger of extinction throughout all of its range.

Tennessee Pigtoe—Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the Tennessee pigtoe is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Tennessee pigtoe warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Everson,* which vacated the provision of the Final Policy (79 FR 37578; July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status for the Tennessee Pigtoe

Our review of the best available scientific and commercial information indicates that the Tennessee pigtoe meets the Act's definition of an endangered species. Therefore, we propose to list the Tennessee pigtoe as

an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Cumberland Moccasinshell—Status Throughout All of Its Range

Historically occurring throughout the Tennessee and Cumberland Basins, most extant populations of the Cumberland moccasinshell are in low condition (have low resiliency) and exhibit little to no reproduction. Recruitment of new generations to the low-condition populations is very unlikely, and, as such, they are functionally extirpated, with little resistance to stochastic events, and they are unlikely to recover under the chronic stresses of current and projected threats. Nine populations are in high condition, with seven occupying the Clinch River drainage and one occupying a watershed in the North Fork Holston River drainage, both in the Upper Tennessee Basin. One high-condition population and two medium-condition populations are in the Duck River watershed. In the Cumberland Basin representation unit, 1 population is in medium condition, 7 are in low condition, and 20 are extirpated. The average current risk of extirpation across all watersheds for the Cumberland moccasinshell is high (0.72).

Containing eight of the nine high-condition populations rangewide, the Upper Tennessee Basin is a stronghold for the species. However, in the Upper Tennessee, there is uncertainty around population condition, for which mean risk of extirpation or low-condition population ranges from 0.5 to 0.8. The stronghold status of the Upper Tennessee Basin and the presence of one high-condition and two medium-condition populations in the Lower Tennessee Basin's Duck River, and another medium-condition population in the Cumberland Basin, indicate the species has some capacity to withstand a catastrophic event, although species redundancy is greatly reduced from historical levels.

Although currently nine populations are in high condition, they are isolated by large impoundments and the hundreds of river miles between the three river systems where they occur. This isolation prohibits genetic exchange between populations, which is essential to maintaining adaptive capacity (representation); therefore, the average risk of extirpation or low condition is high (greater than 0.5) for most of the high-condition populations. Additionally, the level of current rangewide threats to the species, which have contributed to documented extirpation from 87 of 150 watersheds, is projected to remain relatively constant, suggesting population trajectories are unlikely to change. Considering watersheds of unknown condition are likely extirpated and instead are classified as ''unknown'' due to being excluded from surveys because of poor habitat quality, the number of extirpations is likely closer to 106 of the 150 watersheds. The current level and extent of threats has resulted in a low-condition or extirpated state for most populations of the Cumberland moccasinshell, such that these populations are at a high risk of extirpation. Unlike a threatened species, which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, the Cumberland moccasinshell is in danger of extinction throughout its range now, owing to the low condition of most populations and their current high risk of extirpation resulting from current threats. Thus, after assessing the best available information, we determine that the Cumberland moccasinshell is in danger of extinction throughout all of its range.

Cumberland Moccasinshell—Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the Cumberland moccasinshell is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Cumberland moccasinshell warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Everson,* which vacated the provision of the Final Policy (79 FR 37578; July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status for the Cumberland Moccasinshell

Our review of the best available scientific and commercial information indicates that the Cumberland moccasinshell meets the Act's definition of an endangered species. Therefore, we propose to list the Cumberland moccasinshell as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of 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, including the Service, 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. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. 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.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''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. Revisions of the plan may be done to address continuing or new threats to the species, as new

substantive information becomes available. For each of the three species, the recovery outlines, draft recovery plans, final recovery plans, and any revisions will be available on our website (*https://ecos.fws.gov/ecp/species/3254; https://ecos.fws.gov/ecp/species/9887;* and *https://ecos.fws.gov/ecp/species/9881*) or from our Asheville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) as they are completed.

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 these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Alabama, Georgia, Kentucky, North Carolina, Tennessee, and Virginia would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance*.

Although the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as 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)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any 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 critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell that may be subject to the section 7 processes are land management or other landscape-altering activities on Federal lands administered by the National Park Service, U.S. Fish and Wildlife Service, or U.S. Forest Service, as well as 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 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, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following: (1) import endangered wildlife into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) endangered wildlife within the United States or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is the policy of the Service, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the extent known at the time a species is listed, specific activities that would not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that would be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public

awareness of the effect of a proposed listing on proposed and ongoing activities within the ranges of the species proposed for listing.

As discussed above, certain activities that are prohibited under section 9 may be permitted under section 10 of the Act. In addition, to the extent currently known, the following activities would not be considered likely to result in violation of section 9 of the Act if we list the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell:

(1) Normal agricultural and silvicultural practices, which are carried out in accordance with any existing regulations and best management practices; and

(2) Normal residential landscape activities.

This list is intended to be illustrative and not exhaustive; additional activities that would not be considered likely to result in violation of section 9 of the Act may be identified during coordination with the local field office, and in some instances (*e.g.,* with new information), the Service may conclude that one or more activities identified here would be considered likely to result in violation of section 9.

To the extent currently known, the following is a list of examples of activities that would be considered likely to result in violation of section 9 of the Act, in addition to what is already clear from the descriptions of the prohibitions found at 50 CFR part 17, if we list the Tennessee clubshell, Tennessee pigtoe, and Cumberland moccasinshell:

(1) Unauthorized handling or collecting of the species;

(2) Modification of the channel or water flow of any stream in which the Tennessee clubshell, Tennessee pigtoe, or Cumberland moccasinshell is known to occur;

(3) Livestock grazing that results in direct or indirect destruction of stream habitat; and

(4) Discharge of chemicals or fill material into any waters in which the Tennessee clubshell, Tennessee pigtoe, or Cumberland moccasinshell is known to occur.

This list is intended to be illustrative and not exhaustive; additional activities that would be considered likely to result in violation of section 9 of the Act may be identified during coordination with the local field office, and in some instances (*e.g.,* with new or site-specific information), the Service may conclude that one or more activities identified here would not be considered likely to result in violation of section 9 of the Act. Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the Asheville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. 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.

We have found critical habitat to be prudent and determinable for all three mussel species and have drafted a proposed critical habitat rule for these species. However, the proposed critical habitat rule is proceeding on a different timeline from the proposed listing rule because we were informed on August 9, 2023, that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) had determined that our proposed critical habitat rule is significant under Executive Order 12866 and will be initiating the interagency review process for that proposed rule. Because the Service is operating under a court-enforceable deadline requiring us to submit the 12-month finding to the **Federal Register** by August 15, 2023, and because E.O. 12866 does not apply to listing determinations, we are proceeding with publishing this finding and proposed rule without the proposed critical habitat designation. We will publish a proposed critical habitat rule for the three mussels following interagency review of the proposed critical habitat rule.

Required Determinations

Clarity of the Rule

We are required by E.O.s 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 **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 (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

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 (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 Secretary's 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.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Asheville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Asheville Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

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 § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding entries for ''Clubshell, Tennessee'', ''Moccasinshell, Cumberland'', and ''Pigtoe, Tennessee'' in alphabetical order under CLAMS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Clams				
*	*	*	*	*
Clubshell, Tennessee	*Pleurobema oviforme*	Wherever found	E	[**Federal Register** citation when published as a final rule]
*	*	*	*	*
Moccasinshell, Cumberland.	*Medionidus conradicus*	Wherever found	E	[**Federal Register** citation when published as a final rule]
*	*	*	*	*
Pigtoe, Tennessee	*Pleuronaia barnesiana* ..	Wherever found	E	[**Federal Register** citation when published as a final rule]
*	*	*	*	*

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

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BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 161
Tuesday, August 22, 2023

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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information 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.

Comments regarding this information collection received by September 21, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Programs to Request a New Lifecycle Certification Form.

OMB Control Number: 0524–New.

Summary of Collection: The Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) programs at the U.S. Department of Agriculture (USDA) make competitively awarded grants to qualified small businesses to support high quality, advanced concepts research related to important scientific problems and opportunities in agriculture that could lead to significant public benefit if successful. The USDA SBIR/STTR Program Office proposes to contact Phase I and II SBIR/STTR awardees to request submission of the Lifecycle Certification form as part of their interim and final reports, as required by the Small Business Administration's ''SBA SBIR/STTR Policy Directive,'' dated October 1, 2020. In 1982, the Small Business Innovation Research (SBIR) Grants Program was authorized, Public Law 97–219, and in 2022, the BIR and STTR Extension Act of 2022, reauthorized the SBIR and Small Business Technology Transfer (STTR) programs through September 30, 2025.

Need and Use of the Information: The Lifecycle Certification form is used by USDA to ensure Small Business Concerns continue to meet specific program requirements during the life of the Funding Agreement. The Lifecycle Certification form documents grantee compliance with the SBIR/STTR eligibility requirements and is required as part of agency close-out procedures.

Description of Respondents: Individuals.

Number of Respondents: 115.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 58.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–18002 Filed 8–21–23; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–851]

Tin Mill Products From Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that tin mill products from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: George McMahon or Carolyn Adie, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1167 and (202) 482–6250, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on February 14, 2023.[1] On May 31, 2023, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now August 16, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see*

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 (February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 34827 (May 31, 2023).

the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are tin mill products from Germany. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act and constructed export prices in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances do not exist for thyssenkrupp Rasselstein GmbH (TKR) and all other Germany producers and exporters. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for TKR, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for TKR is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
thyssenkrupp Rasselstein GmbH	7.02
All Others	7.02

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of tin mill products from Germany as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondent listed in the table above is the company-specific cash deposit rate listed for the respondent in the table; (2) if the exporter is not a respondent identified in the table above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[7] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue;

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Negative Determination of Critical Circumstances in the Investigation of Tin Mill Products from Germany,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 88 FR at 9482.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

(2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

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

On July 25, 2023, pursuant to 19 CFR 351.210(e), thyssenkrupp Rasselstein GmbH requested that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination in this investigation up to 135 days after publication of this notice and that provisional measures be extended to a period not to exceed six months.[9] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[10]

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If Commerce's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of tin mill products from Germany are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 16, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of the investigation are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of the investigation unless specifically excluded. The following products are outside and/or specifically excluded from the scope of the investigation:

- Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 ½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).
- Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.
- Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.
- Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.
- Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).
- Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025

[9] *See* TKR's Letter, ''Request to Extend Final Determination,'' dated July 25, 2023.

[10] *See* 19 CFR 351.210(e).

mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m² and chromium oxide of 10 mg/m², with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ⅛ inch, with a thickness tolerance of 0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg), with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

• Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

• Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. inch, with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

• Tin-free steel coated with a metallic chromium layer between 100–200 mg/m² and a chromium oxide layer between 5–30 mg/m²; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (Br) of 10 kg minimum and a coercive force (Hc) of 3.8 Oe minimum.

• Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

The merchandise subject to the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Affiliation
VI. Discussion of the Methodology
VII. Preliminary Negative Determination of Critical Circumstances
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2023–18029 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–869]

Tin Mill Products From Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that tin mill products from Canada are being, or likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on February 14, 2023.[1] On May 31, 2023, Commerce postponed the preliminary determination of this investigation and the revised deadline is now August 16, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 (February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 34827 (May 31, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Negative Determination of Critical Circumstances in the Investigation of Tin Mill Products from Canada,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are tin mill products from Canada. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for ArcelorMittal Dofasco G.P. (Dofasco) and all other Canadian producers and exporters. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Commerce calculated an individual estimated weighted-average dumping margin for Dofasco, the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Dofasco is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
ArcelorMittal Dofasco G.P	5.29
All Others	5.29

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[7] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 88 FR at 9482.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

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

On August 2, 2023, pursuant to 19 CFR 351.210(e), Dofasco requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[9] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[10]

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports of tin mill products from Canada are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 16, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of this investigation are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded. The following products are outside and/or specifically excluded from the scope of this investigation:

- Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 ½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).
- Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.
- Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.
- Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.
- Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).
- Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum

[9] *See* Dofasco's Letter, ''Request to Postpone Final Determination,'' dated August 2, 2023.

[10] *See* 19 CFR 351.210(e).

manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of 1/8 inch, with a thickness tolerance of 0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg), with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.
- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. inch, with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.
- Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (Br) of 10 kg minimum and a coercive force (Hc) of 3.8 Oe minimum.
- Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Discussion of the Methodology
VI. Preliminary Negative Determination of Critical Circumstances
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2023–18027 Filed 8–21–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–827]

Tin Mill Products From the United Kingdom: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that tin mill products from the United Kingdom (UK) are not being, and are not likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on February 14, 2023.[1] On May 31, 2023, Commerce postponed the preliminary determination of this investigation and the revised deadline is now August 16, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 34827 (May 31, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination of Sales at Less Than Fair Value in the Investigation of Tin Mill Products from the United Kingdom'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are tin mill products from the UK. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices and constructed export prices in accordance with section 772(a) and 772(b) of the Act, respectively. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Tata Steel UK Ltd	0.00

Consistent with section 733(d) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that Ttat Steel UK Ltd., the company we selected as the sole mandatory respondent, has not made sales of subject merchandise at LTFV.

Consistent with section 773(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of tin mill products from the UK.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[7] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners.

On July 28, 2023, Cleveland-Cliffs Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners) requested that Commerce postpone the final determination in the event of a negative preliminary determination.[9] In accordance with section 735(a)(2)(B) of the Act, and 19 CFR 351.210(b)(2)(i) because: (1) the preliminary determination is negative; (2) the petitioners have requested the postponement of the final determination; and (3) no compelling reasons for denial exist, Commerce is

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 88 FR at 9482.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[9] *See* Petitioners' Letter, ''Petitioners' Request For Postponement Of The Final Determinations,'' dated July 28, 2023.

postponing the final determination. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[10]

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine 75 days after the final determination whether imports of tin mill products from the UK are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 16, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of these investigations are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of these investigations unless specifically excluded. The following products are outside and/or specifically excluded from the scope of these investigations:

• Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 ½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m2; with a chrome oxide coating restricted to 6 to 25 mg/m2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cutoff of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m2 as type DOS, or 3.5 to 6.5 mg/m2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

• Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

• Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

• Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70- 130 mg/m2, with a chromium oxide layer of 5–30 mg/m2, with a tensile strength of 260–440 N/mm2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

• Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).

• Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m2 and chromium oxide of 10 mg/m2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4/6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ⅛ inch, with a thickness tolerance of 0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg), with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

• Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

• Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied

[10] *See* 19 CFR 351.210(e).

coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. inch, with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

- Tin-free steel coated with a metallic chromium layer between 100–200 mg/m2 and a chromium oxide layer between 5–30 mg/m2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (Br) of 10 kg minimum and a coercive force (Hc) of 3.8 Oe minimum.
- Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

The merchandise subject to these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2023–18030 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–848]

Tin Mill Products From the Republic of Turkey: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that tin mill products from the Republic of Turkey (Turkey) are not being, or are not likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on February 14, 2023.[1] On May 31, 2023, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now August 16, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are tin mill products from Turkey. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 (February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 34827 (May 31, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination of Sales at Less Than Fair Value in the Investigation of Tin Mill Products from the Republic of Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notic*e, 88 FR at 9482.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists: [7]

Exporter/producer	Estimated weighted-average dumping margin (percent)
Tosyali Toyo Celik A.S.; Toscelik Profil ve Sac Endustrisi A.S	0.00

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that Tosyali Toyo Celik A.S. and Toscelik Profil ve Sac Endustrisi A.S., the two companies we selected as mandatory respondents and are preliminarily treating as a single entity, *i.e.,* the only individually examined respondent, has not made sales of subject merchandise at LTFV.

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of tin mill products from Turkey.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[8] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners.

On July 28, 2023, Cleveland-Cliffs Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners) requested that Commerce postpone the final determination in the event of a negative preliminary determination.[10] In accordance with section 735(a)(2)(B) of the Act, and 19 CFR 351.210(b)(2)(i), because: (1) the preliminary determination is negative; (2) the petitioners have requested the postponement of the final determination; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[11]

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine 75 days after the final determination whether imports of tin mill products from Turkey are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: August 16, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of this investigation are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded. The following products are outside and/or specifically excluded from the scope of this investigation:

[7] Commerce preliminarily determines that Tosyali Toyo Celik A.S. and Toscelik Profil ve Sac Endustrisi A.S. are a single entity. For further discussion, *see* Preliminary Decision Memorandum at 4–6; *see also* Memorandum ''Preliminary Affiliation and Collapsing Analysis Memorandum for Tosyali Toyo Celik A.S. and Toscelik Profil ve Sac Endustrisi A.S.,'' dated concurrently with this notice.

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* Petitioners' Letter, ''Petitioners' Request for Postponement Of the Final Determinations,'' dated July 28, 2023.

[11] *See* 19 CFR 351.210(e).

• Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 ½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

• Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

• Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

• Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70- 130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

• Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).

• Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch(3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ⅛ inch, with a thickness tolerance of 0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg), with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

• Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

• Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. inch, with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

• Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (Br) of 10 kg minimum and a coercive force (Hc) of 3.8 Oe minimum.

• Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Affiliation and Single Entity Treatment
VI. Discussion of the Methodology
VII. Currency Conversion

VIII. Recommendation

[FR Doc. 2023–18028 Filed 8–21–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Initiation of Antidumping Duty Changed Circumstances Review; Garware

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request for a changed circumstances review (CCR) by Garware Hi-Tech, the U.S. Department of Commerce (Commerce) is initiating a CCR of the antidumping duty (AD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, Commerce published the AD order in the **Federal Register**.[1] In the most recently completed administrative review of the *Order* covering the period July 1, 2020, to June 30, 2021, we rescinded the administrative review with respect to Garware Polyester Limited (Garware).[2] The most recently completed administrative review in which Garware was assigned a dumping rate was the administrative review covering the July 1, 2017, through June 30, 2018, period, wherein Garware was a non-individually examined company under review.[3]

On July 4, 2023, in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 51.221(c)(3), Garware Hi-Tech requested that Commerce conduct an expedited CCR to determine that Garware Hi-Tech is the successor-in-interest to Garware due to a change in the company's name (*i.e.,* Garware Polyester Limited to Garware Hi-Tech), and assign Garware Hi-Tech the non-selected rate assigned to Garware in the 2017–2018 administrative review.[4] In its submission, Garware Hi-Tech addressed the factors Commerce analyzes with respect to successor-in-interest determinations in the AD context and provided supporting documentation. Commerce received no comments from interested parties on Garware Hi-Tech's request.

Scope of the Order

The products covered by the AD order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope the AD order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of information concerning, or a request from an interested party for a review of an *Order* that shows changed circumstances sufficient to warrant a review of the order. Commerce determines that the information submitted by Garware Hi-Tech constitutes a sufficient basis to conduct a CCR of the *Order*.[5]

In the event that Commerce determines an expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits Commerce to combine the notice of initiation of the review and the preliminary results of review into a single notice. However, we are not combining this notice of initiation with the preliminary results, pursuant to 19 CFR 351.221(c)(3)(ii), because Commerce has determined that it is necessary to issue a questionnaire requesting additional information from Garware for this CCR regarding its ownership and management structure and its production facilities. After examining any properly filed comments and following up with any additional questionnaires as needed, we intend to issue the preliminary results of the CCR.

Preliminary and Final Results of the CCR

Commerce intends to publish in the **Federal Register** a notice of the preliminary results of this CCR in accordance with 19 CFR 351.221(b)(4) and (c)(3)(i). Commerce will set forth its preliminary factual and legal conclusions in that notice and a description of any action proposed based on those results. All information submitted may be subject to verification. Failure to allow full and complete verification of any information submitted may affect Commerce's consideration of that information. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. Unless extended, Commerce will issue the final results of this CCR in accordance with the time limits set forth in 19 CFR 351.216(e).

Notification to Interested Parties

We are publishing this initiation notice in accordance with section 751(b)(1) and 777(i)(1) of the Act, 19 CFR 351.216(b), and 19 CFR 351.221(b)(1).

Dated: August 16, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–17997 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–870]

Tin Mill Products From Taiwan: Preliminary Negative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that tin mill products from Taiwan are not being, or are not likely to be, sold in the United States at less

[1] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India,* 67 FR 44175 (July 1, 2002) (*Order*).

[2] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 47968 (August 5, 2022*).*

[3] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 14883 (March 16, 2020).

[4] *See* Garware Hi-Tech's Letter, ''Garware Hi-Tech Films Limited's Request for a Changed Circumstances Review,'' dated July 4, 2023.

[5] *See* 19 CFR 351.216(d).

than fair value (LTFV). The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Jacob Saude, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–0981, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on February 14, 2023.[1] On May 31, 2023, Commerce postponed the preliminary determination of this investigation and the revised deadline is now August 16, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 (February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 34827 (May 31, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination of Sales at Less Than Fair Value and Preliminary Negative Determination of Critical Circumstances in the Investigation of Tin Mill Products from Taiwan,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Investigation

The products covered by this investigation are tin mill products from Taiwan. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. In addition, Commerce has relied on facts available under section 776(a)(1) of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances do not exist for Ton Yi. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 88 FR 9482.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,''dated concurrently with this notice (Preliminary Scope Decision Memorandum).

Exporter/producer	Estimated weighted-average dumping margin (percent)
Ton Yi Industrial Corporation	0.00

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that Ton Yi, the company we selected as the sole mandatory respondent, has not made sales of subject merchandise at LTFV.

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of tin mill products from Taiwan.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register,** in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[7] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

information, until further notice.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners.

On July 28, 2023, Cleveland-Cliffs Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners) requested that Commerce postpone the final determination in the event of a negative preliminary determination.[9] In accordance with section 735(a)(2)(B) of the Act, and 19 CFR 351.210(b)(2)(i), because: (1) the preliminary determination is negative; (2) the petitioners have requested the postponement of the final determination; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination in the **Federal Register,** pursuant to section 735(a)(2) of the Act.[10]

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine 75 days after the final determination whether imports of tin mill products from Taiwan are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 16, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of this investigation are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded. The following products are outside and/or specifically excluded from the scope of this investigation:

- Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 ½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).
- Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.
- Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.
- Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.
- Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).
- Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch(3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[9] *See* Petitioners' Letter, ''Petitioners' Request For Postponement Of The Final Determinations,'' dated July 28, 2023.

[10] *See also* 19 CFR 351.210(e).

finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of 1/8 inch, with a thickness tolerance of 0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg), with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.
- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. inch, with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.
- Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (Br) of 10 kg minimum and a coercive force (Hc) of 3.8 Oe minimum.
- Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Application of Facts Available
VI. Discussion of the Methodology
VII. Preliminary Negative Determination of Critical Circumstances
VIII. Currency Conversion
IX. Recommendation

[FR Doc. 2023–18031 Filed 8–21–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–915]

Tin Mill Products From the Republic of Korea: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that tin mill products from the Republic of Korea (Korea) are not being, or are not likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482 2924 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on February 14, 2023.[1] On May 31, 2023, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now August 16, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 (February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 34827 (May 31, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination of Sales at Less Than Fair Value in the Investigation of Tin Mill Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are tin mill products from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.[7]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated constructed export prices in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
KG Dongbu Steel Co., Ltd	0.00
TCC Steel Corp	0.00

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that KG Dongbu Steel Co., Ltd. and TCC Steel Corp., the two companies we selected as mandatory respondents, have not made sales of subject merchandise at LTFV.

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of tin mill products from Korea.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[8] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners.

On July 28, 2023, Cleveland-Cliffs Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners) requested that Commerce postpone the final determination in the event of a negative preliminary determination.[10] In accordance with section 735(a)(2)(B) of the Act, and 19 CFR 351.210(b)(2)(i), because: (1) the preliminary determination is negative; (2) the petitioners have requested the postponement of the final determination; and (3) no compelling reasons for denial exist, Commerce is

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*, 88 FR at 9482.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

[7] *Id.*

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* Petitioners' Letter, ''Petitioners' Request for Postponement of the Final Determinations,'' dated July 28, 2023.

postponing the final determination. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[11]

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine 75 days after the final determination whether imports of tin mill products from Korea are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 16, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of this investigation are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded. The following products are outside and/or specifically excluded from the scope of this investigation:

- Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 ½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).
- Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.
- Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.
- Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.
- Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).
- Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch(3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ⅛ inch, with a thickness tolerance of 0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg), with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.
- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.
- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side

[11] *See also* 19 CFR 351.210(e).

(detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. inch, with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.

- Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (Br) of 10 kg minimum and a coercive force (Hc) of 3.8 Oe minimum.
- Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Affiliation
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2023–18035 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–816]

Tin Mill Products From the Netherlands: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that tin mill products from the Netherlands are not being, or are not likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3860.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on February 14, 2023.[1] On May 31, 2023, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now August 16, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are tin mill products from the Netherlands. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices and constructed export prices in accordance with sections 772(a) and 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 (February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 34827 (May 31, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination of Sales at Less-Than-Fair-Value in the Investigation of Tin Mill Products from the Netherlands,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notic*e, 88 FR at 9482.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

Exporter/producer	Estimated weighted-average dumping margin (percent)
Tata Steel IJmuiden BV	0.00

Consistent with section 733(b)(3) of the Act, Commerce disregards *de minimis* rates. Accordingly, Commerce preliminarily determines that TSIJ, the only individually examined respondent, has not made sales of subject merchandise at LTFV.

Consistent with section 733(d) of the Act, Commerce has not calculated an estimated weighted-average dumping margin for all other producers and exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because Commerce has made a negative preliminary determination of sales at LTFV with regard to subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation or to require a cash deposit of estimated antidumping duties for entries of tin mill products from the Netherlands.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[7] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners.

On July 28, 2023, Cleveland-Cliffs Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioners) requested that Commerce postpone the final determination in the event of a negative preliminary determination.[9] In accordance with section 735(a)(2)(B) of the Act, and 19 CFR 351.210(b)(2)(i), because: (1) the preliminary determination is negative; (2) the petitioners have requested the postponement of the final determination; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination. Accordingly, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[10]

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine 75 days after the final determination whether imports of tin mill products from the Netherlands are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: August 16, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of this investigation are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded. The following products are outside and/or specifically excluded from the scope of this investigation:

• Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 ½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers,

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[9] *See* Petitioners Letter, ''Petitioners' Request For Postponement Of The Final Determinations,'' dated July 28, 2023.

[10] *See also* 19 CFR 351.210(e).

measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m² as type DOS, or 3.5 to 6.5 mg/m² as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

- Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.
- Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.
- Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m², with a chromium oxide layer of 5–30 mg/m², with a tensile strength of 260–440 N/mm², with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.
- Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).
- Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m² and chromium oxide of 10 mg/m², with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ⅛ inch, with a thickness tolerance of 0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg), with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.
- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.
- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. inch, with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch × 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch × 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch × 34.125 inch scroll cut dimension.
- Tin-free steel coated with a metallic chromium layer between 100–200 mg/m² and a chromium oxide layer between 5–30 mg/m²; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (Br) of 10 kg minimum and a coercive force (Hc) of 3.8 Oe minimum.
- Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2023–18032 Filed 8–21–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–150]

Tin Mill Products From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that tin mill products from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable August 22, 2023.

FOR FURTHER INFORMATION CONTACT: Samuel Frost, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8180.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on February 14, 2023.[1] On May 31, 2023, Commerce postponed the preliminary determination of this investigation and the revised deadline is now August 16, 2023.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are tin mill products from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice.* In the Preliminary Scope Decision Memorandum, Commerce established a deadline for parties to submit scope and rebuttal briefs.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206(c), Commerce preliminarily determines that critical circumstances exist with respect to imports of tin mill products from China for the China-wide entity. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[7] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8] In this case, because no respondent qualified for a separate rate, we did not calculate any producer/exporter combination rates. For a full description of the separate rate status of interested parties in this investigation, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margin exists:

Producer/exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset (percent))
China-wide Entity	122.52	111.98

[1] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 9481 (February 14, 2023) (*Initiation Notice*).

[2] *See Tin Mill Products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 88 FR 34827 (May 31, 2023).

[3] *See* Memorandum, ''Decision Memorandum for Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances in the Investigation of Tin Mill Products from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice*, 88 FR at 9482.

[6] *See* Memorandum, ''Preliminary Scope Decision Memorandum, dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

[7] *See Initiation Notice*, 88 FR at 9486.

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available at *https://access.trade.gov/Resources/policy/bull05-1.pdf.*

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from all producers and/or exporters of tin mill products from China that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice in the **Federal Register**.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). As discussed in the Preliminary Decision Memorandum, we made no adjustment for domestic subsidy pass-through. Any such adjusted rates may be found in the Preliminary Determination Section's chart of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margin calculated in this preliminary determination unadjusted for export subsidies at the time the CVD provisional measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied total adverse facts available (AFA) to the China-wide entity in this investigation, in accordance with section 776 of the Act, and the applied AFA rate is based solely on the petition, there are no calculations to disclose.

Verification

Because the China-wide entity in this investigation did not provide information requested by Commerce, and Commerce preliminarily determines that the China-wide entity was uncooperative, we will not conduct verification.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than September 8, 2023. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination. Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: August 16, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products within the scope of the investigation are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

double- reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of the investigation unless specifically excluded. The following products are outside and/or specifically excluded from the scope of the investigation:

- Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (±1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (±1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 ½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).
- Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.
- Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.
- Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (kg) 10.0 minimum, Br (kg) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.
- Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).
- Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of ⅛ inch, with a thickness tolerance of 0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg), with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.
- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of: (1) CAT4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.
- Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. inch, with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch x 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch x 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch x 34.125 inch scroll cut dimension.
- Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (Br) of 10 kg minimum and a coercive force (Hc) of 3.8 Oe minimum.
- Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A).

The merchandise subject to the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0020, 7210.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel. Although the subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation
V. Selection of Respondents
VI. Discussion of the Methodology
VII. Adjustment Under Section 777A(f) of the Act
VIII. Adjustment to Cash Deposit Rate for Export Subsidies
IX. Preliminary Determination of Critical Circumstances
X. Recommendation

[FR Doc. 2023–18036 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Semiconductor Technology Center Selection Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: On April 26, 2023, the National Institute of Standards and Technology published a notice in the **Federal Register** soliciting nominations for a Selection Committee that will play an important role in the success of the National Semiconductor Technology Center (''NSTC''). The notice indicated that the Selection Committee shall automatically terminate no later than August 31, 2023. NIST is issuing this notice to inform the public that the Selection Committee shall automatically terminate no later than September 30, 2023.

DATES: Nominations for the Selection Committee closed on 5:00 p.m. EST on May 24, 2023. The Selection Committee shall automatically terminate no later than September 30, 2023.

ADDRESSES: Kevin Kimball, Senior Advisor, CHIPS R&D Office, U.S. Department of Commerce, NIST, 100 Bureau Drive, MS1000, Gaithersburg, MD 20899; email: *FRN@chips.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Kimball, Senior Advisor, CHIPS R&D Office, U.S. Department of Commerce, NIST, 100 Bureau Drive, MS1000, Gaithersburg, MD 20899; email: *FRN@chips.gov;* telephone: 240–778–3977. For additional information about the National Semiconductor Technology Center, please visit *https://www.nist.gov/document/vision-and-strategy-national-semiconductor-technology-center.* For media inquiries, please contact Matt Hill at *Matt.Hill@chips.gov.*

SUPPLEMENTARY INFORMATION: On April 26, 2023, the Department issued a notice in the **Federal Register** seeking nominations for Selection Committee members, who by virtue of their experience and expertise, could identify distinguished, purpose-driven, visionary leaders for the new independent, non-profit entity to operate the NSTC. The original notice is available at *https://www.federalregister.gov/documents/2023/04/26/2023-08591/national-semiconductor-technology-center-selection-committee.*

On June 20, 2023, the Department identified five highly qualified individuals to serve on the Selection Committee. The press release describing these individuals is available at *https://www.nist.gov/news-events/news/2023/06/chips-america-announces-selection-committee-board-trustees-national.*

The Department understands that the Committee would benefit from additional time to complete this important task. Therefore, the Department is extending the termination date of the Selection Committee from August 31, 2023 to September 30, 2023.

Authority: 15 U.S.C. 4656, 4659.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–17991 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Northwest Region, Pacific Coast Groundfish Fishery: Trawl Rationalization Cost Recovery Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before October 23, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0364 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Christopher Biegel, Cost Recovery Coordinator, National Marine Fisheries Service, West Coast Regional Office, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232, (503) 231–6291, *christopher.biegel@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision to a currently approved information collection. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) authorizes and requires that the Secretary of Commerce maintain a cost recovery program to recover the management, data collection and analysis, and enforcement costs of the limited access privilege programs, such as the Pacific Coast Groundfish Trawl Rationalization Program (Trawl Program). Cost recovery fees may not exceed three percent of the ex-vessel value. The Trawl Program cost recovery program requires fish sellers to submit fees to fish buyers who then submit those fees to NOAA's National Marine Fisheries Service (NMFS). Fish buyers must also submit information to NMFS on the volume and value of harvested groundfish when submitting the fees. Information is collected from monthly and annual payment transactions and reports as well as non-payment documents when necessary. This revision would add the applicable fish ticket number to each IFQ *Pay.Gov* payment transaction.

The information collected is used to track the payment of cost recovery fees, reconcile cost recovery payments with landings data from other sources, calculate average ex-vessel values, and, if necessary, help in the resolution of non-payment issues.

This program is authorized under the Pacific coast groundfish fishery

regulations, trawl rationalization cost recovery program at 50 CFR 660.115.

II. Method of Collection

Cost recovery fee payments for the Trawl Program must be submitted online through the Federal web portal *Pay.gov.* MS sector annual reports are submitted by mail or email. Payments for the Shorebased Individual Fishing Quota (IFQ) and Mothership (MS) sectors cost recovery fees are submitted online monthly through *Pay.gov.* The Catcher Processor sector submits cost recovery fees online yearly through *Pay.gov.*

III. Data

OMB Control Number: 0648–0663.

Form Number(s): None.

Type of Review: Regular submission, revision of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 580.

Estimated Time per Response: Trawl rationalization cost recovery fee collection report: 1 hour; Mothership Coop Annual Report: 1 hour.

Estimated Total Annual Burden Hours: The estimated total annual burden is 580 hours.

Estimated Total Annual Cost to Public: The estimated total annual cost is $0.

Respondent's Obligation: Mandatory.

Legal Authority: NMFS and the Pacific Fisheries Management Council (Council) manage the groundfish fisheries in the exclusive economic zone seaward of California, Oregon, and Washington under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council prepared the FMP under the authority of the MSA, 16 U.S.C. 1801 *et seq.* Regulations governing United States fisheries and implementing the FMP appear at 50 CFR part 660.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–18068 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Southeast Region Permit Family of Forms

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

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment before the Department submits the information collection request to the Office of Management and Budget (OMB).

DATES: To ensure consideration, written comments regarding this information collection must be received no later than October 23, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *noaa.pra@noaa.gov.* Please reference OMB Control Number 0648–0205 in the subject line of your comments. All comments received are part of the public record. All personally identifiable information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information or questions related to the information collection activities to Adam Bailey, NMFS Southeast Regional Office, 8901 La Jolla Shores Dr, La Jolla, CA 92037; (858) 546–7000; or *adam.bailey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension to the existing reporting requirements approved under the Office of Management and Budget's (OMB) Control Number 0648–0205, Southeast Region Permit Family of Forms. The NMFS Permits Office within the Southeast Regional Office (SERO) administers Federal permits for fishing in the U.S. exclusive economic zone (EEZ) of the Caribbean Sea, Gulf of Mexico (Gulf), and South Atlantic under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

The NMFS Southeast Region manages Federal fisheries in the Caribbean, Gulf, and South Atlantic under fishery management plans (FMPs) in each of these areas. The regional fishery management councils prepared the FMPs pursuant to the Magnuson-Stevens Act. The regulations implementing the FMPs, including those that have recordkeeping and reporting requirements, are located at 50 CFR part 622 (*https://www.ecfr.gov/current/title-50/chapter-VI/part-622?toc=1*).

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. The NMFS Southeast Region requests information from fishery participants. This information results in an increasingly more efficient and accurate database for management and monitoring of the Federal fisheries in the U.S. Caribbean, Gulf, and South Atlantic.

II. Method of Collection

Respondents can access forms and instructions from the SERO Permits Office website at *https://*

www.fisheries.noaa.gov/southeast/resources-fishing/southeast-fisheries-permits, or, if requested by a respondent, the SERO Permits Office can mail an application and instructions. Respondents can complete and submit forms electronically, or complete paper forms, and then respondents can either mail or bring the forms to NMFS.

III. Data

OMB Control Number: 0648–0205.

Form Number(s): None.

Type of Review: Regular submission—extension of current information collection.

Affected Public: Businesses or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 9,471.

Estimated Time per Response:

- Dealer Permit Application, 30 minutes;
- Vessel EEZ Permit Application, including Golden Tilefish Endorsement and Smoothhound Shark Permit, 50 minutes;
- Wreckfish Permit Application, 55 minutes;
- Vessel Operator Card Application for Rock Shrimp, 30 minutes;
- Fishing in Colombian Treaty Waters Vessel Permit Application, 50 minutes;
- Golden Crab Permittee Zone Transit Notification, 10 minutes;
- Notifications of Lost or Stolen Traps or Authorization for Retrieval (golden crab, reef fish, snapper-grouper, spiny lobster), 10 minutes;
- Vessel Permit Transfers and Notarizations, 10 minutes;
- Annual Landings Report for Gulf of Mexico Shrimp, 20 minutes;
- International Maritime Organization Number Registration, 30 minutes;
- Aquacultured Live Rock Permitting and Reporting—New Permit—Deposit or Harvest Report, 15 minutes; Notice of Intent to Harvest, 10 minutes; Federal Permit Application, including Site Evaluation Report, 70 minutes; and
- Aquacultured Live Rock Permitting and Reporting—Renew Permit—Deposit or Harvest Report, 15 minutes; Notice of Intent to Harvest, 10 minutes; Federal Permit Application, 50 minutes.

Estimated Total Annual Burden Hours: 7,009.

Estimated Total Annual Cost to Public: $321,508 in recordkeeping or reporting costs.

Respondent's Obligation: Mandatory.

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

IV. Request for Comments

We are soliciting public comments to permit the Department to: (a) evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the time and cost burden for this information collection, including the validity of the methodology and assumptions used; (c) evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection. 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–18061 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2023–0038]

USPTO AI/ET Partnership: Public Meeting on Artificial Intelligence Tools and Data

AGENCY: United States Patent and Trademark Office, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The United States Patent and Trademark Office (USPTO) plays an important role in incentivizing and protecting innovation, including innovation driven by artificial intelligence (AI), a transformative technology that holds promise for tremendous societal and economic benefit. The USPTO embraces an expansive view of the potential of AI and other emerging technologies (ET) as tools to be leveraged for advancing equitable access to the intellectual property (IP) system, improving agency operations, and enhancing employee effectiveness. Development and implementation of AI-enabled tools at the USPTO advances national priorities in IP to protect and promote inclusive, transparent, and trustworthy innovation. The USPTO will host a public meeting on AI tools and data virtually and in person at the USPTO headquarters on September 27, 2023, at 10:30 a.m. ET. This will be the fourth meeting in the USPTO's AI/ET Partnership Series. First announced in June 2022, the AI/ET Partnership provides an opportunity to bring stakeholders together through a series of engagements to share ideas, feedback, experiences, and insights on the intersection of IP and AI/ET.

DATES: The public meeting will be held on September 27, 2023, from 10:30 a.m. to 4 p.m. ET. Persons seeking to attend, either virtually or in person, must register by September 24, 2023, at the website listed in the **ADDRESSES** section of this notice.

ADDRESSES: Register at *https://www.uspto.gov/about-us/events/aiet-partnership-series-4-ai-data-set-and-tools.* The public meeting will be held virtually and in person at the USPTO headquarters, Clara Barton Auditorium, 600 Dulany St., Alexandria, VA 22314. Registration is required for both virtual and in person attendance.

The public meeting will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs to an individual listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the public meeting.

FOR FURTHER INFORMATION CONTACT: Aleksandr Kerzhner, Supervisory Patent Examiner, at 571–270–1760, or *Aleksandr.Kerzhner@uspto.gov;* or Srilakshmi Kumar, Supervisory Patent Examiner, at 571–272–7769, or *Srilakshmi.Kumar@uspto.gov.* You can also send inquiries to *AIPartnership@uspto.gov.* Please direct all media inquiries to the Office of the Chief Communications Officer at 571–272–8400.

SUPPLEMENTARY INFORMATION: The USPTO held its inaugural AI/ET Partnership meeting virtually in June 2022. This meeting provided an overview of the National AI Initiative and the USPTO's efforts on AI/ET, including the USPTO AI Patent Dataset. The meeting also discussed important patent policy issues related to AI/ET

inventions, such as subject matter eligibility, disclosure, and inventorship.

In September 2022, the USPTO held its second AI/ET Partnership meeting virtually and in person at the USPTO's Silicon Valley Regional Office. This meeting focused on AI and biotechnology and explored current trends highlighting the convergence of technologies in the life sciences and AI, as well as the IP considerations arising from this technological convergence.

In February 2023, the USPTO held its third AI/ET Partnership meeting virtually and in person at the Arts District Mansion in Dallas, Texas. This meeting focused on various IP policy issues with respect to AI-driven innovation, including the current state of AI-driven innovation, ways to address inventions created with significant AI contributions, and unanticipated IP challenges from AI-driven innovation.

The USPTO will hold its fourth AI/ET Partnership meeting virtually and in person at the USPTO headquarters in Alexandria, Virginia, on September 27, 2023. Presentations and panel discussions will focus on: efforts at the USPTO and elsewhere to harness AI to benefit stakeholders and the IP system, the value of USPTO data in advancing the state-of-the-art in AI, and timely policy issues as to trustworthy and responsible AI.

Instructions and Information on the Public Meeting

The public meeting will be held virtually and in person at the USPTO headquarters, Clara Barton Auditorium, 600 Dulany St., Alexandria, VA 22314, from 10:30 a.m. to 4 p.m. ET. The agenda is available on the USPTO website at *https://www.uspto.gov/about-us/events/aiet-partnership-series-4-ai-data-set-and-tools.* Registrations to attend the meeting must be submitted on the same web page.

Katherine K. Vidal,

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

[FR Doc. 2023–18044 Filed 8–21–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0097]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Efficacy Evaluation of the Mathematics Intervention Toolkit for the Elementary Grades

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 21, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Janelle Sands, 202–245–6786.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Efficacy Evaluation of the Mathematics Intervention Toolkit for the Elementary Grades.

OMB Control Number: 1850–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 9,630.

Total Estimated Number of Annual Burden Hours: 3,106.

Abstract: The U.S. Department of Education (ED) requests OMB clearance for data collection related to the Regional Educational Laboratory (REL) program. ED, in consultation with REL Northeast and the Islands (REL–NEI) under contract 91990022C0013 has planned a study of the efficacy of a professional development (PD) course for fourth and fifth grade math intervention teachers in the state of Massachusetts. Researchers at WestEd will carry out a school-level randomized controlled trial (RCT) to evaluate the efficacy of the PD course and investigate how and whether the PD course is helping teachers improve their practices and boost student learning. OMB approval is being requested for REL–NEI's data collection for this project, including pre and post measures of student skills and attitudes, and teacher knowledge, beliefs, and feedback regarding instructional practice and implementation of the PD course.

Elementary math achievement is a topic of national concern. Students who leave elementary school with a strong foundation in mathematics, particularly fractions, are better prepared to succeed in middle school mathematics and algebra. Algebra is a well-documented gatekeeper to advanced high school math coursework, which is consistently linked to increased post-secondary opportunities and earnings. On the 2019 NAEP report card, only 41% of grade 4 students scored Proficient or above in math, and these numbers are lower for students from marginalized backgrounds. These opportunity gaps persist at the secondary level, so need to be addressed as soon as they appear.

Given this need, district leaders in Massachusetts are seeking ways to bolster learning for students who struggle with mathematics. Some of these approaches adopted by districts target core instruction, but districts are also interested in strengthening their approaches to intervention. Together with the Massachusetts Partnership to Support Student Learning Through Math Intervention, REL–NEI is designing a toolkit PD course to build educators' knowledge of and ability to implement the recommendations of a new What Works Clearinghouse (WWC)

Practice Guide, Assisting Students Struggling with Mathematics: Intervention in the Elementary Grades. By using the PD course's extensive resources, districts will be able to provide teachers with in-depth PD on the recommendations and how to implement them by using specific instructional practices. Teachers will learn to use these practices effectively, helping them to optimize intervention time to improve student learning. Their students will be actively engaged in doing math, communicating their ideas, and progressing toward clear learning goals with feedback and support.

Dated: August 17, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–18053 Filed 8–21–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid open meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 20, 2023; 4:00 p.m.–8:20 p.m. PDT.

The opportunity for public comment is at 4:10 p.m. PDT.

This time is subject to change; please contact the Nevada Site Specific Advisory Board (NSSAB) Administrator (below) for confirmation of time prior to the meeting.

ADDRESSES: This meeting will be open to the public in-person at the Molasky Corporate Center (address below) or virtually via Microsoft Teams. To attend virtually, please contact Barbara Ulmer, NSSAB Administrator, by email *nssab@emcbc.doe.gov* or phone (702) 523–0894, no later than 4:00 p.m. PDT on Monday, September 18, 2023.

Molasky Corporate Center, 15th Floor Conference Room, 100 North City Parkway, Las Vegas, NV 89106.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, NSSAB Administrator, by phone: (702) 523–0894 or email: *nssab@emcbc.doe.gov* or visit the Board's internet homepage at *www.nnss.gov/NSSAB/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

1. Follow-up to a EM Work Plan Presentation
2. Public Comment Period
3. Update from Deputy Designated Federal Officer
4. Updates from NSSAB Liaisons
5. Updates on Federal Facility Agreement and Consent Order
6. Fiscal Year 2024 Work Plan Development
7. Election of Officers for Fiscal Year 2024

Public Participation: The in-person/online virtual hybrid meeting is open to the public either in-person at the Molasky Corporate Center or via Microsoft Teams. To sign-up for public comment, please contact the NSSAB Administrator (above) no later than 4:00 p.m. PDT on Monday, September 18, 2023. In addition to participation in the live public comment session identified above, written statements may be filed with the Board either before or within seven days after the meeting by sending them to the NSSAB Administrator at the aforementioned email address. Written public comment received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so in 2-minute segments for the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing or calling Barbara Ulmer, NSSAB Administrator, U.S. Department of Energy, EM Nevada Program, 100 North City Parkway, Suite 1750, Las Vegas, NV 89106; Phone: (702) 523–0894. Minutes will also be available at the following website: *http://www.nnss.gov/nssab/pages/MM_FY23.html.*

Signed in Washington, DC, on August 17, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–18046 Filed 8–21–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

21st Century Energy Workforce Advisory Board

AGENCY: Office of Energy Jobs, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open hybrid meeting with a virtual option for members and the public of the 21st Century Energy Workforce Advisory Board (EWAB). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, September 18, 2023; 10:00 a.m. to 3:30 p.m. EST.

ADDRESSES: Virtual meeting for members of the public.

EWAB members only will participate in-person at the Department of Energy (DOE) Forrestal Building at 1000 Independence Avenue SW, Washington, DC 20585. Registration to participate remotely is available: *https://teams.microsoft.com/registration/zD4Ya1VL1U6z-H9kvhxBOA,eJoRzaPoQUuElbtOCKtbWQ,pBbtdUJIYkOKcRiuZY6fDw,aXmsWhibl0ycUwucZqCtsQ,3dxScWg7fku7AguKAro2Yg,7RlsUBNLTUetMZf2VboYSg?mode=read&tenantId=6b183ecc-4b55-4ed5-b3f8-7f64be1c4138&webinarRing=gcc.*

The meeting information will be posted on the 21st Century Energy Workforce Advisory Board website at: *https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab,* and can also be obtained by contacting *EWAB@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Piper O'Keefe, Designated Federal Officer, EWAB; email: *EWAB@hq.doe.gov* or at 202–809–5110.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The 21st Century Energy Workforce Advisory Board (EWAB) advises the Secretary of Energy in developing a strategy for the Department of Energy (DOE) to support and develop a skilled energy workforce to meet the changing needs of the U.S. energy system. It was established pursuant to section 40211 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117–58 (42 U.S.C. 18744) in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. This is the first meeting of EWAB.

Tentative Agenda: The meeting will start at 1:00 p.m. Eastern Time on September 18, 2023. The tentative

meeting agenda includes: roll call, remarks from DOE program offices, discussion of future energy workforce needs, and public comments. The meeting will conclude at approximately 3:30 p.m.

Public Participation: The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register for the meeting here: *https://teams.microsoft.com/registration/zD4Ya1VL1U6z-H9kvhxBOA,eJoRzaPoQUuElbtOCKtbWQ,pBbtdUJIYkOKcRiuZY6fDw,aXmsWhibl0ycUwucZqCtsQ,3dxScWg7fku7AguKAro2Yg,7RlsUBNLTUetMZf2VboYSg?mode=read&tenantId=6b183ecc-4b55-4ed5-b3f8-7f64be1c4138&webinarRing=gcc.*

It is the policy of the EWAB to accept written public comments no longer than 5 pages and to accommodate oral public comments, whenever possible. The EWAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. The public comment period for this meeting will take place on September 18, 2023, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on the EWAB's work, not for business marketing purposes. The Designated Federal Officer will conduct the meeting to facilitate the orderly conduct of business.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak by contacting *EWAB@hq.doe.gov* no later than 12:00 p.m. Eastern Time on September 11, 2023. To accommodate as many speakers as possible, the time for public comments will be limited to three (3) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, the EWAB will select speakers on a first-come, first-served basis from those who applied. Those not able to present oral comments may always file written comments with the Board.

Written Comments: Although written comments are accepted continuously, written comments relevant to the subjects of the meeting should be submitted to *EWAB@hq.doe.gov* no later than 12:00 p.m. Eastern Time on September 11, 2023, so that the comments may be made available to the EWAB members prior to this meeting for their consideration. Please note that because EWAB operates under the provisions of FACA, all public comments and related materials will be treated as public documents and will be made available for public inspection, including being posted on the EWAB website.

Minutes: The minutes of this meeting will be available on the 21st Century Energy Workforce Advisory Board website at *https://www.energy.gov/policy/21st-century-energy-workforce-advisory-board-ewab* or by contacting Piper O'Keefe at *EWAB@hq.doe.gov.*

Signed in Washington, DC, on August 17, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–18045 Filed 8–21–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4639–033]

Ampersand Christine Falls Hydro, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 4639–033.

c. *Date filed:* September 29, 2021.

d. *Applicant:* Ampersand Christine Falls Hydro, LLC (Ampersand).

e. *Name of Project:* Christine Falls Hydroelectric Project (Christine Falls Project or project).

f. *Location:* On the Sacandaga River near the Village of Speculator, Hamilton County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Sayad Moudachirou, Licensing Manager, Ampersand Christine Falls Hydro LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111, Phone: 617–933–7206, Email: *sayad@ampersandenergy.com;* and Mr. Jason Huang, Asset Manager, Ampersand Christine Falls Hydro LLC, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111, Phone: 773–919–0923, Email: *jasonh@ampersandenergy.com.*

i. *FERC Contact:* Andy Bernick at (202) 502–8660, or *andrew.bernick@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and final recommendations, terms and conditions, and fishway prescriptions 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,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Christine Falls Hydroelectric Project (P–4639–033).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, 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.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that Federal agencies use to implement the National Environmental Policy Act (NEPA) (see National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23453–70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. *The Christine Falls Project consists of the following existing facilities:* (1) a

15-foot-high, 152.6-foot-long concrete gravity dam (includes both abutments), with 3-foot-high wooden flashboards installed along the crest of the 135-foot-long spillway; (2) a reservoir with a surface area of 1.1 acres and a storage capacity of 4-acre feet at a normal water surface elevation of 1,699.7 feet National Geodetic Vertical Datum of 1929 (NGVD29); (3) an intake structure; (4) a 613-foot-long steel penstock with a diameter of 6 feet that bifurcates into 3-foot-diameter, 45-foot-long and 4-foot-diameter, 32-foot-long penstocks; (5) a brick and concrete powerhouse containing two turbine-generator units (*i.e.,* one 275-kilowatt (kW) unit and one 575-kW unit) with a total capacity of 850 kW; (7) a tailrace with a depth of 21 feet; (8) a 610-foot-long bypassed reach; (9) a 185-foot-long underground transmission line connecting the generating units to a 1,000-kilovolt-ampere step-up transformer; (10) a 9,315-foot-long, 4.16/13.2-kilovolt underground transmission line from the transformer to a point of interconnection; and (11) appurtenant facilities.

The Christine Falls Project is operated in a run-of-river mode, with a minimum flow of 25 cubic feet per second (cfs) into the bypassed reach during the months of March, April, and May, and a minimum flow of 10 cfs during the remainder of the year. The project has an average annual generation of 2,478 megawatt-hours.

Ampersand proposes to operate the project in a strict run-of-river mode with an impoundment level fluctuation limit of 3 inches from the dam crest or flashboards when in place. As described in its October 11, 2022, settlement agreement with the U.S. Fish and Wildlife Service, New York State Department of Environmental Conservation, American Whitewater, and the New York State Council of Trout Unlimited, Ampersand proposes the following changes to project operation and facilities: (1) providing two seasonal minimum flow regimes over the spillway and through the bypass gate: (a) a 15-cubic foot per second (cfs) minimum flow or inflow, whichever is less, from June 1 to October 31, and (b) a 35-cfs minimum flow or inflow, whichever is less, from November 1 to May 31; (2) installing trash racks with 1-inch clear spacing or the equivalent (*e.g.,* an overlay-type system) whereby approach velocities are less than or equal to 2 feet per second, as measured 1 foot in front of the trash racks; and (3) installing and maintaining a year-round downstream fish passage structure. Ampersand also proposes to remove the existing 9,315-foot-long transmission line from the project, stating that the line also provides power to the project from the grid and thus should not be considered a primary transmission line.

m. A copy of the application may be viewed on the Commission's website 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 this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnllineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

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, contact FERC Online Support.

n. 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, and .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.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''FISHWAY PRESCRIPTIONS;'' (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, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). 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. 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.

o. Procedural Schedule:

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions.	October 2023.
Filing of Reply Comments	November 2023.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

r. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 16, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–18067 Filed 8–21–23; 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: ER10–2126–007; EL23–73–000.

Applicants: Idaho Power Company, Idaho Power Company.

Description: Idaho Power Company submits Response to June 8, 2023, Show Cause Order.

Filed Date: 8/7/23.

Accession Number: 20230807–5183.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER10–2126–006; EL23–9–000.

Applicants: Idaho Power Company, Idaho Power Company.

Description: Response to Show Cause Order of Idaho Power Company.

Filed Date: 1/30/23.

Accession Number: 20230130–5217.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER23–2481–000.

Applicants: Crystal Hill Solar, LLC.

Description: Supplement to July 25, 2023, Crystal Hill Solar, LLC submits tariff filing Market-Based Rate Application.

Filed Date: 8/8/23.

Accession Number: 20230808–5135.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER23–2630–000.

Applicants: NextEra Energy Transmission Southwest, LLC.

Description: Application for Authorization for Abandoned Plant Incentive Rate Treatment of NextEra Energy Transmission Southwest, LLC.

Filed Date: 8/15/23.

Accession Number: 20230815–5160.

Comment Date: 5 p.m. ET 9/5/23.

Docket Numbers: ER23–2631–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA/CSA, SA Nos. 4810 and 4811; Queue No. AA2–103 to be effective 10/16/2023.

Filed Date: 8/16/23.

Accession Number: 20230816–5042.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER23–2632–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5856; Queue No. AF2–379 re: Milestone to be effective 10/16/2023.

Filed Date: 8/16/23.

Accession Number: 20230816–5052.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER23–2633–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–08–16_SA 3591 Termination of METC-Heartland Farms E&P (J984) to be effective 8/17/2023.

Filed Date: 8/16/23.

Accession Number: 20230816–5087.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER23–2634–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2023–08–16 HUC GRE MOU McLeod SS 741 to be effective 8/17/2023.

Filed Date: 8/16/23.

Accession Number: 20230816–5102.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER23–2635–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ISA, SA No. 6571; Queue No. AE2–104/AF2–110 to be effective 7/20/2023.

Filed Date: 8/16/23.

Accession Number: 20230816–5115.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER23–2636–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: Service Agreement No. 66 to be effective 8/17/2023.

Filed Date: 8/16/23.

Accession Number: 20230816–5118.

Comment Date: 5 p.m. ET 9/6/23.

Docket Numbers: ER23–2637–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Ministerial Clean-Up Filing, Tariff, Attachment Q to be effective 5/1/2021.

Filed Date: 8/16/23.

Accession Number: 20230816–5135.

Comment Date: 5 p.m. ET 9/6/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Dated: August 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–18016 Filed 8–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2629–000]

High Banks 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 High Banks 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 September 5, 2023.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–18018 Filed 8–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–526–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 8, 2023, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Suite 1000, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), and Tennessee's blanket certificate issued in Docket No. CP82–413–000, for authorization to construct its Sunnyside Supply Project. Tennessee proposes to upgrade the existing electric motor drive for Unit 2A and to install various enhancements at its existing Compressor Station (CS) 323A located in Pike County, Pennsylvania. Tennessee states that the project will increase the horsepower of Unit 2A by 2,200 horsepower (HP), bringing the total certificated horsepower at CS 323A to 27,800 HP. Tennessee asserts that the project will deliver 30,000 dekatherms per day of firm transportation service to Lackawanna Energy Center LLC at an estimated cost of approximately $15.6 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Francisco Tarin, Director, Regulatory, Tennessee Gas Pipeline Company, L.L.C., Two North Nevada Avenue, Colorado Springs, Colorado 80903, by telephone at (719) 667–7515 or by email at *francisco_tarin@kindermorgan.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 16, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is October 16, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is October 16, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before October 16, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How to File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–526–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–526–000.

To file via USPS:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Francisco Tarin, Director, Regulatory, Tennessee Gas Pipeline Company, L.L.C., Two North Nevada Avenue, Colorado Springs, Colorado 80903, or by email at *francisco_tarin@kindermorgan.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 16, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–18069 Filed 8–21–23; 8:45 am]

BILLING CODE 6717–01–P

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–967–000.

Applicants: Big Sandy Pipeline, LLC, Bobcat Gas Storage, East Tennessee Natural Gas, LLC, Egan Hub Storage, LLC, Garden Banks Gas Pipeline, LLC, Mississippi Canyon Gas Pipeline, L.L.C., Moss Bluff Hub, LLC, Nautilus Pipeline Company, L.L.C., NEXUS Gas Transmission, LLC, Sabal Trail Transmission, LLC, Saltville Gas Storage Company L.L.C., Southeast Supply Header, LLC, Steckman Ridge, LP, Texas Eastern Transmission, LP, Maritimes & Northeast Pipeline, L.L.C., Algonquin Gas Transmission, LLC.

Description: Compliance filing: Big Sandy Pipeline, LLC submits tariff filing per 154.203: Enbridge (U.S.) Pipelines—LINK System Maintenance—Request For Waivers 2023 to be effective N/A.

Filed Date: 8/15/23.

Accession Number: 20230815–5103.

Comment Date: 5 p.m. ET 8/28/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

Filings in Existing Proceedings

Docket Numbers: RP23–956–001.

Applicants: Rockies Express Pipeline LLC.

Description: Tariff Amendment: REX 2023–08–16 RP23–956, Amendment to be effective 8/4/2023.

Filed Date: 8/16/23.

Accession Number: 20230816–5072.

Comment Date: 5 p.m. ET 8/28/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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.

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Dated: August 16, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–18017 Filed 8–21–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Solicitation of Statements of Interest for Membership on the Insurance Policy Advisory Committee

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice.

SUMMARY: The Economic Growth, Regulatory Relief, and Consumer Protection Act established at the Board an Insurance Policy Advisory Committee (IPAC). This Notice advises individuals who wish to serve as IPAC members of the annual opportunity to be considered for the IPAC.

DATES: Individuals who submit a Statement of Interest that is received by the Board from the first Monday in August through the first Monday in October of each year will be considered for appointments to the IPAC announced in the fourth calendar quarter of the same year. Statements of Interest received outside the period from the first Monday in August through the first Monday in October generally will not be considered.

ADDRESSES: Individuals seeking an appointment to the IPAC may send a Statement of Interest by email to *IPAC@frb.gov.* The Statement of Interest contains only contact information. Candidates also may choose to provide additional information. Candidates may send this information by email to *IPAC@frb.gov.* The Privacy Act Statement for IPAC Member Selection, which describes the purposes, authority, effects of nondisclosure, and uses of this information, can be found at *https://www.federalreserve.gov/aboutthefed/ipac-privacy.htm.*

Individuals also may mail Statements of Interest and any additional information to the Board of Governors of the Federal Reserve System, Attn: Insurance Policy Advisory Committee, 20th Street and Constitution Ave. NW, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Lara Lylozian, Deputy Associate Director and Chief Accountant, (202) 475–6656; Matt Walker, Manager, Insurance Supervision & Regulation, (202) 872–4971; or Matti Peltonen, Lead Insurance Policy Analyst, (202) 430–7915; Division of Supervision and Regulation; or *IPAC@frb.gov.* For users of TDD–TYY, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION: The Economic Growth, Regulatory Relief, and Consumer Protection Act established at the Board an Insurance Policy Advisory Committee (IPAC) to advise the Board on international capital standards and other insurance matters. This notice advises individuals of the opportunity to be considered for appointment to the IPAC. To assist with the appointment of IPAC members, the Board considers information submitted by the candidate, public information, and any other relevant information the Board determines to consider.

Council Size and Terms

The IPAC has at most 21 members. IPAC members serve staggered three-year terms. Members are appointed to three-year terms unless the Board appoints a member to fill a vacant unexpired term. A member that is appointed to serve a three-year term begins his or her service on the first January 1 occurring after his or her appointment. A member appointed to fill a vacant unexpired term serves for the remainder of the term. The Board provides a nominal honorarium and reimburses members only for their actual travel expenses, subject to Board policy.

Statement of Interest

A Statement of Interest must contain the following information:

- Full name;
- Address;
- Phone number; and
- Email address.

At their option, candidates may provide additional information for consideration.

Qualifications

IPAC candidates should be insurance experts. The Board provides equal appointment opportunity to all persons without regard to race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), national origin, age, disability, genetic information, or military service. In addition, the Board is committed to a diverse committee and seeks a diverse set of expert perspectives from the various sectors of the U.S. insurance industry including life insurance, property and casualty insurance and reinsurance, agents and brokers, academics, consumer advocates, and experts on issues facing underserved insurance communities and consumers. The Board also seeks relevant actuarial, legal, regulatory, and accounting expertise, as well as expertise on lines of business underwritten by its currently supervised population of insurance institutions.

Members must be willing and able to participate in conference calls and prepare for and attend meetings in person. Membership and attendance is not delegable.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Supervision and Regulation under delegated authority.

Erin Cayce,

Assistant Secretary of the Board.

[FR Doc. 2023–17995 Filed 8–21–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: August 31, 2023 at 10:00 a.m.

ADDRESSES: 77 K Street NE, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Status: Closed to the public.

Board Meeting Agenda

Closed Session

1. Information covered under 5 U.S.C. 552b(c)(4) and (c)(10).

Authority: 5 U.S.C. 552b(e)(1).

Dated: August 17, 2023.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2023–18019 Filed 8–21–23; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0204; Docket 2023–0053; Sequence No. 6]

Submission for OMB Review; Acquisition 360 Voluntary Survey

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

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a preapproved information collection requirement regarding the Acquisition 360 Voluntary Survey.

DATES: Submit comments on or before September 21, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0204, Acquisition 360 Voluntary Survey. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0204, Acquisition 360 Voluntary Survey.

B. Needs and Uses

This clearance covers the information that actual and potential offerors may submit in accordance with the following Federal Acquisition Regulation (FAR) requirement as stipulated in agency procedures:

FAR 52.201–01, Acquisition 360: Voluntary Survey. This provision encourages actual and potential offerors to provide the Government constructive feedback about the preaward and debriefing processes, as applicable, used for a specific acquisition using a Government-provided survey at *https://www.acquisition.gov/360.* Survey questions follows:

Actual/Potential Offeror Survey

Responses to these questions are not intended to identify you as a respondent, but to ensure we gain insight into various groups' views and satisfaction with the procurement process.

Did you submit an offer on this solicitation? Yes/No

Are you a small business? Yes/No/Don't Know

Select all that apply:

- ○ *Small disadvantaged business*
- ○ *Women-owned small business*
- ○ *Service-disabled veteran-owned small business*
- ○ *Historically Underutilized Business Zone (HUBZone) small business*

Have you used any of the following resources to assist in doing business with the government? Select all that apply:

- ○ *SBA Procurement Center Representatives*
- ○ *Procurement Technical Assistance Centers (PTACs)*
- ○ *GSA Vendor Support Center*
- ○ *Agency Office of Small and Disadvantaged Business Utilization (OSDBU) or Office of Small Business Programs (OSBP)*

Did you learn of this opportunity through outreach that helps attract new and/or more socio economically diverse vendors?

Yes/No

a. If Yes, the following options appear with a ''Select all that apply'' prompt.

- From an agency
- From a state or local government
- From a competitor
- From a partner organization

For the following questions pertaining to different aspects of the Presolicitation Phase, please rate your level of satisfaction from ''Extremely Dissatisfied'' to ''Extremely Satisfied''. If the Presoliciation aspect does not apply, please select ''Not Applicable''.

	Extremely satisfied	Moderately satisfied	Neither satisfied nor dissatisfied	Moderately dissatisfied	Extremely dissatisfied	Not applicable
Presolicitation Phase						
How satisfied were you:						
8. With the agency's vendor engagement methods (*e.g.,* RFIs, RFQs, draft RFP, preaward conferences) in fostering early communication and exchange before submission of quotes or offers?	○	○	○	○	○	○
9. That the exchange offered by any industry day(s) (or similar event) provided valuable information that improved your understanding of the agency's requirements?	○	○	○	○	○	○
10. With the agency's understanding of the state of this marketplace?	○	○	○	○	○	○
Solicitation Phase						
How satisfied were you:						
11. With the clarity of the requirements?	○	○	○	○	○	○

	Extremely satisfied	Moderately satisfied	Neither satisfied nor dissatisfied	Moderately dissatisfied	Extremely dissatisfied	Not applicable
12. That the agency kept offerors informed about any delays in the solicitation process (considering both the initial release and any subsequent delays), if applicable?	○	○	○	○	○	○
13. That the solicitation included clear submission instructions that sufficiently guided offerors or respondents in preparing offers or responses to requests for information?	○	○	○	○	○	○
14. That the solicitation included clear submission instructions that sufficiently guided offerors or respondents in preparing offers or responses to requests for information?	○	○	○	○	○	○
15. That the Government chose an appropriate contract type based on the requirement and associated risks?	○	○	○	○	○	○
16. That the Government chose an appropriate source selection methodology?	○	○	○	○	○	○
17. That the agency answered questions regarding the solicitation in such a way that it helped you to prepare the offer?	○	○	○	○	○	○
18. With the opportunity to propose unique and innovative solutions (*e.g.,* the solicitation and evaluation criteria promoted innovation)?	○	○	○	○	○	○
19. With the amount of time the agency gave to submit an offer?	○	○	○	○	○	○
20. That the solicitation's evaluation methodology allowed for the best selection among competing offers?	○	○	○	○	○	○
21. With the quality of the agency's debriefing (*e.g.,* it allowed you to understand how to improve on similar efforts in the future)?	○	○	○	○	○	○
Overall Satisfaction						
22. How satisfied were you with your overall experience on this acquisition?	○	○	○	○	○	○
	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Not applicable
23. This transaction increased my confidence in the acquisition process	○	○	○	○	○	○
24. If given the opportunity, what would you change about the process to improve your experience? [Open Text Field]						

The purpose of the Acquisition 360 Survey is to standardize the gathering of feedback regarding preaward and debriefing actions so that agencies can continually consider and improve their performance in early vendor engagement efforts and internal acquisition practices.

C. Common Form

This information collection is a common form. The General Services Administration is the sponsor agency of this common form. All executive agencies covered by the FAR will use this common form. Each executive agency will report their agency burden separately, and the reported information will be available at *Reginfo.gov.*

D. Annual Burden

General Services Administration

Respondents: 2,689.
Total Annual Responses: 2,689.
Total Burden Hours: 448.

E. Public Comment

A 60-day notice was published as a part of the notice of the proposed rulemaking for FAR case 2017–014 in the **Federal Register** at 85 FR 57177, on August 15, 2020. A respondent provided comments on a variety of issues on the proposed rule; one of the comments expressed support for this collection of information.

Comment: Regarding whether the collection of information will have practical utility, the commenter stated that if better communication aids in the proper performance of FAR functions, both the information and the initiative to promote voluntary feedback has merit. The commenter finds this collection to be a worthy time investment to facilitate effective communication that could prevent delays or errors due to miscommunication.

Response: Noted.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0204, Acquisition 360 Voluntary Survey.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023–18005 Filed 8–21–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3268]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on October 5, 2023, from 9:30 a.m. to 3 p.m. Eastern Time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/*

AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–3268. The docket will close on October 4, 2023. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 4, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before September 21, 2023, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2023–N–3268 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- 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.'' FDA 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 *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information 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 the 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: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–7973, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. The Committee will discuss supplemental new drug application (sNDA) 214665/S–005, for LUMAKRAS (sotorasib) tablets, submitted by Amgen Inc., for the proposed treatment of adult patients with KRAS G12C mutated locally advanced or metastatic non-small cell lung cancer, as determined by an FDA approved test, who have received at least one prior systemic therapy. This supplement proposes to convert the NDA to full approval based on the confirmatory study, CodeBreaK 200. The Committee will consider the results of the CodeBreaK 200 study and discuss the benefit-risk profile of LUMAKRAS.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views,

orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before September 21, 2023, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 13, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 14, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Frimpong (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. No participant will be prejudiced by this waiver, and that the ends of justice will be served by allowing for this modification to FDA's advisory committee meeting procedures.

Dated: August 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–18024 Filed 8–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by October 23, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- 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 *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. 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: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Christine Le, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993–0002, 301–796–2398, *PSG-Questions@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on May 19, 2023 (88 FR 32231). This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active Ingredient(s).
Abrocitinib.
Asciminib hydrochloride.
Atogepant.
Atropine sulfate.
Avacopan.
Chloroprocaine hydrochloride.
Daridorexant hydrochloride.
Epinephrine.
Lidocaine hydrochloride.
Lumasiran sodium.
Lutetium Lu-177 vipivotide tetraxetan.
Maralixibat chloride.
Mavacamten.
Midazolam hydrochloride.
Mitapivat sulfate.
Mobocertinib succinate.
Oteseconazole.
Pacritinib citrate.
Pilocarpine hydrochloride.
Ruxolitinib phosphate.
Tirzepatide.
Vutrisiran sodium.

III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active Ingredient(s)
Beclomethasone dipropionate (multiple reference listed drugs).
Beclomethasone dipropionate monohydrate.
Budesonide.
Ciclesonide (multiple reference listed drugs).
Clascoterone.
Diclofenac epolamine.
Epinephrine.
Estradiol; Levonorgestrel.
Fluvoxamine maleate.
Glucagon.
Ipratropium bromide.
Mometasone furoate; Olopatadine Hydrochloride.
Triamcinolone acetonide.
Voxelotor.

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that these draft guidances contain no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents, or https://www.regulations.gov.*

Dated: August 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–18026 Filed 8–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than October 23, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners—45 CFR Part 60 Regulations and Forms, OMB No. 0915–0126—Revision.

Abstract: This is a request for a revision of OMB approval of the information collection contained in regulations found in 45 CFR part 60 governing the National Practitioner Data Bank (NPDB) and the forms to be used in registering with, reporting information to, and requesting information from the NPDB. Administrative forms are also included to aid in monitoring compliance with federal reporting and querying requirements. Responsibility for NPDB implementation and operation resides in HRSA's Bureau of Health Workforce.

The intent of the NPDB is to improve the quality of health care by encouraging entities such as hospitals, state licensing boards, professional societies, and other eligible entities [1] providing health care services to identify and discipline those who engage in unprofessional behavior, and to restrict the ability of incompetent health care practitioners, providers, or suppliers to move from state to state without disclosure or discovery of previous damaging or incompetent performance. It also serves as a fraud and abuse clearinghouse for the reporting and disclosing of certain final adverse actions taken against health care practitioners, providers, or suppliers by health plans, federal agencies, and state agencies (excluding settlements in which no findings of liability have been made). Users of the NPDB include reporters (entities that are required to submit reports) and queriers (entities and individuals that are authorized to request information).

The reporting forms, request for information forms (query forms), and administrative forms (used to monitor compliance) are accessed, completed, and submitted to the NPDB electronically through the NPDB website at *https://www.npdb.hrsa.gov/*. All reporting and querying is performed through the secure portal of this website. This revision proposes changes to improve navigation through the secure portal.

[1] "Other *eligible entities*" that participate in the NPDB are defined in the provisions of Title IV, Section 1921, Section 1128E, and implementing regulations. In addition, a few federal agencies also participate with the NPDB through federal memorandums of understanding. Eligible entities are responsible for complying with all reporting and/or querying requirements that apply; some entities may qualify as more than one type of eligible entity. Each eligible entity must certify its eligibility in order to report to the NPDB, query the NPDB, or both. Information from the NPDB is available only to those entities specified as eligible in the statutes and regulations. Not all entities have the same reporting requirements or level of query access.

Need and Proposed Use of the Information: The NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information is collected from, and disseminated to, eligible entities (entities that are entitled to query and/or report to the NPDB as authorized in Title 45 CFR part 60 of the Code of Federal Regulations) on the following: (1) medical malpractice payments, (2) licensure actions taken by Boards of Medical Examiners, (3) state licensure and certification actions, (4) federal licensure and certification actions, (5) negative actions or findings taken by peer review organizations or private accreditation entities, (6) adverse actions taken against clinical privileges, (7) federal or state criminal convictions related to the delivery of a health care item or service, (8) civil judgments related to the delivery of a health care item or service, (9) exclusions from participation in federal or state health care programs, and (10) other adjudicated actions or decisions. It is intended for NPDB information to be considered with other relevant information in evaluating credentials of health care practitioners, providers, and suppliers.

Likely Respondents: Eligible entities or individuals that are entitled to query and/or report to the NPDB as authorized in regulations found at 45 CFR part 60.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Regulation citation	Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours (rounded up)
§ 60.6: Reporting errors, omissions, revisions or whether an action is on appeal.	Correction, Revision-to-Action, Void, Notice of Appeal (manual).	8,897	1	8,897	.2500	2,225
	Correction, Revision-to-Action, Void, Notice of Appeal (automated).	14,982	1	14,982	.0003	5
§ 60.7: Reporting medical malpractice payments.	Medical Malpractice Payment (manual).	11,080	1	11,080	.7500	8,310
	Medical Malpractice Payment (automated).	447	1	447	.0003	1
§ 60.8: Reporting licensure actions taken by Boards of Medical Examiners.	State Licensure or Certification (manual).	13,996	1	13,996	.7500	10,497
§ 60.9: Reporting licensure and certification actions taken by States.	State Licensure or Certification (automated).	14,636	1	14,636	.0003	5
§ 60.10: Reporting Federal licensure and certification actions.	DEA/Federal Licensure	555	1	555	.7500	417
§ 60.11: Reporting negative actions or findings taken by peer review organizations or private accreditation entities.	Peer Review Organization	10	1	10	.7500	8
	Accreditation	10	1	10	.7500	8
§ 60.12: Reporting adverse actions taken against clinical privileges.	Title IV Clinical Privileges Actions	782	1	782	.7500	587
	Professional Society	27	1	27	.7500	21
§ 60.13: Reporting Federal or State criminal convictions related to the delivery of a health care item or service.	Criminal Conviction (Guilty Plea or Trial) (manual).	979	1	979	.7500	735
§ 60.13: Reporting Federal or State criminal convictions related to the delivery of a health care item or service.	Criminal Conviction (Guilty Plea or Trial) (automated).	406	1	406	.0003	1
	Deferred Conviction or Pre-Trial Diversion.	60	1	60	.7500	45
	Nolo Contendere (no contest plea)	75	1	75	.7500	57
	Injunction	10	1	10	.7500	8
§ 60.14: Reporting civil judgments related to the delivery of a health care item or service.	Civil Judgment	6	1	6	.7500	5
§ 60.15: Reporting exclusions from participation in Federal or State health care programs.	Exclusion or Debarment (manual)	1,287	1	1,287	.7500	966
	Exclusion or Debarment (automated)	2,610	1	2,610	.0003	1
§ 60.16: Reporting other adjudicated actions or decisions.	Government Administrative (manual)	1,367	1	1,367	.7500	1,026
	Government Administrative (automated).	632	1	632	.0003	1
	Health Plan Action	391	1	391	.7500	294
§ 60.17: Information which hospitals must request from the National Practitioner Data Bank.	One-Time Query for an Individual (manual).	1,790,355	1	1,790,355	.0800	143,229
	One-Time Query for an Individual (automated).	3,945,360	1	3,945,360	.0003	1,184
§ 60.18: Requesting Information from the NPDB.	One-Time Query for an Organization (manual).	77,095	1	77,095	.0800	6,168
	One-Time Query for an Organization (automated).	33,993	1	33,993	.0003	11
	Self-Query on an Individual	223,589	1	223,589	.4200	93,908
	Self-Query on an Organization	879	1	879	.4200	370
	Continuous Query (manual)	1,030,917	1	1,030,917	.0800	82,474
	Continuous Query (automated)	900,661	1	900,661	.0003	271
§ 60.21: How to dispute the accuracy of NPDB information.	Subject Statement and Dispute	4,015	1	4,015	.7500	3,012
	Request for Dispute Resolution	83	1	83	8.0000	664
Administrative	Entity Registration (Initial)	3,252	1	3,252	1.0000	3,252
	Entity Registration (Renewal & Update).	12,990	1	12,990	.2500	3,248
	State Licensing Board Data Request	87	1	87	10.5000	914
	State Licensing Board Attestation	360	1	360	1.0000	360
	Authorized Agent Attestation	171	1	171	1.0000	171
	Health Center Attestation	724	1	724	1.0000	724
	Hospital Attestation	3,238	1	3,238	1.0000	3,238
	Medical Malpractice Payer, Peer Review Organization, or Private Accreditation Organization Attestation.	267	1	267	1.0000	267
	Other Eligible Entity Attestation	4,790	1	4,790	1.0000	4,790
	Corrective Action Plan (Entity)	10	1	10	.0800	1
	Reconciling Missing Actions	1,371	1	1,371	.0800	110
	Agent Registration (Initial)	78	1	78	1.0000	78
	Agent Registration (Renewal & Update).	318	1	318	.0800	26
	Electronic Funds Transfer Authorization.	734	1	734	.0800	59
	Authorized Agent Designation	183	1	183	.2500	46
	Account Discrepancy	4	1	4	.2500	1
	New Administrator Request	215	1	215	.0800	18
	Purchase Query Credits	5,590	1	5,590	.0800	448
	Education Request	10	1	10	.0800	1
	Account Balance Transfer	10	1	10	.0800	1

Regulation citation	Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours (rounded up)
	Missing Report From Query Form	10	1	10	.0800	1
	Total	8,114,604	.....	8,114,604	.....	374,268

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–17987 Filed 8–21–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Supplemental Award; Infant-Toddler Court Program—National Resource Center

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of a HRSA-initiated supplemental award.

SUMMARY: HRSA is providing approximately $1.91 million in supplemental award funds under HRSA–22–074 in fiscal year 2023 to the recipient of the Infant-Toddler Court Program (ITCP)—National Resource Center (NRC) award, to support state and local capacity to implement the ITC approach at sites that previously received funding under HRSA–18–123 but that do not currently receive HRSA funding under HRSA–22–073 or HRSA–22–074. It is also providing approximately $650,000 in supplemental award funds under this notice of funding opportunity (NOFO) to support ITC sites with high need and capacity to provide Medicaid redetermination navigation support to families.

FOR FURTHER INFORMATION CONTACT: Kateryna Zoubak, Early Childhood Systems Analyst, Division of Home Visiting and Early Childhood Systems, Maternal and Child Health Bureau, Health Resources and Services Administration, at *ezoubak@hrsa.gov* or 240–475–8014.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: ZERO TO THREE National Center for Infant, Toddler and Families, Inc.

Amount of Non-Competitive Award(s): One award of approximately $2.56 million.

Project Period: September 30, 2023, to September 29, 2024.

Assistance Listing (CFDA) Number: 93.110.

Award Instrument: Cooperative Agreement.

Authority: 42 U.S.C. 701(a)(2) (Social Security Act, title V, section 501(a)(2)).

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	City, State	Award amount
U2DMC32394	ZERO TO THREE National Center for Infant, Toddler and Families, Inc	DC	$2.56 million (estimated).

Justification: The Consolidated Appropriations Act, 2023, included additional funds that are being used to support ITCs. HRSA understands guidance provided in House Report 117–403 to support the award of additional funds for the NRC to provide implementation support and subject matter expertise to ITC teams and to advance national-level reach and impact of the program, including via subaward funds to local ITC teams who previously received financial support and technical assistance under HRSA–18–123, which was in place in 2022. Both of these objectives will be accomplished through a supplement to the NRC.

The planned supplemental award to the ITCP NRC aligns with the most recent funding opportunity (HRSA–22–074) and program purpose outlined in the NOFO, which is ''to continue and expand research-based infant-toddler court teams to change child welfare practices and improve the early developmental health and well-being of infants, toddlers, and their families,'' with primary goals to (1) build the capacity of state/territorial/tribal and local teams to implement the ITC approach and lead aligned community-driven efforts to prevent and respond to child maltreatment; and (2) advance the evidence and national reach, impact, and sustainability of the ITC approach. Additional expectations of the NRC in HRSA–22–074 include that it will ''lead and coordinate improvements nationwide to policy and practice in child welfare and early childhood systems'' and ''provide a range of tailored supports to states and local sites that implement the ITC approach'' that ''build upon previously-funded ITCP efforts'' (*e.g.,* funding awards under HRSA–18–123). Additionally, under the NOFO, the NRC advances the objective of increasing the spread, scale, and coordination of local ITC sites across States, Territories, jurisdictions, and Tribal nations.

HRSA will award approximately $1.91 million to the current ITCP NRC recipient. This funding will enhance resource development, provision of subject matter expertise, the building of capacity to implement the ITC approach, further develop national-level partnerships, and provide subawards to local court teams that were previously funded under HRSA–18–123 (but not under HRSA–22–074/073), which will advance the national reach, impact, and sustainability of ITC teams. In addition, HRSA will provide a supplement of approximately $650,000 to enable

subawards to local ITC sites with high need and capacity to provide Medicaid redetermination navigation support to families. It will support core objectives related to timely service access and program expectations in the NOFO.

Carole Johnson,

Administrator.

[FR Doc. 2023–18051 Filed 8–21–23; 8:45 am]

BILLING CODE 4615–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on July 1, 2023, through July 31, 2023. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading ''**FOR FURTHER INFORMATION CONTACT**''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Nicole Martelli on behalf of S.M., Sturbridge, Massachusetts, Court of Federal Claims No: 23–1015V
2. Jeannette Alvarez, Lakewood, Colorado, Court of Federal Claims No: 23–1024V
3. Jason Olszanicky, San Marcos, California, Court of Federal Claims No: 23–1026V
4. William Woods, Boston, Massachusetts, Court of Federal Claims No: 23–1037V
5. Angela Walker, St. Paul, Minnesota, Court of Federal Claims No: 23–1038V
6. Kelly Dziuban, Chadwicks, New York, Court of Federal Claims No: 23–1049V
7. Sandra Meneses Hernandez, Alexandria, Virginia, Court of Federal Claims No: 23–1050V
8. Sonia Borgelt, West Linn, Oregon, Court of Federal Claims No: 23–1051V
9. Mary Ditzian, Mount Joy, Pennsylvania, Court of Federal Claims No: 23–1052V
10. Faustina F. Ankomah, The Woodlands, Texas, Court of Federal Claims No: 23–1053V
11. Mikkel Prim, Phoenix, Arizona, Court of Federal Claims No: 23–1055V
12. Emily Mendez, South Miami, Florida, Court of Federal Claims No: 23–1056V
13. Steven S. Cohen, Atlanta, Georgia, Court of Federal Claims No: 23–1060V
14. Victoria Cramer and Clayton Huff on behalf of N.H., Boston, Massachusetts, Court of Federal Claims No: 23–1062V
15. Benjamin Riley, New York, New York, Court of Federal Claims No: 23–1063V
16. Aaron Woodard, Washington, District of Columbia, Court of Federal Claims No: 23–1065V
17. Alicia Sawyer on behalf of G.S., Woodstock, Georgia, Court of Federal Claims No: 23–1067V
18. John Hauck, Boston, Massachusetts, Court of Federal Claims No: 23–1069V

19. Joseph Abdulmassih on behalf of K.A., Worcester, Massachusetts, Court of Federal Claims No: 23–1070V
20. Steven A. Chapman, Blaine, Minnesota, Court of Federal Claims No: 23–1073V
21. Sophia Banks, Houston, Texas, Court of Federal Claims No: 23–1074V
22. Erica Brown, Richmond Hill, Georgia, Court of Federal Claims No: 23–1075V
23. Stephen Jordan, Peoria, Illinois, Court of Federal Claims No: 23–1076V
24. Debra A. Schiller Brainerd, Minnesota, Court of Federal Claims No: 23–1078V
25. Britney Vaughn, Martinsville, Virginia, Court of Federal Claims No: 23–1081V
26. John Luu, Richardson, Texas, Court of Federal Claims No: 23–1084V
27. Christine John, Santa Monica, California, Court of Federal Claims No: 23–1087V
28. Alexandra M. Gergel, White Marsh, Maryland, Court of Federal Claims No: 23–1088V
29. Madison E. Gergel, Plaquemine, Louisiana, Court of Federal Claims No: 23–1089V
30. Yaron Partovi, Mission Hills, California, Court of Federal Claims No: 23–1094V
31. Susan Jellison, Redding, California, Court of Federal Claims No: 23–1097V
32. Michelle Anderson, Phoenix, Arizona, Court of Federal Claims No: 23–1098V
33. Eileen M. Salas, Colton, California, Court of Federal Claims No: 23–1101V
34. Alivia Zhang, Fremont, California, Court of Federal Claims No: 23–1102V
35. Elena Borisevich, Griffin, Georgia, Court of Federal Claims No: 23–1114V
36. Christine Rockney, Goodyear, Arizona, Court of Federal Claims No: 23–1119V
37. Carolyn Scott, Durham, North Carolina, Court of Federal Claims No: 23–1121V
38. Roizy Teitelbaum on behalf of C.S., Toms River, New Jersey, Court of Federal Claims No: 23–1122V
39. Daniel Mitchell, Boscobel, Wisconsin, Court of Federal Claims No: 23–1126V
40. Deborah Butturini, Washington, District of Columbia, Court of Federal Claims No: 23–1129V
41. Dale Cutler, Provo, Utah, Court of Federal Claims No: 23–1133V
42. John Troy, Brownsville, Pennsylvania, Court of Federal Claims No: 23–1134V
43. Juanita Owens, San Mateo, California, Court of Federal Claims No: 23–1136V
44. Savanna Hodges, Plaquemine, Louisiana, Court of Federal Claims No: 23–1137V
45. Dorothy Christine Coleman, Baton Rouge, Louisiana, Court of Federal Claims No: 23–1141V
46. Christine Wilson, Myrtle Beach, South Carolina, Court of Federal Claims No: 23–1142V
47. David Horn, Sacramento, California, Court of Federal Claims No: 23–1144V
48. Donald Young, Charlottesville, Virginia, Court of Federal Claims No: 23–1147V
49. Raymond Williamson, Pelham, Alabama, Court of Federal Claims No: 23–1149V
50. Jane C. Schaefer, Mason, Ohio, Court of Federal Claims No: 23–1152V
51. Luanne Gochnour, Boise, Idaho, Court of Federal Claims No: 23–1153V
52. Bonnie Morman, Ottawa, Ohio, Court of Federal Claims No: 23–1154V
53. Richard Rogers, Dubuque, Iowa, Court of Federal Claims No: 23–1156V
54. Dennis Ngo, Sacramento, California, Court of Federal Claims No: 23–1157V
55. Michelle Brown-Wysocki, Dresher, Pennsylvania, Court of Federal Claims No: 23–1158V
56. Arianna Borgra, Joliet, Illinois, Court of Federal Claims No: 23–1159V
57. Jeremy Faulkner, Albuquerque, New Mexico, Court of Federal Claims No: 23–1160V
58. Kanako Yamanaka, Flower Mound, Texas, Court of Federal Claims No: 23–1162V
59. Rodney K. Hollis, Black River Falls, Wisconsin, Court of Federal Claims No: 23–1165V
60. Brian Dessecker, Dover, Ohio, Court of Federal Claims No: 23–1166V
61. Eunice Hawkins, Atlanta, Georgia, Court of Federal Claims No: 23–1168V
62. Joshua Brooks on behalf of A.B., Prattville, Alabama, Court of Federal Claims No: 23–1169V
63. Michele Alphonse, Houston, Texas, Court of Federal Claims No: 23–1170V
64. Natalie Parsons, Phoenix, Arizona, Court of Federal Claims No: 23–1172V
65. Kristin Matsuda on behalf of C.M., Phoenix, Arizona, Court of Federal Claims No: 23–1173V
66. Chester Bochenek on behalf of Eve Bochenek, Snyder, New York, Court of Federal Claims No: 23–1175V
67. Courtney Ramsey, Philadelphia, Pennsylvania, Court of Federal Claims No: 23–1176V
68. Franklin Mattu, White Plains, New York, Court of Federal Claims No: 23–1177V
69. Kelli Marie Lessila, Milwaukee, Wisconsin, Court of Federal Claims No: 23–1179V
70. Carmine Branagan, New York, New York, Court of Federal Claims No: 23–1185V
71. Heather Page, Boston, Massachusetts, Court of Federal Claims No: 23–1186V
72. Karye Burton on behalf of M.L., Fort Worth, Texas, Court of Federal Claims No: 23–1188V
73. Jaclyn Hallman, Coatesville, Pennsylvania, Court of Federal Claims No: 23–1189V
74. Susan Scricco, Shrewsbury, Massachusetts, Court of Federal Claims No: 23–1190V
75. Francine Riviere, Asheville, North Carolina, Court of Federal Claims No: 23–1191V
76. Diane Sincoff on behalf of E S., New York, New York, Court of Federal Claims No: 23–1192V
77. Santosh Joshi, Memphis, Tennessee, Court of Federal Claims No: 23–1233V

[FR Doc. 2023–18003 Filed 8–21–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Health Workforce Connector OMB No. 0906–0031 Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than September 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, contact Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Health Workforce Connector OMB No. 0906–0031—Revision.

Abstract: The Health Workforce Connector's (HWC) goal is to help connect skilled professionals to communities in need by allowing approved Site Points of Contact (POCs) at National Health Service Corps (NHSC), Nurse Corps Scholarship and Loan Repayment Programs (Nurse Corps), Substance Use Disorder Treatment and Recovery (STAR) Loan Repayment Program, Pediatric Specialty (PS) Loan Repayment Program, Nursing Training, and Teaching Health Center

Graduate Medical Education (THCGME) sites to post available opportunities and update site profiles. The HWC provides a central platform to connect participants, including but not limited to those in the NHSC, Nurse Corps, STAR, PS, Nursing Training, and THCGME programs with facilities that are approved for performance of their service obligation. The HWC has become a resource that connects any health care professional or student interested in providing primary care services in underserved communities with facilities in need of health care providers. The HWC also allows users to create a profile, search for approved sites, find job and training opportunities, and connect with other clinicians who are similarly interested in working with underserved populations. The HWC is searchable by Site POCs. Individuals can use the HWC's search capability with Google Maps.

A 60-day notice published in the **Federal Register** on May 30, 2023, 88 FR 34506–07. There were no public comments.

Need and Proposed Use of the Information: Information will be collected from users in the following two ways:

(1) *Account Creation:* For job seekers, creating an account is optional. To create an account the user must enter their first name, last name, and email address. Those mandatory fields will be used to send an automated email allowing the user to validate their login credentials. In addition, for job seekers participating in the programs listed above, their HWC account will be linked to their existing program file in the Bureau of Health Workforce Management Information Systems Solution database and allow an initial import of existing data at the request of the user.

(2) Profile Completion: Users may fill out a profile, but this function will be optional and includes fields such as location, discipline, specialty, and languages spoken. The information collected, if published by the user, can be searched by approved Site POCs seeking potential candidates for health care job opportunities at their site. Job seekers also can set their security and privacy settings on their accounts to make their profiles searchable by other end users or private at any time. In addition, all information collected through the HWC will be stored within existing secure the Bureau of Health Workforce Management Information Systems Solution databases and will be used internally for report generation on an as-needed basis.

Likely Respondents: Potential users include individuals searching for a health care job opportunity at a NHSC, Nurse Corps, STAR, PS, Nursing Training, or THCGME approved health care facility and health care facility POCs searching for potential candidates to fill open health care job opportunities at their sites.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. 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. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Account Creation	5,008	1	5,008	0.08	400.64
Complete Profile	4,164	1	4,164	1.00	4,164.00
Total	5,008 [1]		5,008		4,564.64

[1] The 4,164 respondents who complete their profiles are a subset of the 5,008 respondents who create accounts.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–18007 Filed 8–21–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Solicitation of Nominations for Membership To Serve on the Advisory Commission on Childhood Vaccines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for nominations.

SUMMARY: HRSA is seeking nominations of qualified candidates for consideration for appointment as members of the Advisory Commission on Childhood Vaccines (ACCV). ACCV advises the Secretary of HHS (the Secretary) on issues related to the implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: Written nominations for membership on the ACCV will be received on a continuous basis.

ADDRESSES: Nomination packages must be submitted to the Director, Division of Injury Compensation Programs, Health Systems Bureau, HRSA, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857. Electronic nomination packages can be submitted by email to *ACCV@hrsa.gov*.

FOR FURTHER INFORMATION CONTACT: Pita Gomez, Principal Staff Liaison, Division of Injury Compensation Programs, Health Systems Bureau, HRSA at 1–800–338–2382 or email at *ACCV@hrsa.gov*. A copy of the ACCV charter and list of the current membership may be obtained by accessing the ACCV website at *https://www.hrsa.gov/advisory-committees/vaccines/index.html*.

SUPPLEMENTARY INFORMATION: ACCV was established by title XXI of the Public Health Service Act and advises the Secretary on issues related to implementation of the VICP. ACCV meets four times per year and at the call of the Chair.

Nominations: HRSA is requesting nominations for voting members to serve as Special Government Employees (SGEs) on the ACCV to fill open positions. The Secretary appoints ACCV members with the expertise needed to

fulfill the duties of the Advisory Committee. The membership requirements are set forth in section 2119 of the Public Health Service Act.

ACCV consists of nine voting members appointed by the Secretary as follows: (1) three health professionals, who are not employees of the United States government, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians; (2) three members from the general public, of whom at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and (3) three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

HHS will consider nominations of all qualified individuals to ensure the ACCV includes the areas of subject matter expertise noted above. As indicated above, at least two of the three ACCV members of the general public must be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death. Because those members must be the legal representatives of children who have suffered a vaccine-related injury or death, to be considered for appointment to the ACCV in that category, there must have been a finding (*i.e.,* a decision) by the U.S. Court of Federal Claims or a civil court that a VICP-covered vaccine caused, or was presumed to have caused, the represented child's injury or death. Additionally, based on a recommendation made by ACCV, the Secretary will consider having a health professional with expertise in obstetrics as one of the members of the general public. Interested applicants may self-nominate or be nominated by another individual or organization.

Individuals selected for appointment to ACCV will be invited to serve for 3 years. Members are appointed as SGEs and receive a stipend and reimbursement for per diem and travel expenses incurred for attending ACCV meetings and/or conducting other business on behalf of ACCV, as authorized by 5 U.S.C. 5703 for persons employed intermittently in government service.

The following information must be included in the package of materials submitted for each individual nominated for consideration: (1) a letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of the ACCV) and the nominee's field(s) of expertise; (2) the name, address, daytime telephone number, and email address at which the nominator can be contacted; and (3) a current copy of the nominee's curriculum vitae or resume. Nomination packages may be submitted directly by the individual being nominated or by the person/organization recommending the candidate. Nomination packages will be collected and retained to create a pool of possible future ACCV voting members. When a vacancy occurs, nomination packages from the appropriate category will be reviewed and nominees may be contacted at that time.

HHS endeavors to ensure that ACCV's membership is balanced in terms of points of view represented and that individuals from a broad representation of geographic areas, gender, and ethnic and minority groups, as well as individuals with disabilities, are considered for membership. Appointments shall be made without discrimination on the basis of age, disability, race, ethnicity, gender, sexual orientation, national origin, or cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is required for HRSA ethics officials to determine whether there is a potential conflict of interest between the SGE's public duties as a member of ACCV and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict.

Authority: Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, as amended) and the National Childhood Vaccine Injury Act (Pub. L. 99–660, as amended), HRSA is requesting nominations for voting members of ACCV.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–17999 Filed 8–21–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Award of President's Emergency Plan for AIDS Relief (PEPFAR) Funding To Strengthen Health Workforce Efforts in the Democratic Republic of Congo (DRC)

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of award.

SUMMARY: HRSA will award $2 million in PEPFAR funding for work in DRC to strengthen pre-service education primarily focusing on nursing and midwifery competencies through student clinical rotations and community health work.

FOR FURTHER INFORMATION CONTACT: Carla Haddad, Director, Office of Global Health, HRSA, *chaddad@hrsa.gov* and (301) 443–4551.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Johns Hopkins Program for International Education in Gynecology and Obstetrics (JHPIEGO) Global Reach II Program UH6OA45170.

Amount of Awards: Two awards, $400,000 for Q4 FY2023 and $1,600,000 for Q1–Q4 FY 2024, totaling $2,000,000.

Project Period: July 1, 2023–September 30, 2024.

CFDA Number: 93.266.

Award Instrument: Cooperative Agreement Supplement.

Authority: Public Law 108–25 (the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601 *et seq.*], Public Law 110–293 and Public Law 113–56.

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	Country	Award amount
UH6OA45170	JHPIEGO Global Reach II	DRC	$400,000
UH6OA45170	JHPIEGO Global Reach II	DRC	1,600,000

Justification: DRC continues to face severe shortages of nurses and nurse-midwives for HIV prevention, care and treatment and essential health services, and this award is critical for HIV epidemic control and health security in DRC. The recipient is implementing similar efforts to strengthen the health workforce in other countries (Uganda, Ethiopia, and Zambia) with strong progress and outcomes.

Carole Johnson,

Administrator.

[FR Doc. 2023–18001 Filed 8–21–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, 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 Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Ruth L. Kirschstein Institutional National Research Service Award Review.

Date: September 25, 2023.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20817, (301) 443–0800, *bbuzas@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Neuroscience and Behavior Study Section.

Date: October 25, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20817, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: August 17, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–18037 Filed 8–21–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold an in-person public meeting with a virtual option on Tuesday, September 19, 2023, and Wednesday, September 20, 2023. The meeting will be open to the public in-person and via a Microsoft Teams Video Communications link.

DATES: The TMAC will meet on Tuesday, September 19, 2023, and Wednesday, September 20, 2023, from 8:00 a.m. to 5:00 p.m. Eastern Time (ET). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in-person at the FEMA Conference Center at 400 C St. SW, Washington, DC 20472. and virtually using the following Microsoft Teams Video Communications link (Tuesday Link: *https://tinyurl.com/5n7ahwpw;* Wednesday Link: *https://tinyurl.com/bdjetjb9*). Members of the public who wish to attend the in-person or virtual meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper) by 5:00 p.m. ET on Friday, September 15, 2023. Members of the public who wish to attend the in-person or virtual meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper) by 5:00 p.m. ET on Friday, September 15, 2023.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available upon request after Wednesday, September 13, 2023. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper). Written comments to be considered by the committee at the time of the meeting must be submitted and received by Thursday, September 14, 2023, 5:00 p.m. ET identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email to *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact information in the body of the email.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice via a link on the homepage of *www.regulations.gov.*

Docket: For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

A public comment period will be held on Tuesday, September 19, 2023, from 3:30 p.m. to 4:00 p.m. ET and Wednesday, September 20, 2023, from 12:00 p.m. to 12:30 p.m. ET. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Tuesday, September 12, 2023, 5:00 p.m. ET. Please be prepared to submit a written version of your public comment.

FEMA is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C St. SW, Washington, DC 20472, telephone 202–646–3085, and email *brian.koper@fema.dhs.gov.* The TMAC website is: *https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* Public Law 117–286, 5 U.S.C. ch. 10.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) how to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to discuss the content of the 2023 TMAC Annual Report. Any related materials will be available upon request prior to the meeting to provide the public with an opportunity to review the materials. The full agenda and related meeting materials will be available upon request by Tuesday, September 12, 2023. To receive a copy of any relevant materials, please send the request to: *FEMA-TMAC@fema.dhs.gov* (Attn: Brian Koper).

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Insurance and Mitigation Administration, Resilience, Federal Emergency Management Agency.

[FR Doc. 2023–18039 Filed 8–21–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number 2023–0029]

Agency Information Collection Activities: Regulation on Agency Protests; OMB No. 1600–0004

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until October 23, 2023. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2023–0029, at:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS–2023–0029. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*

SUPPLEMENTARY INFORMATION: In accordance with Federal regulations and statutes, when protests are filed, the contracting officer will require information/documentation such as detailed statements of legal and factual grounds for the protests, copies of relevant documents, solicitation or contract number, and requests for a ruling by the agency. The Federal Acquisition Regulation (FAR) and 48 CFR chapter 1 provide general procedures on handling protests submitted by contractors to Federal agencies. FAR part 33, Protests, Disputes and Appeals, prescribes policies and procedures for filing protests and for processing contract disputes and appeals. While the FAR prescribes the procedures to be followed for protests to the agency, it allows agencies to determine the method of receipt. DHS will utilize electronic mediums (email or facsimile) for collection of information and will not prescribe a format or require more information than what is already required in the FAR. If DHS determines there is a need to collect additional information outside of what is required in the FAR, DHS will submit a request to the Office of Management and Budget (OMB) for approval. The prior information collection request for OMB No. 1600–0004 was approved through November 30, 2024, by OMB in a Notice of OMB Action. This justification supports a request for an extension of the approval.

The information being collected will be obtained from contractors as part of their submissions whenever they file a bid protest with DHS. The information will be used by DHS officials in deciding how the protest should be resolved. Failure to collect this information would result in delayed resolution of protests. Agency protest information is contained in each individual solicitation document, and provides the specified contracting officer's name, email, and mailing address that the contractors would use to submit its response. The FAR does not specify the format in which the contractor should submit protest information. However, most contractors use computers to prepare protest materials and submit time sensitive responses electronically (email or facsimile) to the specified Government point of contact. Since the responses

must meet specific timeframes, a centralized mailbox or website would not be a practical method of submission. Submission of protest information through contracting officers' email or through facsimile are the best methods to use to document receipt of protest information, and are the methods most commonly used in the Government protest process. This information collection may involve small business contractors, depending on the particular transaction. The burden applied to small businesses is minimal and consistent with the goals of achieving timely resolution of agency protests. This information is collected only when contractors choose to file a protest to the agency. The information is requested from contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file such claims.

DHS/ALL/PIA–006 General Contact Lists covers the basic contact information that must be collected for DHS to address these protests. The other information collected will typically pertain to the contract itself, and not individuals. However, all information for this information collection is submitted voluntarily. Technically, because this information is not retrieved by personal identifier, no SORN is required. However, DHS/ALL–021 DHS Contractors and Consultants provides coverage for the collection of records on DHS contractors and consultants, to include resume and qualifying employment information. There is no assurance of confidentiality provided to the respondents.

The burden estimates provided in response to Item 12 above are based upon the Department's findings in its FY 2022 Procurement Line of Business, Operational Status Report. No program changes have occurred or changes to the information being collected, however, the burden was adjusted to reflect an agency adjustment increase of 33 respondents within DHS for Fiscal Year 2022, as well as an increase in the average hourly wage rate.

The Office of Management and Budget is particularly interested in comments which:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Regulation on Agency Protests.

OMB Number: 1600–0004.

Frequency: Annually.

Affected Public: Business or other for-profit/Individuals or Households.

Number of Respondents: 126.

Estimated Time per Respondent: 2 hrs.

Total Burden Hours: 252.

Robert Dorr,

Acting Executive Director, Business Management Directorate.

[FR Doc. 2023–18013 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0021]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for a Stay of Deportation or Removal

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on June 9, 2023, allowing for a 60-day comment period. ICE received one non-substantive comment. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until September 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact James Laforge, ERO Domestic Operations, (973–392–8026), *james.a.laforge@ice.dhs.gov,* U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Application for a Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–246, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: individual or households, business or other non-profit; The information collected on the I–246 is necessary for ICE to make a determination the eligibility

requirements for a request for a stay of deportation or removal are met by the applicant.

(5) *An estimate of the total number of responses and the amount of time estimated for an average respondent to respond:* ICE estimates a total of 3,664 responses at 30 minutes (.50 hours) per response

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,832 annual burden hours.

Dated: August 17, 2023.

Scott Elmore,

ICE PRA Clearance Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2023–18004 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6416–N–01]

Credit Watch Termination Initiative Termination of Direct Endorsement (DE) Approval

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Direct Endorsement (DE) approval taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees that have had their DE Approval terminated.

FOR FURTHER INFORMATION CONTACT: John Higgins, Director, Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000; telephone (202) 402–6730 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999, HUD published a notice (64 FR 26769) on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees that have had their Approval Agreements terminated. HUD Handbook 4000.1 section V.E.3.a.iii outlines current procedures for terminating Underwriting Authority of Direct Endorsement mortgagees.

Termination of Direct Endorsement Approval: HUD approval of a DE mortgagee authorizes the mortgagee to underwrite single family mortgage loans and submit them to FHA for insurance endorsement. The approval may be terminated on the basis of poor performance of FHA-insured mortgage loans underwritten by the mortgagee. The termination of a mortgagee's DE Approval is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD regulations at 24 CFR part 25.

Cause: HUD regulations permit HUD to terminate the DE Approval of any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and that exceeds the national default and claim rate for insured mortgages.

Effect: Termination of DE Approval precludes the mortgagee from underwriting FHA-insured single-family mortgages within the HUD field office jurisdiction(s) listed in this notice. Mortgagees authorized to hold or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are those already underwritten and approved by a DE underwriter and cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated mortgagee; however, the cases may be transferred for completion of processing and underwriting to another mortgagee with DE Approval in that geographic area. Mortgagees must continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for reinstatement if their DE Approval in the affected area or areas has been terminated for at least six months and the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.10 and 202.12. The mortgagee's application for reinstatement must be in a format prescribed by the Secretary and signed by the mortgagee. In addition, the application must be accompanied by an independent analysis of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The analysis must be prepared by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for reinstatement must be submitted through the Lender Electronic Assessment Portal (LEAP). The application must be accompanied by the CPA's report and the corrective action plan.

Action: The following mortgagees have had their DE Approval terminated by HUD:

Mortgagee name	Mortgagee home office address	HUD office jurisdiction	Termination effective date	Homeownership center
Southwest Funding, LP	13150 Coit Rd., Suite 100, Dallas, TX 75240–5775	Shreveport	7/18/2023	Denver.

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2023–17989 Filed 8–21–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on May 22, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fire Protection Association (''NFPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, NFPA has provided an updated and current list of its standards development activities, related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development and conformity assessment activities are publicly available at *nfpa.org.*

On September 20, 2004, NFPA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 21, 2004 (69 FR 61869).

The last notification was filed with the Department on February 9, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 17, 2023 (88 FR 23471).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–18056 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on June 6, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), R Consortium, Inc. (''R Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mango Solutions has changed its name to Ascent Data Science, Bristol, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on January 4, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 25, 2023 (88 FR 4850).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–18055 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on June 2, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Marathon Petroleum Company LP, Findlay, OH, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on February 2, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 11, 2022 (87 FR 14044).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–18065 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Digital Dollar Project, Inc.

Notice is hereby given that, on June 7, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Digital Dollar Project, Inc. (''DDP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Baton, San Francisco, CA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DDP intends to file additional written notifications disclosing all changes in membership.

On June 9, 2022, DDP filed its original notification pursuant to section 6(a) of

the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 2022 (87 FR 47007).

The last notification was filed with the Department on October 26, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 24, 2023 (88 FR 4208).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–18058 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on June 15, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hagiwara (Shanghai) Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; and Homenema Technology Inc., Taipei Hsien, TAIWAN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on March 8, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2023 (88 FR 18179).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–18054 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program

Notice is hereby given that, on May 24, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Shipbuilding Research Program (''NSRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, VT Halter Marine, Inc., Pascagoula, MS, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSRP intends to file additional written notifications disclosing all changes in membership.

On March 13, 1998, NSRP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on October 24, 2022. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 8, 2022 (87 FR 67492).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–18062 Filed 8–21–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Utility Broadband Alliance, Inc.

Notice is hereby given that, on May 30, 2023, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Utility Broadband Alliance, Inc. (''UBBA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ATT Business, Dallas, TX; and Aetheros Inc., San Francisco, CA, have been added as parties to this venture.

Also, Thales, Bellevue, WA; Cambridge Consultants, Boston, MA; Tilson, Portland, ME; and CrescoNet, San Francisco, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UBBA intends to file additional written notifications disclosing all changes in membership.

On May 4, 2021, UBBA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 10, 2021 (86 FR 30981).

The last notification was filed with the Department on March 8, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2023 (88 FR 18184).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2023–18060 Filed 8–21–23; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1239]

Bulk Manufacturer of Controlled Substances Application: Pisgah Laboratories Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Pisgah Laboratories Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 23, 2023. Such persons may also file a written request for a hearing on the application on or before October 23, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 10, 2023, Pisgah Laboratories Inc, 3222 Old Hendersonville Highway, Pisgah Forest, North Carolina 28768, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ibogaine	7260	I
Tapentadol	9780	II

The company plans to bulk manufacture the above-listed controlled substances in bulk for internal research purposes and distribution to its customers. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17971 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1249]

Bulk Manufacturer of Controlled Substances Application: Irvine Labs Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Irvine Labs Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 23, 2023. Such persons may also file a written request for a hearing on the application on or before October 23, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 10, 2023, Irvine Labs Inc., 7305 Murdy Circle, Huntington Beach, California 92647–3533, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Lysergic acid diethylamide	7315	I
Mescaline	7381	I
Peyote	7415	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the above listed controlled substances for research and development purposes internally and for distribution to its research customers. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17984 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1247]

Bulk Manufacturer of Controlled Substances Application: Cambrex Charles City

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambrex Charles City has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 23, 2023. Such persons may also file a written request for a hearing on the application on or before October 23, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 3, 2023, Cambrex Charles City, 1205 11th Street, Charles City, Iowa 50616–3466, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Tetrahydrocannabinols	7370	I
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
ANPP (4-Anilino-N-phenethyl-4-piperidine).	8333	II
Phenylacetone	8501	II
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Methadone	9250	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium extracts	9610	II
Opium fluid extract	9620	II
Opium tincture	9630	II
Opium, powdered	9639	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Fentanyl	9801	II

The company plans to manufacture the listed controlled substances in bulk for conversion to other controlled substances and sales to its customers for dosage form development, clinical trials and use in stability qualification studies.

In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–18043 Filed 8–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0003]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Annual Progress Report for the STOP Formula Grants Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office on Violence Against Women (OVW), Department of Justice (DOJ), 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. The proposed information collection was previously published in the **Federal Register** on June 30, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until September 21, 2023.

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, please contact Catherine Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

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 agency, including whether the information will have practical utility;

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

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1122–0003. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

Title of the Form/Collection: Annual Progress Report for the STOP Formula Grants Program.

Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0003. U.S. Department of Justice, Office on Violence Against Women.

2. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: State, local and tribal governments.

Abstract: The STOP Violence Against Women Formula Grants Program was authorized through the Violence Against Women Act of 1994 (VAWA) and amended and reauthorized in 2000, 2005, 2013 and 2022. The STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program funding is awarded to states and territories. It enhances the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat domestic violence, dating violence, sexual assault and stalking and to develop and strengthen comprehensive, holistic victim services. The grant funds must be distributed by STOP state administrators to subgrantees according to a statutory formula. The annual progress reporting form is necessary for the Attorney General and STOP Formula Grant Program grantees and subgrantees to comply with federal statutory reporting requirements. The information will be used for reports to Congress on the use of appropriated funds in support of the STOP Formula Grant Program. There are two sets of respondents—the STOP state administrators who allocate the STOP funds and the subgrantees who may include law enforcement agencies, prosecutors officers, courts, and victim services organizations.

3. *Obligation to Respond:* Required to obtain or retain a benefit.

4. *Total Estimated Number of Respondents:* 2,556.

5. *Estimated Time per Respondent:* One hour.

6. *Frequency:* Annual.

7. *Total Estimated Annual Time Burden:* 2,556.

8. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: August 17, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–18071 Filed 8–21–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0034]

Agency Information Collection Activities; Proposed eCollection eComments Requested; STOP Formula Grant Program Match Documentation Worksheet

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office on Violence Against Women (OVW), Department of Justice (DOJ), 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. The proposed information collection was previously published in the **Federal Register** on June 30, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until September 21, 2023.

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, please contact: Catherine Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

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 agency, including whether the information will have practical utility;

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

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1123–0034. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* STOP Formula Grant Program Match Documentation Worksheet.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* 1122–0034. U.S. Department of Justice, Office on Violence Against Women.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: State, local and Tribal governments.

Abstract: The STOP Violence Against Women Formula Grants Program was authorized through the Violence Against Women Act of 1994 (VAWA) and amended and reauthorized in 2000, 2005, 2013 and 2022. The STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program funding is awarded to States and Territories. It enhances the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat domestic violence, dating violence, sexual assault and stalking and to develop and strengthen comprehensive, holistic victim services. The grant funds must be distributed by STOP State administrators to subgrantees according to a statutory formula. The Department of Justice's Office on Violence Against Women administers the STOP Formula Grant Program funds which are awarded to States and territories to enhance the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in cases involving violent crimes against women. Each State and territory must allocate 25 percent for law enforcement, 25 percent for prosecutors, 30 percent for victim services (of which at least 10 percent must be distributed to culturally specific community-based organizations), 5 percent to State and local courts, and 15 percent for discretionary distribution. VAWA provides for a 25 percent match requirement imposed on grant funds under the STOP Formula Grant Program. Thus, a grant made under this program may not cover more than 75 percent of the total costs of the project being funded. Under VAWA 2005, the State cannot require matching funds for a grant or subgrant for any Tribe, Territory, or victim service provider, regardless of funding allocation category. The State is exempted from matching the portion of the State award that goes to a victim service provider for victim services or that goes to Tribes. Territories are also exempted in full. States can receive additional waiver of match based on a petition to OVW and a demonstration of financial need. OVW will look at the time of closeout at the entities and purposes of funds and base the required match. The purpose of this information collection is to provide a worksheet for documenting the amount of matching funds required at the closeout of a specific fiscal year award under the STOP Formula Grant Program. The type of questions on the worksheet will include award number, award amount, amount of funds sub-

awarded to victim service providers for victim services or to Tribes.

5. *Obligation to Respond:* Required to obtain or retain a benefit.

6. *Total Estimated Number of Respondents:* 51.

7. *Estimated Time per Respondent:* 10 minutes.

8. *Frequency:* Annual.

9. *Total Estimated Annual Time Burden*: 8.5 (9) hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: August 17, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–18070 Filed 8–21–23; 8:45 am]

BILLING CODE 4410–14–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Sequestration Update Report to the President and Congress for Fiscal Year 2024

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability of the OMB Sequestration Update Report to the President and Congress for FY 2024.

SUMMARY: OMB is issuing the *OMB Sequestration Update Report to the President and Congress for Fiscal Year 2024* to report on the status of the discretionary spending limits and on the compliance of pending discretionary appropriations legislation with those limits.

DATES: August 20, 2023.

ADDRESSES: The OMB Sequestration Reports to the President and Congress is available on-line on the OMB home page at: *https://www.whitehouse.gov/omb/legislative/sequestration-reports-orders/.*

FOR FURTHER INFORMATION CONTACT: Thomas Tobasko, 6202 New Executive Office Building, Washington, DC 20503, Email address: *ttobasko@omb.eop.gov,* telephone number: (202) 395–5745, FAX number: (202) 395–4768. Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications.

SUPPLEMENTARY INFORMATION: Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 requires the Office of Management and Budget (OMB) to issue a Sequestration Update Report by August 20th of each year statutory discretionary spending caps are in place. For fiscal year 2024, the report finds that, under OMB estimates, actions to date by the House of Representatives and the Senate for the 12 annual appropriations bills for fiscal year 2024 would not breach either the defense or non-defense caps if they were enacted into law. The report contains OMB's Preview Estimate of the Disaster Relief Funding Adjustment for FY 2024.

Shalanda D. Young,

Director.

[FR Doc. 2023–18052 Filed 8–21–23; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: Native American Library Services Enhancement Grants Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to communicate our intent to request renewal of the clearance for IMLS's Native American Library Services Enhancement Grants, a discretionary grant program designed to assist Native American libraries in improving core library services for their communities. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 20, 2023.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Jennifer Himmelreich, Senior Program Officer, Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Himmelreich can be reached by telephone at 202–653–4797, or by email at *jhimmelreich@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries,

and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The purpose of the Native American Library Services Enhancement Grants Program is to assist Native American tribes in improving core library services for their communities. IMLS recognizes that information needs and approaches to meeting them are evolving at an unprecedented pace in all communities, and to operate within this environment effectively for the benefit of their users, libraries must be able to both strengthen existing services and move quickly to adopt new and emerging technologies.

The three goals for this program will be to improve digital services to support needs for education, workforce development, economic and business development, health information, critical thinking skills, and digital literacy skills; to improve educational programs related to specific topics and content areas of interest to library patrons and community-based users; and to enhance the preservation and revitalization of Native American cultures and languages.

Agency: Institute of Museum and Library Services.

Title: Native American Library Services Enhancement Grants Notice of Funding Opportunity.

OMB Control Number: 3137–NEW.

Agency Number: 3137–0110.

Respondents/Affected Public: Federally Recognized Indian Tribes.

Total Estimated Number of Annual Respondents: TBD.

Frequency of Response: Once per request.

Average Minutes/Hours per Response: TBD.

Total Estimated Number of Annual Burden Hours: TBD.

Cost Burden (dollars): TBD.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: August 16, 2023.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2023–17974 Filed 8–21–23; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: Native Hawaiian Library Services Grants Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to communicate our intent to request renewal of the clearance for IMLS's Native Hawaiian Library Services Grants, a discretionary grant program designed to assist Native Hawaiian libraries in improving core library services for their communities. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before October 20, 2023.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Jennifer Himmelreich, Senior Program Officer, Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Ms. Himmelreich can be reached by telephone at 202–653–4797, or by email at *jhimmelreich@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The purpose of the Native Hawaiian Library Services Grants Program is to assist Native Hawaiian libraries in improving core library services for their communities. IMLS recognizes that information needs and approaches to meeting them are evolving at an unprecedented pace in all communities, and to operate within this environment effectively for the benefit of their users, libraries must be able to both strengthen existing services and move quickly to adopt new and emerging technologies.

The three goals for this program will be to improve digital services to support needs for education, workforce development, economic and business development, health information, critical thinking skills, and digital literacy skills; to improve educational

programs related to specific topics and content areas of interest to library patrons and community-based users; and to enhance the preservation and revitalization of Native Hawaiian culture and language.

Agency: Institute of Museum and Library Services.

Title: Native Hawaiian Library Services Grants Notice of Funding Opportunity.

OMB Control Number: 3137–0102.

Agency Number: 3137.

Respondents/Affected Public: Nonprofit organizations that primarily serve and represent Native Hawaiians.

Total Estimated Number of Annual Respondents: TBD.

Frequency of Response: Once per request.

Average Minutes/Hours per Response: TBD.

Total Estimated Number of Annual Burden Hours: TBD.

Cost Burden (dollars): TBD.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: August 16, 2023.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2023–17975 Filed 8–21–23; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Innovation and Technology Ecosystems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Innovation and Technology Ecosystems (#84685)—Michigan State University Site Visit.

Date and Time: September 11, 2023; 2:00 p.m.–6:30 p.m.; September 12, 2023; 8:30 a.m.–7:45 p.m. September 13, 2023; 8:00 a.m.–2:00 p.m.

Place: Douglas Meijer Medical Building—109 Michigan St NW, Grand Rapids, MI 49503 (Floors 4 & 7).

Tour Location: Kent County Recycling & Education Center—977 Wealthy Street SW, Grand Rapids, MI 49504.

Type of Meeting: Part-open.

Contact Persons: Michal Ziv-El, Program Director, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Telephone (703) 292–4926.

Purpose of Meeting: NSF site visit to provide advice and recommendations concerning the progress and future activities of the projects that are one year into two-year awards.

Agenda

September 11, 2023

2:00 p.m.–4:15 p.m.—Executive Sessions (Closed)
4:15 p.m.–6:30 p.m.—Tour of Kent County Recycling & Education Center (Open)

September 12, 2023

8:30 a.m.–7:45 p.m.—Executive Sessions (Closed)

September 13, 2023

8:00 a.m.–2:00 p.m.—Executive Sessions (Closed)

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–18063 Filed 8–21–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Innovation and Technology Ecosystems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Innovation and Technology Ecosystems (#84685)—University of Louisville Site Visit.

Date and Time: September 12, 2023; 3:00 p.m.–7:00 p.m.; September 13, 2023; 8:30 a.m.–7:45 p.m.; September 14, 2023; 8:00 a.m.–2:00 p.m.

Place: University of Louisville, Ignite Innovation Building, 252 E Market St, Louisville, KY 40202.

Tour Locations: AMIST 334 Eastern Parkway, Vogt Building #104, Louisville, KY 40208; and MEMStim 1205 E. Washington Street, Louisville, KY 40206.

Type of Meeting: Part-open.

Contact Persons: Geoffrey Brown, Program Director, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; Telephone (703) 292–4979.

Purpose of Meeting: NSF site visit to provide advice and recommendations concerning the progress and future activities of the projects that are one year into two-year awards.

Agenda

September 12, 2023

3:00 p.m.–4:15 p.m.—Executive Sessions (Closed)
4:15 p.m.–7:00 p.m.—Tour of AMIST and MEMStim (Open)

September 13, 2023

8:30 a.m.–7:45 p.m.—Executive Sessions (Closed)

September 14, 2023

8:00 a.m.–2:00 p.m.—Executive Sessions (Closed)

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–18064 Filed 8–21–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0169]

Information Collection: NRC Forms 366, 366A, and 366B, Licensee Event Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''NRC Forms 366, 366A, and 366B, Licensee Event Report.''

DATES: Submit comments by September 21, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0169 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 Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0169.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, 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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos. ML22269A458, ML22269A459, ML22269A460, and ML23227A039. The supporting statement is available in ADAMS under Accession No. ML23125A074.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''NRC Forms 366, 366A, and 366B, Licensee Event Report.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on April 7, 2023, 88 FR 20921.

1. *The title of the information collection:* NRC Forms 366, 366A, and 366B, Licensee Event Report.
2. *OMB approval number:* 3150–0104.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Forms 366, 366A, and 366B.
5. *How often the collection is required or requested:* As needed per section 50.73 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensee event report system.''
6. *Who will be required or asked to respond:* The holder of an operating license under 10 CFR part 50 or a combined license under 10 CFR part 52 (after the Commission has made the finding under 10 CFR 52.103(g)).
7. *The estimated number of annual responses:* 344.
8. *The estimated number of annual respondents:* 94 (92 operating license under 10 CFR part 50 + 2 combined license holders under 10 CFR part 52).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* The total estimated burden for completing License Event Reports is 20,000 hours (16,000 reporting + 4,000 recordkeeping).
10. *Abstract:* Part of the NRC's function is to license and regulate the operation of commercial nuclear power plants to ensure protection of public health and safety and the environment in accordance with the Atomic Energy Act of 1954 as amended. In order for the NRC to carry out these responsibilities, licensees must report significant events in accordance with 10 CFR 50.73, so that the NRC can evaluate the events to determine what actions, if any, are warranted to ensure protection of public health and safety or the environment. Section 50.73 requires reporting on NRC Forms 366, 366A, and 366B.

Dated: August 17, 2023.

For the Nuclear Regulatory Commission.

Kristen E. Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2023–18000 Filed 8–21–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–7513; NRC–2021–0193]

Kairos Power, LLC; Hermes Test Reactor; Environmental Impact Statement; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental impact statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final Environmental Impact Statement (EIS), NUREG–2263, ''Environmental Impact Statement for the Construction Permit for the Kairos Hermes Test Reactor: Final Report.'' The NRC staff is issuing a final EIS as part of the review of the application submitted by Kairos Power,

LLC (Kairos) for a construction permit (CP). The Hermes test reactor is proposed to be built in the City of Oak Ridge, Tennessee.

DATES: The final EIS is available as of August 22, 2023.

ADDRESSES: Please refer to Docket ID NRC–2021–0193 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 Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2021–0193. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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 ''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, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The final EIS is available in ADAMS under Accession No. ML23214A269. The ADAMS accession number for additional documents referenced in this document (if it is available in ADAMS) is provided the first time that it is mentioned as follows.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *Project website:* The final EIS can be accessed online at the Hermes—Kairos project specific web page at *https://www.nrc.gov/reactors/non-power/hermes-kairos.html.*

FOR FURTHER INFORMATION CONTACT: Tamsen Dozier, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2272, email: *Tamsen.Dozier@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By letter to the NRC dated September 29, 2021 (ADAMS Package Accession Number No. ML21272A375), Kairos Power LLC (Kairos) submitted an application for a construction permit for the Hermes non-power test reactor, pursuant to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' and section 104c of the Atomic Energy Act of 1954, as amended. Additionally, by letter dated October 31, 2021 (ADAMS Package Accession No. ML21306A131), Kairos submitted an Environmental Report (ER) in support of its Hermes construction permit application. The test reactor is proposed to be built in Oak Ridge, Tennessee.

By letter dated November 29, 2021 (ADAMS Accession No. ML21319A354), the NRC staff informed Kairos of its determination that the Kairos application for a construction permit for the Hermes test reactor was acceptable for docketing under Docket No. 50–7513.

A notice of acceptance for docketing of the application was published in the **Federal Register** on December 1, 2021 (86 FR 68290) and a notice of opportunity for hearing was published on February 9, 2022 (87 FR 7503). A notice of intent to prepare an EIS and to conduct scoping process was published in the **Federal Register** on February 18, 2022 (87 FR 9394). A notice of availability of the draft EIS was published by the NRC in the **Federal Register** on September 29, 2022 (87 FR 59124). The public comment period for the draft EIS closed on December 6, 2022. Public comments are addressed in Appendix G in the final EIS (ADAMS Accession No. ML23214A269). This notice is being published in accordance with the National Environmental Policy Act of 1969, as amended and the NRC's regulations in 10 CFR part 51.

In addition, as outlined in 36 CFR 800.8(c), ''Coordination with the National Environmental Policy Act,'' the NRC staff used the process and documentation for the preparation of the EIS to comply with section 106 of the National Historic Preservation Act (NHPA) in lieu of the procedures set forth on 36 CFR 800.3 through 800.6.

II. Discussion

As discussed in the final EIS, the NRC staff's recommendation related to the environmental aspects of the proposed action is that the CP should be issued once the NHPA Section 106 process is complete. This recommendation is based on: (1) the ER submitted by Kairos, as revised; (2) consultation with Federal, State, Tribal and local agencies; (3) the NRC staff's consideration of comments received during the environmental review; and (4) the staff's independent review and assessment summarized in the final EIS, including the potential mitigation measures identified in the ER and in the final EIS.

In addition, in making its recommendation, the NRC staff has concluded that there are no environmentally preferable or obviously superior sites in the region of interest.

Dated: August 17, 2023.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–18042 Filed 8–21–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[[Docket Nos. CP2020–227; MC2023–230 and CP2023–233; MC2023–231 and CP2023–234; MC2023–232 and CP2023–235]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 23, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or

removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2020–227; *Filing Title:* Notice of the United States Postal Service of Filing Modification Three to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* August 15, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 23, 2023.

2. *Docket No(s).:* MC2023–230 and CP2023–233; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 122 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 15, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 23, 2023.

3. *Docket No(s).:* MC2023–231 and CP2023–234; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 27 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 15, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 23, 2023.

4. *Docket No(s).:* MC2023–232 and CP2023–235; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 28 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 15, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 23, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–17994 Filed 8–21–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–233 and CP2023–236]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 24, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–233 and CP2023–236; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 29 to Competitive Product List and Notice of Filing

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Materials Under Seal; *Filing Acceptance Date:* August 16, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 24, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–18059 Filed 8–21–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98142; File No. SR–Phlx–2023–34]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's All-or-None Order

August 16, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been 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 at Options 3, Options Trading Rules, at: Section 7, Types of Orders and Order and Quote Protocols; Section 8, Options Opening Process; Section 10, Electronic Execution Priority and Processing in the System; Section 12, Electronic Qualified Contingent Cross Order; Section 13, Price Improvement XL (''PIXL''); Section 14, Complex Orders; Section 23, Data Feeds and Trade Information; Options 5, Section 4, Order Routing; and Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY. The Exchange also proposes to amend its Rules at Options 8, Floor Trading, at: Section 30, Crossing, Facilitation and Solicited Orders; and Section 32, Types of Floor-Based (Non-System) Orders.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

Phlx proposes to amend Options 3, Options Trading Rules, at: Section 7, Types of Orders and Order and Quote Protocols; Section 8, Options Opening Process; Section 10, Electronic Execution Priority and Processing in the System; Section 12, Electronic Qualified Contingent Cross Order; Section 13, Price Improvement XL (''PIXL''); Section 14, Complex Orders; Section 23, Data Feeds and Trade Information; Option5, Section 4, Order Routing; and Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY. The Exchange also proposes to amend its Rules at Options 8, Floor Trading, at: Section 30, Crossing, Facilitation and Solicited Orders; and Section 32, Types of Floor-Based (Non-System) Orders.

Background

Today, Phlx's All-or-None Orders are described in Options 7, Section 7(b)(5) as Limit Orders or Market Orders that are executed in their entirety or not at all. All-or None Orders may only be submitted by a Public Customer.[3] Phlx's All-or-None Orders rest on the order book as non-displayed orders. The Exchange does not disseminate bids or offers of All-or-None Orders to the Options Price Reporting Authority or ''OPRA'' and Top of PHLX Options[4] feed, however All-or-None Orders are displayed in the PHLX Orders[5] and PHLX Depth of Book[6] feed. Further, All-or-None Orders are executed in price-time priority among all Public Customer orders if the size contingency can be met. If an All-or-None Order contingency cannot be met, the All-or-None Order would be by-passed until such time as the contingency could be met.[7]

Proposal

At this time, the Exchange proposes to amend All-or-None Orders so that they may only be submitted by a Public Customer as an Immediate-or-Cancel Order. With this proposed change, All-or-None Orders would no longer rest on the order book. Upon entry, an All-or-None Order would be executed in its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Public Customer'' means a person or entity that is not a broker or dealer in securities and is not a Professional as defined within Options 1, Section (b)(45). *See* Options 1, Section 1(b)(46).

[4] Top of PHLX Options (''TOPO'') is a direct data feed product that includes the Exchange's best bid and offer price, with aggregate size, based on displayable order and quoting interest on Phlx and last sale information for trades executed on Phlx. The data contained in the TOPO data feed is identical to the data simultaneously sent to the processor for the OPRA and subscribers of the data feed. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. *See* Options 3, Section 23(a)(1).

[5] PHLX Orders is a real-time full Limit Order book data feed that provides pricing information for orders on the PHLX Order book for displayed order types and All-or-None Orders, as well as market participant capacity. PHLX Orders is currently provided as part of the TOPO Plus Orders data product. PHLX Orders provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance). *See* Options 3, Section 23(a)(2).

[6] PHLX Depth of Market is a data product that provides: (i) order and quotation information for individual quotes and orders on the order book; (ii) last sale information for trades executed on Phlx; (iii) auction; and (iv) an Imbalance Message which includes the symbol, side of the market, size of matched contracts, size of the imbalance, and price of the affected series. The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening (size of matched contracts and size of the imbalance) and exposure notifications, with market participant capacity. *See* Options 3, Section 23(a)(2).

[7] Also of note, All-or-None Orders are non-routable and the Acceptable Trade Range protection in Options 3, Section 15(a) is not applied to All-Or-None Orders. *See* Options 7, Section 7(b)(5).

entirety or it will cancel if it cannot execute. Other options markets require All-or-None Orders to be Immediate-or-Cancel such as Nasdaq GEMX, LLC.[8]

The Exchange proposes to amend the order type description in Options 3, Section 7(b)(5) to state, ''An All-or-None Order is a Limit Order or Market Order that is to be executed in its entirety or not at all. An All-or None Order may only be submitted by a Public Customer as an Immediate-or-Cancel Order.'' As is the case today, the Acceptable Trade Range protection in Options 3, Section 15(a) is not applied to All-Or-None Orders. Further, the All-or-None Order type in Options 8, Section 32(b)(3) may only be submitted by a Public Customer. The Exchange proposes to add a new sentence in Options 8, Section 32(b)(3) that would state, ''Further, pursuant to Options 8, Section 39, A–3, an All-or-None Order has no standing respecting executions in the trading crowd except with respect to other All-or-None Orders. When represented in the trading crowd, All-or-None Orders are not included as part of the bid or offer.'' The Exchange believes the new sentence, which references existing language in Options 8, Section 39, A–3, will bring greater clarity to the All-or-None Order type description.

The Exchange proposes to also remove rule text about All-or-None Orders as a Non-Displayed Contingency Order in Options 3, Section 7(b)(5)(i). The Exchange proposes to add a new Options 3, Section 7(b)(4)(C) that states, ''A Stop Order is a non-displayed, contingency order until elected,'' in order to preserve the current rule text related to Stop Orders at Options 3, Section 7(b)(5)(i).

As a result of the proposed amendment to the All-or-None Order type, Phlx proposes to remove rule text regarding All-or-None Orders in various other rules. Since All-or-None Orders will not rest on the order book, it is not considered for purposes of Legging Orders and therefore the rule text within Options 3, Section 7(b)(10)(2) and (4) related to All-or-None Orders is being removed. Additionally, the Exchange proposes a technical amendment to re-letter Options 3, Section 7(b)(1) (1)–(4) as (A)–(D).

Since All-or-None Orders will not rest on the order book as proposed, those orders would be treated the same as all other Immediate-or-Cancel Orders in the Opening Process and, therefore, do not need to be separately described in Options 3, Section 8. The Exchange proposes to remove specific references to All-or-None Orders in Options 3, Section 8(b), (h) and (k)(C)(6).

All-or-None Orders do not need to be excluded from the internal PBBO in Options 3, Section 10, which describes the Exchange's allocation process, because All-or-None Orders will not rest on the order book with this proposed amendment. The Exchange proposes to remove the language concerning All-or-None Orders from Options 3, Section 10(a)(1)(B), (C), and (D)(i) and (ii).

As proposed, Public Customers All-or None Orders, similar to all other Public Customer Orders which are Immediate-or-Cancel Orders, will not be considered for purposes of checking the order book prior to executing a Qualified Contingent Cross Order since they will not rest on the order book. Therefore, the Exchange proposes to remove the language within Supplementary Material .01 to Options 3, Section 12 and Options 8, Section 30 concerning All-or-None Orders.

As proposed, All-or None Orders will not be considered when checking the order book to start a PIXL Auction or to allocate the PIXL Order at the end of the PIXL Auction because All-or-None Orders will not rest on the order book. Therefore, the Exchange proposes to remove the language within Options 3, Section 13(a)(2) and (f) related to All-or-None Orders on the order book.

As amended, All-or-None Orders will be treated in the same manner as other Immediate-or-Cancel Orders with respect to a Complex Opening Process and a Complex Order Live Auction. Also, All-or-None Orders will not rest on the order book and are not considered for purposes of legging into the simple order book. Therefore, the Exchange is removing language concerning All-or-None Orders within Options 3, Section 14(d)(ii)(C), (e)(vi)(A)(1), (e)(viii)(C)(3), and (f)(iii)(A) because All-or-None Orders do not need to be treated differently.

For purposes of the PHLX Orders feed, All-or-None Orders will be treated the same as all other Immediate-or-Cancel Orders and not displayed on the PHLX Orders feed. Options 3, Section 23(a)(2) is being amended to remove All-or-None Orders from the feed description.

Since All-or-None Orders will not rest on the order book the Exchange proposes to amend Options 5, Section 4(a), 4(a)(iii)(C)(3), (5), (7) and (9), concerning Routing, to remove references to the exclusion of All-or-None Orders from the PBBO and their partial exclusion from the internal PBBO.

The Exchange proposes to remove the following pricing from Options 7, Section 3, Rebates and Fees for Adding and Removing Liquidity in SPY, ''The Cancellation Fee for each cancelled electronically delivered Professional[9] AON order will continue to apply to the SPY. The Cancellation Fee will not apply for each cancelled electronically delivered Customer order in SPY.'' Today, only Public Customers may submit All-or-None Orders.[10] In 2019, Phlx amended its All-or-None Order type to offer it only to Public Customers and no longer offer the order type to Professionals.[11] This pricing should have been removed in 2019, as Professionals could no longer enter All-or-None Orders after the 2019 amendment.

Implementation

The Exchange proposes to implement this rule proposal before January 31, 2024. The Exchange will announce the implementation date in an Options Trader Alert to provide notice to members and member organizations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposal is appropriate and reasonable, because the time-in-force designation of Immediate-Or-Cancel will offer members and member organizations certainty with respect to their order handling. Today, All-or-None Orders are executed in price-time priority among all Public Customer orders if the size contingency can be met, but otherwise

[8] *See* Nasdaq GEMX, LLC (''GEMX'') Options 3, Section 7(c). *See* Securities Exchange Act Release No. 80102 (February 24, 2017), 82 FR 12381 (March 2, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to All-or-None Orders). *See also* GEMX, Nasdaq MRX, LLC (''MRX''), and Nasdaq ISE, LLC (''ISE'') Options 3, Section 7(c), The Nasdaq Options Market LLC (''NOM'') Options 3, Section 7(a)(8) and Nasdaq BX, Inc. (''BX'') Options 3, Section 7(a)(7). GEMX, MRX, ISE, NOM and BX have All-or-None Orders that are Immediate-or-Cancel.

[9] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Member organizations must indicate whether orders are for Professionals. *See* Options 1, Section 1(b)(45).

[10] *See* Options 3, Section 7(b)(5).

[11] *See* Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 9192 (March 13, 2019) (SR–Phlx–2019–03).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

have no priority on the order book. With this proposal, an All-Or-None Order will either execute immediately or be cancelled back to the member or member organization. This proposal would remove uncertainty with respect to the manner in which these orders would be handled in the order book by cancelling back an All-Or-None Order if it cannot be immediately executed in its entirety. This proposal would harmonize Phlx's All-or-None Order type across its various options markets.[14]

The Exchange notes that members and member organizations are aware of this proposed change.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impact the intense competition that exists in the options market. With this change, no market participant would be able to submit an All-Or-None Order without a time-in-force designation of Immediate-Or-Cancel. The Exchange believes the All-Or-None Order type, as proposed, will continue to offer members and member organizations a competitive alternative for submitting orders for execution. Furthermore, the proposed rule changes align the Exchange's System functionality across the Nasdaq affiliated options exchanges that have all-or-none order types.[16]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2023–34 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–Phlx–2023–34. 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 website (*https://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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2023–34 and should be submitted on or before September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

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[14] *See* GEMX, MRX, ISE Options 3, Section 7(c), NOM Options 3, Section 7(a)(8) and BX Options 3, Section 7(a)(7). GEMX, MRX, ISE, NOM and BX have All-or-None Orders that are Immediate-or-Cancel.

[15] *See* Options Trader Alert 2023–17. The Exchange has not received any feedback from members or member organizations regarding the change to the All-or-None Order as a result of the Options Trader Alert. Further, the Exchange reached out to member organizations about the All-or-None change and, based on those conversations, the Exchange does not believe that member organizations have any concerns with the proposed change.

[16] *See supra* note 14.

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98150; File No. SR–NYSEARCA–2023–53]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the Connectivity Fee Schedule Regarding Power Allocation

August 16, 2023.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 3, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day ''Ordering Window.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center (''MDC'')[4] via deposit-guaranteed orders from Users made within a 90-day ''Ordering Window.''

Background

Shortly after the onset of the Covid–19 pandemic, the Exchange began experiencing unprecedented User[5] demand for cabinets and power at the MDC. In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders.[6] In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.[7] Pursuant to the terms of those filings, a Combined Waitlist is currently in place.

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (*i.e.,* Hall 4), yet User demand for additional power continues to climb. Currently, the waitlist includes 27 Users collectively requesting in excess of an additional 700 kilowatts (''kW'') of power. That number, however, may be a mere fraction of Users' true demand for additional power at the MDC, since, due to the existing waitlist procedures, the Exchange may not accept orders for more than 32 kW of power, and a User and its Affiliates[8] may have only one order on the waitlist at a time. Of the 27 Users on the current waitlist, many have mentioned that they are actually interested in purchasing much more than 32 kW of power, with several claiming that they are seeking additional power of several hundred kilowatts.[9]

ICE is currently expanding the amount of colocation space and power available at the MDC. ICE is already developing a new colocation hall (*i.e.,* Hall 5) to deliver power that would satisfy all orders currently on the waitlist with some extra power remaining.

ICE proposes this rule change to address two issues posed by the current situation. First, while the development of Hall 5 is underway, ICE must also evaluate whether customer demand would support additional expansion projects to provide further power. ICE must anticipate future demand now because each colocation expansion project is a significant capital project requiring long lead times, especially given current supply-chain constraints on equipment, and substantial up-front investment. It may be possible for ICE to leverage certain efficiencies and economies of scale by planning for future expansion now.

Yet ICE currently lacks any real indication of customers' true demands. As noted above, the current waitlist of 700 kW may represent a mere fraction of Users' true power requirements, since waitlist orders are limited to one order of 32 kW per User. On the one hand, ICE does not know whether the extra power that will be provided in Hall 5 will be enough to meet Users' needs. On the other hand, ICE cannot justify the investment of time and expense that it would take to create additional colocation space based on only casual indications of interest from customers. Without firm, guaranteed commitments from Users to purchase the power if it is made available, ICE runs the risk of underestimating or overestimating Users' true demand for power and faces the possibility of undersupplying or oversupplying space and power.

Second, the existing procedures in the Connectivity Fee Schedule are not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens. Under the existing procedures, if less than 350 kW of unallocated power is available, the Purchasing Limits in Colocation Note 6 restrict all orders to 32 kW—but any time more than 350 kW of unallocated power is available, Users can place unlimited orders that the Exchange must allocate on a first-come, first-served basis. Regarding Hall 5, the Exchange anticipates large amounts of unallocated power becoming available at several intervals. This could create a race condition in which the largest Users place early orders for many hundreds of kilowatts of power, effectively shutting out other customers with more modest power needs. The Exchange therefore believes that it needs a different procedure when allocating substantial amounts of power at one time due to a hall expansion or other similar expansion of available power.

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[4] Through its Fixed Income and Data Services (''FIDS'') business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and its affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (the ''Affiliate SROs'') are indirect subsidiaries of ICE. Each of the Exchange's Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2023–29, SR–NYSEAMER–2023–39, SR–NYSECHX–2023–16, and SR–NYSENAT–2023–16.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Connectivity Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs.

[6] *See* Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR–NYSE–2020–73, SR–NYSEAMER–2020–66, SR–NYSEArca–2020–82, SR–NYSECHX–2020–26, SR–NYSENAT–2020–28,) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

[7] *See* Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02, SR–NYSENAT–2021–03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

[8] An ''Affiliate'' of a User is defined as ''any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User.'' Connectivity Fee Schedule, at 1.

[9] Such demand for increased power is not unique to the MDC. Customers have told the Exchange that available power is in short supply at several other data centers as well, including the Equinex-owned data center in Secaucus, New Jersey, the Equinex-owned data center in Carteret, New Jersey, and the Digital Realty-owned data center at Cermak, Illinois. Since none of those data centers is operated by an exchange or regulated by the Commission, the operators of those data centers are free to ask customers to indicate their interest in future build-outs by submitting orders guaranteed by deposits.

Proposed ''Ordering Window'' Procedure

The Exchange proposes to solve these issues by providing a temporary procedure to permit the Exchange to accept unlimited, deposit-guaranteed orders from Users for a period of 90 days (the ''Ordering Window''). The Colocation Notes in the Connectivity Fee Schedule would be amended accordingly.

Based on the total power ordered by Users during the Ordering Window, ICE would gain insight into whether further expansion beyond Hall 5 is likely to be required in the future. Requiring Users to submit deposits with their orders during this Ordering Window would encourage Users to carefully assess their true power needs and would protect against Users ordering more power than they actually intend to purchase. After the Ordering Window closes, the Exchange would allocate power to Users according to terms described below, which would ensure that every User submitting an order would receive at least some power and no Users would be shut out of the allocation. Following the Ordering Window, the existing purchasing limits and waitlist procedures in Colocation Notes 6 and 7 would then resume.

Specifically, the Exchange proposes to amend the Connectivity Fee Schedule to add new Colocation Note 8, entitled ''Ordering Window.''

Paragraph (a) of Colocation Note 8 would provide that the Exchange may announce, by customer notice, a 90-day Ordering Window during which the Exchange may accept orders and deposits pursuant to the terms below. Paragraph (a) would specify that if the Exchange announces an Ordering Window while the Cabinet and Power Purchasing Limits in Colocation Note 6 and/or the Cabinet and Combined Waitlist provisions in Colocation Note 7 are in effect, the terms of the Ordering Window as set out in Colocation Note 8 would temporarily supersede those terms.[10]

Paragraph (b) of Colocation Note 8 would specify the procedures for placing orders and paying deposits during the Ordering Window. Subparagraph (1) would provide that during the Ordering Window, Users may submit orders for their anticipated power needs, subject to the following. First, a User and its Affiliates, if any, may finalize only one order for power during the Ordering Window. Second, the provision of Colocation Note 7 that prohibits the Exchange from accepting orders for more than four dedicated cabinets and/or 32 kW of power would not apply. Third, a User may submit an order during the Ordering Window even if it already has an order pending on a waitlist pursuant to Colocation Note 7.

Subparagraph (2) of paragraph (b) would provide that orders submitted during the Ordering Window are subject to deposits equal to two months' worth of the monthly recurring costs of the amount of new power ordered.[11] The subparagraph would further provide that a User's order would be finalized when the User's signed order form and deposit are received by the Exchange, and that orders that are not finalized before the Ordering Window closes will be considered void. Subparagraph (2) of paragraph (b) would further provide that the deposit would be applied to the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted. If the User withdraws its order during the Ordering Window, the deposit would be returned.[12]

Subparagraph (3) of paragraph (b) would provide that a User may modify its order during the Ordering Window, but such modification would not be finalized until the User's signed modified order form and any additional deposit are received by the Exchange.

Paragraph (c) of Colocation Note 8 would specify the Exchange's procedure for allocating available power after the Ordering Window ends. After determining the total amount of power available to allocate, the Exchange would allocate the available power as follows. In Step 1, per subparagraph (1) of paragraph (c), the Exchange would allocate power to fill any orders on any waitlist in effect pursuant to Colocation Note 7 (*e.g.,* the current waitlist of 32 kW orders totaling 700 kW).

In Step 2, per subparagraph (2) of paragraph (c), the Exchange would allocate up to 32 kW of power to each User that finalized an order during the Ordering Window, subject to the following. If sufficient power is available, the Exchange would allocate 32 kW of power to each User, except that orders for less than 32 kW would be filled only up to the number of kilowatts actually ordered. If sufficient power is not available to allocate 32 kW of power to each User, the Exchange would allocate the available power equally among all Users (rounded to a whole number of kilowatts), except that no User would be allocated more kilowatts than it actually ordered. If no power remains to be allocated after Step 2, all orders finalized during the Ordering Window would be considered to be completed.[13]

In Step 3, per subparagraph (3) of paragraph (c), if any power remains to be allocated after Step 2, the Exchange would allocate power to any orders that were not completely filled during Step 2, as follows. If sufficient power is available, the Exchange would allocate power to completely fill all remaining orders finalized during the Ordering Window. If sufficient power is not available to completely fill all such orders, the Exchange would allocate power to fill an identical percentage of each remaining order (rounded to a whole number of kilowatts). All such orders would then be considered completed.[14]

Paragraph (d) of Colocation Note 8 would specify that any orders received by the Exchange after the end of the Ordering Window would not be included in the allocation process described in Colocation Note 8. Such orders would be subject to the terms of Colocation Notes 6 and 7.

Application and Impact of the Proposed Changes

The Exchange currently anticipates invoking the proposed Ordering Window procedure to assist in determining Users' power needs and to allocate power in Hall 5. The procedure could also be used in the future each

[10] During the Ordering Window, any orders submitted by Users must meet the requirements of Colocation Note 8. The Exchange would not accept new orders to the waitlist established under Colocation Note 7 while the Ordering Window is open.

[11] For instance, the required deposit would be calculated as the number of kilowatts ordered by the User in its Ordering Window order, multiplied by the appropriate ''Per kW Monthly Fee'' as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

[12] In the event that a User wishes to reduce an order that it placed during the Ordering Window, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted.

[13] To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated 32 kW of power during Step 2 and no further power remained to be allocated after Step 2, the User's order would be considered completed. The residual 68 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect).

[14] To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated a total of 90 kW of power in Steps 2 and 3, the order would be considered completed. The residual 10 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect).

time the Exchange or ICE must assess customer demand for additional space and power in the MDC or allocate large amounts of power that become available at one time.

The Exchange does not propose to eliminate or alter the existing purchasing limits and waitlist procedures in Colocation Notes 6 and 7. Rather, those procedures would be temporarily superseded during the Ordering Window and would resume immediately after the Ordering Window ends.

The Exchange expects that the proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the opening of the Ordering Window; the Ordering Window dates would be the same for all Users; and each order during the Ordering Window would be secured with a deposit equal to two months of the monthly recurring costs of the power ordered during the Ordering Window.

The proposed Ordering Window procedure would not disadvantage Users on the current waitlist pursuant to Colocation Note 7, since power would be allocated to those orders first under the Ordering Window procedure.

Smaller Users with more modest power needs would not be disadvantaged by the proposed changes. In Step 2, each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled. This would ensure that all Users that participate in the Ordering Window would receive at least some power and no Users would be shut out of the allocation. In addition, because the deposit is proportional to the size of the order, and not a fixed amount, smaller Users would not be disproportionately affected by the deposit requirement.

The proposed changes are not otherwise intended to address any other issues relating to colocation services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, because it is 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by creating an alternative procedure by which the Exchange can allocate power in the MDC. The current procedures provide for only two allocation methods: orders that must be limited to 32 kW when the Purchasing Limits are in effect, and unlimited orders that the Exchange must fill on a first-come, first-served basis when the Purchasing Limits are not in effect. Neither of those current procedures gives the Exchange a way to obtain accurate information from Users about their actual and anticipated power needs—information that the Exchange requires in order to properly plan for future hall expansions at the MDC. The current procedures are not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens. When a large amount of power becomes available at one time, such as through a hall expansion, the current procedures could create a race condition in which the largest Users place early orders for many hundreds of kilowatts of power that the Exchange must fill on a first-come, first-served basis, effectively shutting out other customers with more modest power needs. In contrast, the proposed alternative procedure would remove impediments and perfect the mechanism of a free and open market and a national market system by permitting the Exchange to allocate up to 32 kW of power (subject to sufficient power being available) to each User before any User's order for more than 32 kW would be filled. This would ensure that each User submitting a finalized order during the Ordering Window would be guaranteed to receive at least some power and no Users would be shut out of the allocation.

The proposed requirement that orders submitted during the Ordering Window be guaranteed by a deposit is also designed to remove impediments and to perfect the mechanism of a free and open market and a national market system. The current procedures give the Exchange no way to accurately measure User demand for additional power. The existing waitlist is no indication of Users' actual demand, since waitlist orders are capped at 32 kW. Users' comments that they are interested in purchasing hundreds more kilowatts of power are mere casual mentions, which, in the Exchange's experience, Users sometimes walk back when the power actually becomes available. Without firm, guaranteed commitments from Users to purchase the power if it is made available, the Exchange runs the risk of underestimating or overestimating Users' true demand for power. The proposed deposit requirement would address these issues by discouraging Users from submitting orders for more power than they actually intend to purchase and would indicate the true amount of additional power that each User would agree to purchase if it were made available. The proposed deposit requirement of two months' worth of the monthly recurring costs of the amount of new power ordered during the Ordering Window is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders.[17] The Exchange requires market participants to submit deposits in other contexts, and as such, the deposit requirement here would not be novel.[18]

Under the proposed procedure, if a User wishes to reduce an order that it placed during the Ordering Window, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] To illustrate, for a large User ordering an additional 300 kW of power, the deposit required would be $540,000 (*i.e.,* two times the monthly recurring cost of $270,000), while a smaller User ordering an additional 32 kW of power would pay an estimated deposit of $60,000 (*i.e.,* two times the monthly recurring cost of $30,000), depending on how much power it already had at the MDC.

[18] For example, since 2012, the Exchange has required prospective issuers to pay a $25,000 initial application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as ''a disincentive for impractical applications by issuers.'' The deposit is forfeited if the issuer does not ultimately list on the exchange. *See* Securities Exchange Act Release No. 68470 (December 19, 20212), 77 FR 76116 at 76117 (December 26, 2012) (SR–NYSE–2012–68).

open market and a national market system because it would ensure that a User would be reimbursed for all of its deposit even if it reduces its order after the Ordering Window closes. This would remove any incentive a User otherwise might have to understate its needs for power out of a concern that it would not be reimbursed for the full amount of its deposit.

The proposed rule change would protect investors and the public interest in that it would provide the Exchange with accurate insight into Users' true power requirements. It is in the public interest for the Exchange to take User demand into account and to make reasoned, informed decisions about whether and how to expand the MDC.

The proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the opening of the Ordering Window; the Ordering Window dates would be the same for all Users; and each order during the Ordering Window would be secured with a deposit equal to two months of the monthly recurring costs of the power ordered. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes. In Step 2, each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled. This would ensure that all Users that participate in the Ordering Window would receive at least some power and no Users would be shut out of the allocation. In addition, because the deposit is proportional to the size of the order and not a fixed amount, smaller Users would not be disproportionately affected by the deposit requirement. Finally, the proposed Ordering Window procedure would not disadvantage Users on the current waitlist pursuant to Colocation Note 7, since power would be allocated to those orders first under the Ordering Window procedure.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[19] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed rule change would not place any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would provide an alternative procedure by which the Exchange can allocate power in the MDC that both provides the Exchange with reliable information about Users' true power needs and allows all Users that submit deposit-guaranteed orders during the Ordering Window to be assured of receiving at least some additional power. The Exchange does not expect the proposed rule change to impact intra-market or intermarket competition between exchanges, Users, or any other market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2023–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–53. 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 website (*https://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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–53 and should be submitted on or before September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17982 Filed 8–21–23; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78f(b)(8).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98146; File No. SR–C2–2023–019]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Relating to the Options Regulatory Fee

August 16, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the

''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 14, 2023, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, 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

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), 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

The Exchange proposes to reduce the Options Regulatory Fee (''ORF'') from $0.0003 per contract to $0.0002 per contract in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.[3]

The ORF is assessed by C2 Options to each Trading Permit Holder (''TPH'') for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (''OCC'') in the customer range, regardless of the exchange on which the transaction occurs.[4] In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (''CTPH'') or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, C2 Options reimburses its routing broker providing Routing Services pursuant to C2 Options Rule 5.36 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 25% of C2's total regulatory costs for 2023. Thus, direct expenses are estimated to be approximately 75% of total regulatory costs for 2023. In addition, it is C2 Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.

These expectations are estimated, preliminary and may change. There can be no assurance that the Exchange's final costs for 2023 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with the Exchange's other non-ORF regulatory fees and fines, the revenue being generated by ORF using the current rate results in combined revenue that is running in excess of the Exchange's estimated regulatory costs for the year.[5] Particularly, as discussed above, the options market has seen a substantial increase in volume over the first half of the year, up even from last year's unprecedented volume. This increase resulted in higher volume than was originally projected by the Exchange (thereby resulting in higher ORF revenue than projected). Moreover, in addition to projected reductions in regulatory expenses, the Exchange's expenses have been reduced.[6] Accordingly, because revenue generated by the current ORF rates, when combined with the Exchange's other non-ORF regulatory fees and fines, is expected to exceed the Exchange's regulatory costs for the year, the Exchange proposes to decrease its ORF rate. Particularly, the Exchange believes that by decreasing the ORF, as amended, when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed rule change on August 1, 2023 (SR–C2–2023–018). On August 14, 2023, the Exchange withdrew that filing and submitted this filing.

[4] The Exchange notes ORF also applies to customer-range transactions executed during Global Trading Hours.

[5] Consistent with Rule 2.2 (Regulatory Revenue), the Exchange notes that notwithstanding the excess ORF revenue collected to date, it has not used such revenue for nonregulatory purposes.

[6] The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

[7] The Exchange notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies TPHs of adjustments to the ORF via Exchange Notice, including for the change being proposed herein.[8] Based on the Exchange's most recent semi-annual review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0003 per contract side to $0.0002 per contract side. The proposed decrease is based on the Exchange's estimated projections for its regulatory costs, which have decreased, balanced with recent options volumes, which has increased. For example, total options contract volume in June 2023 was approximately 19% higher than the total options contract volume in June 2022 and the total options contract volume in March 2023 was approximately 12% higher than the total options contract volume in March 2022.[9] In fact, March 2023 was the high total volume in month in the history of U.S. equities options industry and May 2023 was the third highest options volume month in the history of U.S. equity options industry.[10] The below table displays monthly total volumes for 2023.[11]

Month	Total volume	Customer sides
January 2023	919,299,330	802,712,235
February 2023	883,234,837	780,284,838
March 2023	1,052,984,722	915,674,991
April 2023	760,808,909	673,183,772
May 2023	944,534,205	826,490,407
June 2023	909,616,267	801,688,960

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act,[13] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the current rate. Moreover, the proposed reduction is necessary in order to lessen the potential that the Exchange collects revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices. The Exchange had designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it would be collecting revenue in excess of 75% of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, coupled with the projected reduction in regulatory costs, it estimates the ORF will generate revenues that would cover more than the approximated 75% of the Exchange's projected regulatory costs. Moreover, when coupled with the Exchange's other regulatory fees and revenues, the Exchange estimates ORF to generate over 100% of the Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to decrease the ORF amount from $0.0003 to $0.0002 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff and travel expenses), as well as investigations into customer complaints and the terminations of Registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* TPH proprietary transactions) of its regulatory program.[15] Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its TPHs' activities, irrespective of where their transactions take place.

[8] *See* Exchange Notice, C2023071301 ''Cboe Options Exchanges Regulatory Fee Update Effective August 1, 2023.'' The Exchange will endeavor to provide TPHs with notice of any future changes at least 30 calendar days prior to the effective date of the change.

[9] *See https://www.theocc.com/newsroom/press-releases/2023/07-05-occ-clears-962-6m-contracts-in-june-2023,-up-19-4-year-over-year* and *https://www.theocc.com/newsroom/press-releases/2023/04-04-occ-clears-over-1b-total-contracts-in-march-2023-highest-month-on-record-and-up-12-2-year.*

[10] *Id. See also https://www.theocc.com/newsroom/press-releases/2023/06-02-occ-clears-949-1m-contracts-in-may-2023-third-highest-month-on-record.*

[11] Volume data in the table represents numbers of contracts; each contract has two sides. June numbers reflect volumes through June 29, 2023.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity irregardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [16] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its TPHs' customer trading activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–C2–2023–019 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–C2–2023–019. 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 website (*https://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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–C2–2023–019 and should be submitted on or before September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17978 Filed 8–21–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–559, OMB Control No. 3235–0621]

Proposed Collection; Comment Request; Extension: Form 15F

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

[16] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

Form 15F (17 CFR 249.324) is filed by a foreign private issuer when terminating its Exchange Act reporting obligations pursuant to Exchange Act Rule 12h–6 (17 CFR 240.12h–6). Form 15F requires a foreign private issuer to disclose information that helps investors understand the foreign private issuer's decision to terminate its Exchange Act reporting obligations and assists the Commission staff in determining whether the filer is eligible to terminate its Exchange Act reporting obligations pursuant to Rule 12h–6. Rule 12h–6 provides a process for a foreign private issuer to exit the Exchange Act registration and reporting regime when there is relatively little U.S. investor interest in its securities. Rule 12h–6 is intended to remove a disincentive for foreign private issuers to register their securities with the Commission by lessening concerns that the Exchange Act registration and reporting system would be difficult to exit once an issuer enters it. We estimate that Form 15F takes approximately 30 hours to prepare and is filed by approximately 30 issuers. We estimate that 25% of the 30 hours per response (7.5 hours per response) is prepared by the filer for a total annual reporting burden of 225 hours (7.5 hours per response × 30 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on 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 by October 23, 2023.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–18010 Filed 8–21–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98148; File No. SR–NYSE–2023–29]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Change To Amend the Connectivity Fee Schedule Regarding Power Allocation

August 16, 2023.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 3, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day ''Ordering Window.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center (''MDC'') [4] via deposit-guaranteed orders from Users made within a 90-day ''Ordering Window.''

Background

Shortly after the onset of the Covid–19 pandemic, the Exchange began experiencing unprecedented User [5] demand for cabinets and power at the MDC. In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders.[6] In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.[7] Pursuant to the terms of those filings, a Combined Waitlist is currently in place.

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (*i.e.,* Hall 4), yet User demand for additional power continues to climb. Currently, the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Through its Fixed Income and Data Services (''FIDS'') business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and its affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (the ''Affiliate SROs'') are indirect subsidiaries of ICE. Each of the Exchange's Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAMER–2023–39, SR–NYSEARCA–2023–53, SR–NYSECHX–2023–16, and SR–NYSENAT–2023–16.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Connectivity Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs.

[6] *See* Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR–NYSE–2020–73, SR–NYSEAMER–2020–66, SR–NYSEArca–2020–82, SR–NYSECHX–2020–26, SR–NYSENAT–2020–28,) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

[7] *See* Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02, SR–NYSENAT–2021–03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

waitlist includes 27 Users collectively requesting in excess of an additional 700 kilowatts (''kW'') of power. That number, however, may be a mere fraction of Users' true demand for additional power at the MDC, since, due to the existing waitlist procedures, the Exchange may not accept orders for more than 32 kW of power, and a User and its Affiliates [8] may have only one order on the waitlist at a time. Of the 27 Users on the current waitlist, many have mentioned that they are actually interested in purchasing much more than 32 kW of power, with several claiming that they are seeking additional power of several hundred kilowatts.[9]

ICE is currently expanding the amount of colocation space and power available at the MDC. ICE is already developing a new colocation hall (*i.e.,* Hall 5) to deliver power that would satisfy all orders currently on the waitlist with some extra power remaining.

ICE proposes this rule change to address two issues posed by the current situation. First, while the development of Hall 5 is underway, ICE must also evaluate whether customer demand would support additional expansion projects to provide further power. ICE must anticipate future demand now because each colocation expansion project is a significant capital project requiring long lead times, especially given current supply-chain constraints on equipment, and substantial up-front investment. It may be possible for ICE to leverage certain efficiencies and economies of scale by planning for future expansion now.

Yet ICE currently lacks any real indication of customers' true demands. As noted above, the current waitlist of 700 kW may represent a mere fraction of Users' true power requirements, since waitlist orders are limited to one order of 32 kW per User. On the one hand, ICE does not know whether the extra power that will be provided in Hall 5 will be enough to meet Users' needs. On the other hand, ICE cannot justify the investment of time and expense that it would take to create additional colocation space based on only casual indications of interest from customers. Without firm, guaranteed commitments from Users to purchase the power if it is made available, ICE runs the risk of underestimating or overestimating Users' true demand for power and faces the possibility of undersupplying or oversupplying space and power.

Second, the existing procedures in the Connectivity Fee Schedule are not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens. Under the existing procedures, if less than 350 kW of unallocated power is available, the Purchasing Limits in Colocation Note 6 restrict all orders to 32 kW—but any time more than 350 kW of unallocated power is available, Users can place unlimited orders that the Exchange must allocate on a first-come, first-served basis. Regarding Hall 5, the Exchange anticipates large amounts of unallocated power becoming available at several intervals. This could create a race condition in which the largest Users place early orders for many hundreds of kilowatts of power, effectively shutting out other customers with more modest power needs. The Exchange therefore believes that it needs a different procedure when allocating substantial amounts of power at one time due to a hall expansion or other similar expansion of available power.

Proposed ''Ordering Window'' Procedure

The Exchange proposes to solve these issues by providing a temporary procedure to permit the Exchange to accept unlimited, deposit-guaranteed orders from Users for a period of 90 days (the ''Ordering Window''). The Colocation Notes in the Connectivity Fee Schedule would be amended accordingly.

Based on the total power ordered by Users during the Ordering Window, ICE would gain insight into whether further expansion beyond Hall 5 is likely to be required in the future. Requiring Users to submit deposits with their orders during this Ordering Window would encourage Users to carefully assess their true power needs and would protect against Users ordering more power than they actually intend to purchase. After the Ordering Window closes, the Exchange would allocate power to Users according to terms described below, which would ensure that every User submitting an order would receive at least some power and no Users would be shut out of the allocation. Following the Ordering Window, the existing purchasing limits and waitlist procedures in Colocation Notes 6 and 7 would then resume.

Specifically, the Exchange proposes to amend the Connectivity Fee Schedule to add new Colocation Note 8, entitled ''Ordering Window.''

Paragraph (a) of Colocation Note 8 would provide that the Exchange may announce, by customer notice, a 90-day Ordering Window during which the Exchange may accept orders and deposits pursuant to the terms below. Paragraph (a) would specify that if the Exchange announces an Ordering Window while the Cabinet and Power Purchasing Limits in Colocation Note 6 and/or the Cabinet and Combined Waitlist provisions in Colocation Note 7 are in effect, the terms of the Ordering Window as set out in Colocation Note 8 would temporarily supersede those terms.[10]

Paragraph (b) of Colocation Note 8 would specify the procedures for placing orders and paying deposits during the Ordering Window. Subparagraph (1) would provide that during the Ordering Window, Users may submit orders for their anticipated power needs, subject to the following. First, a User and its Affiliates, if any, may finalize only one order for power during the Ordering Window. Second, the provision of Colocation Note 7 that prohibits the Exchange from accepting orders for more than four dedicated cabinets and/or 32 kW of power would not apply. Third, a User may submit an order during the Ordering Window even if it already has an order pending on a waitlist pursuant to Colocation Note 7.

Subparagraph (2) of paragraph (b) would provide that orders submitted during the Ordering Window are subject to deposits equal to two months' worth of the monthly recurring costs of the amount of new power ordered.[11] The subparagraph would further provide that a User's order would be finalized when the User's signed order form and deposit are received by the Exchange, and that orders that are not finalized before the Ordering Window closes will be considered void. Subparagraph (2) of

[8] An ''Affiliate'' of a User is defined as ''any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User.'' Connectivity Fee Schedule, at 1.

[9] Such demand for increased power is not unique to the MDC. Customers have told the Exchange that available power is in short supply at several other data centers as well, including the Equinex-owned data center in Secaucus, New Jersey, the Equinex-owned data center in Carteret, New Jersey, and the Digital Realty-owned data center at Cermak, Illinois. Since none of those data centers is operated by an exchange or regulated by the Commission, the operators of those data centers are free to ask customers to indicate their interest in future build-outs by submitting orders guaranteed by deposits.

[10] During the Ordering Window, any orders submitted by Users must meet the requirements of Colocation Note 8. The Exchange would not accept new orders to the waitlist established under Colocation Note 7 while the Ordering Window is open.

[11] For instance, the required deposit would be calculated as the number of kilowatts ordered by the User in its Ordering Window order, multiplied by the appropriate ''Per kW Monthly Fee'' as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

paragraph (b) would further provide that the deposit would be applied to the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted. If the User withdraws its order during the Ordering Window, the deposit would be returned.[12]

Subparagraph (3) of paragraph (b) would provide that a User may modify its order during the Ordering Window, but such modification would not be finalized until the User's signed modified order form and any additional deposit are received by the Exchange.

Paragraph (c) of Colocation Note 8 would specify the Exchange's procedure for allocating available power after the Ordering Window ends. After determining the total amount of power available to allocate, the Exchange would allocate the available power as follows. In Step 1, per subparagraph (1) of paragraph (c), the Exchange would allocate power to fill any orders on any waitlist in effect pursuant to Colocation Note 7 (*e.g.,* the current waitlist of 32 kW orders totaling 700 kW).

In Step 2, per subparagraph (2) of paragraph (c), the Exchange would allocate up to 32 kW of power to each User that finalized an order during the Ordering Window, subject to the following. If sufficient power is available, the Exchange would allocate 32 kW of power to each User, except that orders for less than 32 kW would be filled only up to the number of kilowatts actually ordered. If sufficient power is not available to allocate 32 kW of power to each User, the Exchange would allocate the available power equally among all Users (rounded to a whole number of kilowatts), except that no User would be allocated more kilowatts than it actually ordered. If no power remains to be allocated after Step 2, all orders finalized during the Ordering Window would be considered to be completed.[13]

In Step 3, per subparagraph (3) of paragraph (c), if any power remains to be allocated after Step 2, the Exchange would allocate power to any orders that were not completely filled during Step 2, as follows. If sufficient power is available, the Exchange would allocate power to completely fill all remaining orders finalized during the Ordering Window. If sufficient power is not available to completely fill all such orders, the Exchange would allocate power to fill an identical percentage of each remaining order (rounded to a whole number of kilowatts). All such orders would then be considered completed.[14]

Paragraph (d) of Colocation Note 8 would specify that any orders received by the Exchange after the end of the Ordering Window would not be included in the allocation process described in Colocation Note 8. Such orders would be subject to the terms of Colocation Notes 6 and 7.

Application and Impact of the Proposed Changes

The Exchange currently anticipates invoking the proposed Ordering Window procedure to assist in determining Users' power needs and to allocate power in Hall 5. The procedure could also be used in the future each time the Exchange or ICE must assess customer demand for additional space and power in the MDC or allocate large amounts of power that become available at one time.

The Exchange does not propose to eliminate or alter the existing purchasing limits and waitlist procedures in Colocation Notes 6 and 7. Rather, those procedures would be temporarily superseded during the Ordering Window and would resume immediately after the Ordering Window ends.

The Exchange expects that the proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the opening of the Ordering Window; the Ordering Window dates would be the same for all Users; and each order during the Ordering Window would be secured with a deposit equal to two months of the monthly recurring costs of the power ordered during the Ordering Window.

The proposed Ordering Window procedure would not disadvantage Users on the current waitlist pursuant to Colocation Note 7, since power would be allocated to those orders first under the Ordering Window procedure.

Smaller Users with more modest power needs would not be disadvantaged by the proposed changes. In Step 2, each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled. This would ensure that all Users that participate in the Ordering Window would receive at least some power and no Users would be shut out of the allocation. In addition, because the deposit is proportional to the size of the order, and not a fixed amount, smaller Users would not be disproportionately affected by the deposit requirement.

The proposed changes are not otherwise intended to address any other issues relating to colocation services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, because it is 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by creating an alternative procedure by which the Exchange can allocate power in the MDC. The current procedures provide for only two allocation methods: orders that must be limited to 32 kW when the Purchasing Limits are in effect, and unlimited orders that the Exchange must fill on a first-come, first-served basis when the Purchasing Limits are not in effect. Neither of those current procedures gives the Exchange a way to obtain accurate information from

[12] In the event that a User wishes to reduce an order that it placed during the Ordering Window, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted.

[13] To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated 32 kW of power during Step 2 and no further power remained to be allocated after Step 2, the User's order would be considered completed. The residual 68 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect).

[14] To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated a total of 90 kW of power in Steps 2 and 3, the order would be considered completed. The residual 10 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

Users about their actual and anticipated power needs—information that the Exchange requires in order to properly plan for future hall expansions at the MDC. The current procedures are not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens. When a large amount of power becomes available at one time, such as through a hall expansion, the current procedures could create a race condition in which the largest Users place early orders for many hundreds of kilowatts of power that the Exchange must fill on a first-come, first-served basis, effectively shutting out other customers with more modest power needs. In contrast, the proposed alternative procedure would remove impediments and perfect the mechanism of a free and open market and a national market system by permitting the Exchange to allocate up to 32 kW of power (subject to sufficient power being available) to each User before any User's order for more than 32 kW would be filled. This would ensure that each User submitting a finalized order during the Ordering Window would be guaranteed to receive at least some power and no Users would be shut out of the allocation.

The proposed requirement that orders submitted during the Ordering Window be guaranteed by a deposit is also designed to remove impediments and to perfect the mechanism of a free and open market and a national market system. The current procedures give the Exchange no way to accurately measure User demand for additional power. The existing waitlist is no indication of Users' actual demand, since waitlist orders are capped at 32 kW. Users' comments that they are interested in purchasing hundreds more kilowatts of power are mere casual mentions, which, in the Exchange's experience, Users sometimes walk back when the power actually becomes available. Without firm, guaranteed commitments from Users to purchase the power if it is made available, the Exchange runs the risk of underestimating or overestimating Users' true demand for power. The proposed deposit requirement would address these issues by discouraging Users from submitting orders for more power than they actually intend to purchase and would indicate the true amount of additional power that each User would agree to purchase if it were made available. The proposed deposit requirement of two months' worth of the monthly recurring costs of the amount of new power ordered during the Ordering Window is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders.[17] The Exchange requires market participants to submit deposits in other contexts, and as such, the deposit requirement here would not be novel.[18]

Under the proposed procedure, if a User wishes to reduce an order that it placed during the Ordering Window, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and open market and a national market system because it would ensure that a User would be reimbursed for all of its deposit even if it reduces its order after the Ordering Window closes. This would remove any incentive a User otherwise might have to understate its needs for power out of a concern that it would not be reimbursed for the full amount of its deposit.

The proposed rule change would protect investors and the public interest in that it would provide the Exchange with accurate insight into Users' true power requirements. It is in the public interest for the Exchange to take User demand into account and to make reasoned, informed decisions about whether and how to expand the MDC.

The proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the opening of the Ordering Window; the Ordering Window dates would be the same for all Users; and each order during the Ordering Window would be secured with a deposit equal to two months of the monthly recurring costs of the power ordered. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes. In Step 2, each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled. This would ensure that all Users that participate in the Ordering Window would receive at least some power and no Users would be shut out of the allocation. In addition, because the deposit is proportional to the size of the order and not a fixed amount, smaller Users would not be disproportionately affected by the deposit requirement. Finally, the proposed Ordering Window procedure would not disadvantage Users on the current waitlist pursuant to Colocation Note 7, since power would be allocated to those orders first under the Ordering Window procedure.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[19] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed rule change would not place any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would provide an alternative procedure by which the Exchange can allocate power in the MDC that both provides the Exchange with reliable information about Users' true power needs and allows all Users that submit deposit-guaranteed orders during the Ordering Window to be assured of receiving at least some additional power. The Exchange does not expect the proposed rule change to impact intra-market or intermarket competition between exchanges, Users, or any other market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[17] To illustrate, for a large User ordering an additional 300 kW of power, the deposit required would be $540,000 (*i.e.,* two times the monthly recurring cost of $270,000), while a smaller User ordering an additional 32 kW of power would pay an estimated deposit of $60,000 (*i.e.,* two times the monthly recurring cost of $30,000), depending on how much power it already had at the MDC.

[18] For example, since 2012, the Exchange has required prospective issuers to pay a $25,000 initial application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as ''a disincentive for impractical applications by issuers.'' The deposit is forfeited if the issuer does not ultimately list on the exchange. *See* Securities Exchange Act Release No. 68470 (December 19, 20212), 77 FR 76116 at 76117 (December 26, 2012) (SR–NYSE–2012–68).

[19] 15 U.S.C. 78f(b)(8).

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 self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–29 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–NYSE–2023–29. 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 website (*https://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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–29 and should be submitted on or before September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17980 Filed 8–21–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98149; File No. SR–NYSEAMER–2023–39]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change To Amend the Connectivity Fee Schedule Regarding Power Allocation

August 16, 2023.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 3, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day ''Ordering Window.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center (''MDC'')[4] via deposit-guaranteed orders from Users made within a 90-day ''Ordering Window.''

Background

Shortly after the onset of the Covid–19 pandemic, the Exchange began experiencing unprecedented User[5] demand for cabinets and power at the MDC. In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders.[6] In early 2021, the

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Through its Fixed Income and Data Services (''FIDS'') business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and its affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (the ''Affiliate SROs'') are indirect subsidiaries of ICE. Each of the Exchange's Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2023–29, SR–NYSEARCA–2023–53, SR–NYSECHX–2023–16, and SR–NYSENAT–2023–16.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Connectivity Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs.

[6] *See* Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR–NYSE–2020–73, SR–NYSEAMER–2020–66, SR–NYSEArca–2020–82, SR–NYSECHX–2020–26, SR–NYSENAT–2020–28,) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.[7] Pursuant to the terms of those filings, a Combined Waitlist is currently in place.

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (*i.e.,* Hall 4), yet User demand for additional power continues to climb. Currently, the waitlist includes 27 Users collectively requesting in excess of an additional 700 kilowatts (''kW'') of power. That number, however, may be a mere fraction of Users' true demand for additional power at the MDC, since, due to the existing waitlist procedures, the Exchange may not accept orders for more than 32 kW of power, and a User and its Affiliates [8] may have only one order on the waitlist at a time. Of the 27 Users on the current waitlist, many have mentioned that they are actually interested in purchasing much more than 32 kW of power, with several claiming that they are seeking additional power of several hundred kilowatts.[9]

ICE is currently expanding the amount of colocation space and power available at the MDC. ICE is already developing a new colocation hall (*i.e.,* Hall 5) to deliver power that would satisfy all orders currently on the waitlist with some extra power remaining.

ICE proposes this rule change to address two issues posed by the current situation. First, while the development of Hall 5 is underway, ICE must also evaluate whether customer demand would support additional expansion projects to provide further power. ICE must anticipate future demand now because each colocation expansion project is a significant capital project requiring long lead times, especially given current supply-chain constraints on equipment, and substantial up-front investment. It may be possible for ICE to leverage certain efficiencies and economies of scale by planning for future expansion now.

Yet ICE currently lacks any real indication of customers' true demands. As noted above, the current waitlist of 700 kW may represent a mere fraction of Users' true power requirements, since waitlist orders are limited to one order of 32 kW per User. On the one hand, ICE does not know whether the extra power that will be provided in Hall 5 will be enough to meet Users' needs. On the other hand, ICE cannot justify the investment of time and expense that it would take to create additional colocation space based on only casual indications of interest from customers. Without firm, guaranteed commitments from Users to purchase the power if it is made available, ICE runs the risk of underestimating or overestimating Users' true demand for power and faces the possibility of undersupplying or oversupplying space and power.

Second, the existing procedures in the Connectivity Fee Schedule are not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens. Under the existing procedures, if less than 350 kW of unallocated power is available, the Purchasing Limits in Colocation Note 6 restrict all orders to 32 kW—but any time more than 350 kW of unallocated power is available, Users can place unlimited orders that the Exchange must allocate on a first-come, first-served basis. Regarding Hall 5, the Exchange anticipates large amounts of unallocated power becoming available at several intervals. This could create a race condition in which the largest Users place early orders for many hundreds of kilowatts of power, effectively shutting out other customers with more modest power needs. The Exchange therefore believes that it needs a different procedure when allocating substantial amounts of power at one time due to a hall expansion or other similar expansion of available power.

Proposed ''Ordering Window'' Procedure

The Exchange proposes to solve these issues by providing a temporary procedure to permit the Exchange to accept unlimited, deposit-guaranteed orders from Users for a period of 90 days (the ''Ordering Window''). The Colocation Notes in the Connectivity Fee Schedule would be amended accordingly.

Based on the total power ordered by Users during the Ordering Window, ICE would gain insight into whether further expansion beyond Hall 5 is likely to be required in the future. Requiring Users to submit deposits with their orders during this Ordering Window would encourage Users to carefully assess their true power needs and would protect against Users ordering more power than they actually intend to purchase. After the Ordering Window closes, the Exchange would allocate power to Users according to terms described below, which would ensure that every User submitting an order would receive at least some power and no Users would be shut out of the allocation. Following the Ordering Window, the existing purchasing limits and waitlist procedures in Colocation Notes 6 and 7 would then resume.

Specifically, the Exchange proposes to amend the Connectivity Fee Schedule to add new Colocation Note 8, entitled ''Ordering Window.''

Paragraph (a) of Colocation Note 8 would provide that the Exchange may announce, by customer notice, a 90-day Ordering Window during which the Exchange may accept orders and deposits pursuant to the terms below. Paragraph (a) would specify that if the Exchange announces an Ordering Window while the Cabinet and Power Purchasing Limits in Colocation Note 6 and/or the Cabinet and Combined Waitlist provisions in Colocation Note 7 are in effect, the terms of the Ordering Window as set out in Colocation Note 8 would temporarily supersede those terms.[10]

Paragraph (b) of Colocation Note 8 would specify the procedures for placing orders and paying deposits during the Ordering Window. Subparagraph (1) would provide that during the Ordering Window, Users may submit orders for their anticipated power needs, subject to the following. First, a User and its Affiliates, if any, may finalize only one order for power during the Ordering Window. Second, the provision of Colocation Note 7 that prohibits the Exchange from accepting orders for more than four dedicated cabinets and/or 32 kW of power would not apply. Third, a User may submit an order during the Ordering Window even if it already has an order pending on a waitlist pursuant to Colocation Note 7.

Subparagraph (2) of paragraph (b) would provide that orders submitted during the Ordering Window are subject to deposits equal to two months' worth

[7] *See* Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02, SR–NYSENAT–2021–03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

[8] An ''Affiliate'' of a User is defined as ''any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User.'' Connectivity Fee Schedule, at 1.

[9] Such demand for increased power is not unique to the MDC. Customers have told the Exchange that available power is in short supply at several other data centers as well, including the Equinex-owned data center in Secaucus, New Jersey, the Equinex-owned data center in Carteret, New Jersey, and the Digital Realty-owned data center at Cermak, Illinois. Since none of those data centers is operated by an exchange or regulated by the Commission, the operators of those data centers are free to ask customers to indicate their interest in future build-outs by submitting orders guaranteed by deposits.

[10] During the Ordering Window, any orders submitted by Users must meet the requirements of Colocation Note 8. The Exchange would not accept new orders to the waitlist established under Colocation Note 7 while the Ordering Window is open.

of the monthly recurring costs of the amount of new power ordered.[11] The subparagraph would further provide that a User's order would be finalized when the User's signed order form and deposit are received by the Exchange, and that orders that are not finalized before the Ordering Window closes will be considered void. Subparagraph (2) of paragraph (b) would further provide that the deposit would be applied to the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted. If the User withdraws its order during the Ordering Window, the deposit would be returned.[12]

Subparagraph (3) of paragraph (b) would provide that a User may modify its order during the Ordering Window, but such modification would not be finalized until the User's signed modified order form and any additional deposit are received by the Exchange.

Paragraph (c) of Colocation Note 8 would specify the Exchange's procedure for allocating available power after the Ordering Window ends. After determining the total amount of power available to allocate, the Exchange would allocate the available power as follows. In Step 1, per subparagraph (1) of paragraph (c), the Exchange would allocate power to fill any orders on any waitlist in effect pursuant to Colocation Note 7 (*e.g.,* the current waitlist of 32 kW orders totaling 700 kW).

In Step 2, per subparagraph (2) of paragraph (c), the Exchange would allocate up to 32 kW of power to each User that finalized an order during the Ordering Window, subject to the following. If sufficient power is available, the Exchange would allocate 32 kW of power to each User, except that orders for less than 32 kW would be filled only up to the number of kilowatts actually ordered. If sufficient power is not available to allocate 32 kW of power to each User, the Exchange would allocate the available power equally among all Users (rounded to a whole number of kilowatts), except that no User would be allocated more kilowatts than it actually ordered. If no power remains to be allocated after Step 2, all orders finalized during the Ordering Window would be considered to be completed.[13]

In Step 3, per subparagraph (3) of paragraph (c), if any power remains to be allocated after Step 2, the Exchange would allocate power to any orders that were not completely filled during Step 2, as follows. If sufficient power is available, the Exchange would allocate power to completely fill all remaining orders finalized during the Ordering Window. If sufficient power is not available to completely fill all such orders, the Exchange would allocate power to fill an identical percentage of each remaining order (rounded to a whole number of kilowatts). All such orders would then be considered completed.[14]

Paragraph (d) of Colocation Note 8 would specify that any orders received by the Exchange after the end of the Ordering Window would not be included in the allocation process described in Colocation Note 8. Such orders would be subject to the terms of Colocation Notes 6 and 7.

Application and Impact of the Proposed Changes

The Exchange currently anticipates invoking the proposed Ordering Window procedure to assist in determining Users' power needs and to allocate power in Hall 5. The procedure could also be used in the future each time the Exchange or ICE must assess customer demand for additional space and power in the MDC or allocate large amounts of power that become available at one time.

The Exchange does not propose to eliminate or alter the existing purchasing limits and waitlist procedures in Colocation Notes 6 and 7. Rather, those procedures would be temporarily superseded during the Ordering Window and would resume immediately after the Ordering Window ends.

The Exchange expects that the proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the opening of the Ordering Window; the Ordering Window dates would be the same for all Users; and each order during the Ordering Window would be secured with a deposit equal to two months of the monthly recurring costs of the power ordered during the Ordering Window.

The proposed Ordering Window procedure would not disadvantage Users on the current waitlist pursuant to Colocation Note 7, since power would be allocated to those orders first under the Ordering Window procedure.

Smaller Users with more modest power needs would not be disadvantaged by the proposed changes. In Step 2, each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled. This would ensure that all Users that participate in the Ordering Window would receive at least some power and no Users would be shut out of the allocation. In addition, because the deposit is proportional to the size of the order, and not a fixed amount, smaller Users would not be disproportionately affected by the deposit requirement.

The proposed changes are not otherwise intended to address any other issues relating to colocation services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, because it is 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 and because it is not designed to permit unfair

[11] For instance, the required deposit would be calculated as the number of kilowatts ordered by the User in its Ordering Window order, multiplied by the appropriate ''Per kW Monthly Fee'' as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

[12] In the event that a User wishes to reduce an order that it placed during the Ordering Window, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted.

[13] To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated 32 kW of power during Step 2 and no further power remained to be allocated after Step 2, the User's order would be considered completed. The residual 68 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect).

[14] To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated a total of 90 kW of power in Steps 2 and 3, the order would be considered completed. The residual 10 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by creating an alternative procedure by which the Exchange can allocate power in the MDC. The current procedures provide for only two allocation methods: orders that must be limited to 32 kW when the Purchasing Limits are in effect, and unlimited orders that the Exchange must fill on a first-come, first-served basis when the Purchasing Limits are not in effect. Neither of those current procedures gives the Exchange a way to obtain accurate information from Users about their actual and anticipated power needs—information that the Exchange requires in order to properly plan for future hall expansions at the MDC. The current procedures are not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens. When a large amount of power becomes available at one time, such as through a hall expansion, the current procedures could create a race condition in which the largest Users place early orders for many hundreds of kilowatts of power that the Exchange must fill on a first-come, first-served basis, effectively shutting out other customers with more modest power needs. In contrast, the proposed alternative procedure would remove impediments and perfect the mechanism of a free and open market and a national market system by permitting the Exchange to allocate up to 32 kW of power (subject to sufficient power being available) to each User before any User's order for more than 32 kW would be filled. This would ensure that each User submitting a finalized order during the Ordering Window would be guaranteed to receive at least some power and no Users would be shut out of the allocation.

The proposed requirement that orders submitted during the Ordering Window be guaranteed by a deposit is also designed to remove impediments and to perfect the mechanism of a free and open market and a national market system. The current procedures give the Exchange no way to accurately measure User demand for additional power. The existing waitlist is no indication of Users' actual demand, since waitlist orders are capped at 32 kW. Users' comments that they are interested in purchasing hundreds more kilowatts of power are mere casual mentions, which, in the Exchange's experience, Users sometimes walk back when the power actually becomes available. Without firm, guaranteed commitments from Users to purchase the power if it is made available, the Exchange runs the risk of underestimating or overestimating Users' true demand for power. The proposed deposit requirement would address these issues by discouraging Users from submitting orders for more power than they actually intend to purchase and would indicate the true amount of additional power that each User would agree to purchase if it were made available. The proposed deposit requirement of two months' worth of the monthly recurring costs of the amount of new power ordered during the Ordering Window is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders.[17] The Exchange requires market participants to submit deposits in other contexts, and as such, the deposit requirement here would not be novel.[18]

Under the proposed procedure, if a User wishes to reduce an order that it placed during the Ordering Window, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and open market and a national market system because it would ensure that a User would be reimbursed for all of its deposit even if it reduces its order after the Ordering Window closes. This would remove any incentive a User otherwise might have to understate its needs for power out of a concern that it would not be reimbursed for the full amount of its deposit.

The proposed rule change would protect investors and the public interest in that it would provide the Exchange with accurate insight into Users' true power requirements. It is in the public interest for the Exchange to take User demand into account and to make reasoned, informed decisions about whether and how to expand the MDC.

The proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the opening of the Ordering Window; the Ordering Window dates would be the same for all Users; and each order during the Ordering Window would be secured with a deposit equal to two months of the monthly recurring costs of the power ordered. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes. In Step 2, each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled. This would ensure that all Users that participate in the Ordering Window would receive at least some power and no Users would be shut out of the allocation. In addition, because the deposit is proportional to the size of the order and not a fixed amount, smaller Users would not be disproportionately affected by the deposit requirement. Finally, the proposed Ordering Window procedure would not disadvantage Users on the current waitlist pursuant to Colocation Note 7, since power would be allocated to those orders first under the Ordering Window procedure.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[19] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed rule change would not place any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would provide an alternative procedure by which the Exchange can allocate power in the MDC that both provides the Exchange with reliable information about Users' true power needs and allows all Users

[17] To illustrate, for a large User ordering an additional 300 kW of power, the deposit required would be $540,000 (*i.e.,* two times the monthly recurring cost of $270,000), while a smaller User ordering an additional 32 kW of power would pay an estimated deposit of $60,000 (*i.e.,* two times the monthly recurring cost of $30,000), depending on how much power it already had at the MDC.

[18] For example, since 2012, the Exchange has required prospective issuers to pay a $25,000 initial application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as ''a disincentive for impractical applications by issuers.'' The deposit is forfeited if the issuer does not ultimately list on the exchange. *See* Securities Exchange Act Release No. 68470 (December 19, 20212), 77 FR 76116 at 76117 (December 26, 2012) (SR–NYSE–2012–68).

[19] 15 U.S.C. 78f(b)(8).

that submit deposit-guaranteed orders during the Ordering Window to be assured of receiving at least some additional power. The Exchange does not expect the proposed rule change to impact intra-market or intermarket competition between exchanges, Users, or any other market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2023–39 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–NYSEAMER–2023–39. 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 website (*https://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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2023–39 and should be submitted on or before September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17981 Filed 8–21–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–137, OMB Control No. 3235–0145]

Proposed Collection; Comment Request; Extension: Regulation 13D and Regulation 13G; Schedule 13D and Schedule 13G

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the office of Management and Budget for extension and approval.

Schedules 13D and 13G (17 CFR 240.13d–101 and 240.13d–102) are filed pursuant to Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d) and 78m(g)) (''Exchange Act'') and Regulations 13D and 13G (17 CFR 240.13d–1—240.13d–7) thereunder to report beneficial ownership of equity securities registered under Section 12 (15 U.S.C. 78*l*) of the Exchange Act. Regulations 13D and 13G provide investors, the subject issuers, and market participants with information about the accumulation of equity securities that may have the potential to change or influence control of an issuer. Schedules 13D and 13G are filed by persons, including small entities, to report their ownership of more than 5% of a class of equity securities registered under Section 12. We estimate that it takes approximately 14.5 burden hours to prepare a Schedule 13D and it is filed by approximately 1,508 filers. In addition, we estimate that 25% of the 14.5 hours per response (3.625 hours per response) is carried internally by the filer for a total annual reporting burden of 5,467 hours (3.625 hours per response × 1,508 responses).

We estimate that it takes approximately 12.4 hours per response to prepare a Schedule 13G and it is filed by approximately 7,079 filers. In addition, we estimate 25% of the 12.4 hours per response (3.1 hours per response) is carried internally by the filer for a total annual reporting burden of 21,945 hours (3.1 hours per response × 7,079 responses).

The Schedules combined are filed by 8,587 filers and they take approximately 12.769 hours per response. In addition, we estimate 25% of the 12.769 (3.19225 hours per response) is carried internally by the filer for a total annual reporting burden of 27,412 hours (3.1923 hours per response × 8,587 responses). The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

[20] 17 CFR 200.30–3(a)(12).

technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by October 23, 2023.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–18012 Filed 8–21–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98151; File No. SR–NYSECHX–2023–16]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Proposed Rule Change To Amend the Connectivity Fee Schedule Regarding Power Allocation

August 16, 2023.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 3, 2023, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center via deposit-guaranteed orders from Users made within a 90-day ''Ordering Window.'' The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule to provide an alternative procedure by which the Exchange can allocate power in the Mahwah Data Center (''MDC'') [4] via deposit-guaranteed orders from Users made within a 90-day ''Ordering Window.''

Background

Shortly after the onset of the Covid–19 pandemic, the Exchange began experiencing unprecedented User [5] demand for cabinets and power at the MDC. In order to manage its inventory, in late 2020, the Exchange filed to create purchasing limits and a waitlist for cabinet orders.[6] In early 2021, the Exchange filed to create additional purchasing limits and a waitlist for orders for additional power in the MDC.[7] Pursuant to the terms of those filings, a Combined Waitlist is currently in place.

In 2021 and 2022, the Exchange expanded the amount of space and power available in the MDC by opening a new colocation hall (*i.e.,* Hall 4), yet User demand for additional power continues to climb. Currently, the waitlist includes 27 Users collectively requesting in excess of an additional 700 kilowatts (''kW'') of power. That number, however, may be a mere fraction of Users' true demand for additional power at the MDC, since, due to the existing waitlist procedures, the Exchange may not accept orders for more than 32 kW of power, and a User and its Affiliates [8] may have only one order on the waitlist at a time. Of the 27 Users on the current waitlist, many have mentioned that they are actually interested in purchasing much more than 32 kW of power, with several claiming that they are seeking additional power of several hundred kilowatts.[9]

ICE is currently expanding the amount of colocation space and power available at the MDC. ICE is already developing a new colocation hall (*i.e.,* Hall 5) to deliver power that would satisfy all orders currently on the waitlist with some extra power remaining.

ICE proposes this rule change to address two issues posed by the current situation. First, while the development of Hall 5 is underway, ICE must also evaluate whether customer demand would support additional expansion projects to provide further power. ICE must anticipate future demand now because each colocation expansion project is a significant capital project requiring long lead times, especially given current supply-chain constraints

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Through its Fixed Income and Data Services (''FIDS'') business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and its affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (the ''Affiliate SROs'') are indirect subsidiaries of ICE. Each of the Exchange's Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2023–29, SR–NYSEAMER–2023–39, SR–NYSEARCA–2023–53, and SR–NYSENAT–2023–16.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12). As specified in the Connectivity Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs.

[6] *See* Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR–NYSE–2020–73, SR–NYSEAMER–2020–66, SR–NYSEArca–2020–82, SR–NYSECHX–2020–26, SR–NYSENAT–2020–28,) (establishing the procedures in current Colocation Note 6(a) and 7(a)).

[7] *See* Securities Exchange Act Release No. 91515 (April 8, 2021), 86 FR 19674 (April 14, 2021) (SR–NYSE–2021–12, SR–NYSEAMER–2021–08, SR–NYSEArca–2021–11, SR–NYSECHX–2021–02, SR–NYSENAT–2021–03) (establishing the procedures in current Colocation Note 6(b) and 7(b)).

[8] An ''Affiliate'' of a User is defined as ''any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User.'' Connectivity Fee Schedule, at 1.

[9] Such demand for increased power is not unique to the MDC. Customers have told the Exchange that available power is in short supply at several other data centers as well, including the Equinex-owned data center in Secaucus, New Jersey, the Equinex-owned data center in Carteret, New Jersey, and the Digital Realty-owned data center at Cermak, Illinois. Since none of those data centers is operated by an exchange or regulated by the Commission, the operators of those data centers are free to ask customers to indicate their interest in future build-outs by submitting orders guaranteed by deposits.

on equipment, and substantial up-front investment. It may be possible for ICE to leverage certain efficiencies and economies of scale by planning for future expansion now.

Yet ICE currently lacks any real indication of customers' true demands. As noted above, the current waitlist of 700 kW may represent a mere fraction of Users' true power requirements, since waitlist orders are limited to one order of 32 kW per User. On the one hand, ICE does not know whether the extra power that will be provided in Hall 5 will be enough to meet Users' needs. On the other hand, ICE cannot justify the investment of time and expense that it would take to create additional colocation space based on only casual indications of interest from customers. Without firm, guaranteed commitments from Users to purchase the power if it is made available, ICE runs the risk of underestimating or overestimating Users' true demand for power and faces the possibility of undersupplying or oversupplying space and power.

Second, the existing procedures in the Connectivity Fee Schedule are not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens. Under the existing procedures, if less than 350 kW of unallocated power is available, the Purchasing Limits in Colocation Note 6 restrict all orders to 32 kW—but any time more than 350 kW of unallocated power is available, Users can place unlimited orders that the Exchange must allocate on a first-come, first-served basis. Regarding Hall 5, the Exchange anticipates large amounts of unallocated power becoming available at several intervals. This could create a race condition in which the largest Users place early orders for many hundreds of kilowatts of power, effectively shutting out other customers with more modest power needs. The Exchange therefore believes that it needs a different procedure when allocating substantial amounts of power at one time due to a hall expansion or other similar expansion of available power.

Proposed ''Ordering Window'' Procedure

The Exchange proposes to solve these issues by providing a temporary procedure to permit the Exchange to accept unlimited, deposit-guaranteed orders from Users for a period of 90 days (the ''Ordering Window''). The Colocation Notes in the Connectivity Fee Schedule would be amended accordingly.

Based on the total power ordered by Users during the Ordering Window, ICE would gain insight into whether further expansion beyond Hall 5 is likely to be required in the future. Requiring Users to submit deposits with their orders during this Ordering Window would encourage Users to carefully assess their true power needs and would protect against Users ordering more power than they actually intend to purchase. After the Ordering Window closes, the Exchange would allocate power to Users according to terms described below, which would ensure that every User submitting an order would receive at least some power and no Users would be shut out of the allocation. Following the Ordering Window, the existing purchasing limits and waitlist procedures in Colocation Notes 6 and 7 would then resume.

Specifically, the Exchange proposes to amend the Connectivity Fee Schedule to add new Colocation Note 8, entitled ''Ordering Window.''

Paragraph (a) of Colocation Note 8 would provide that the Exchange may announce, by customer notice, a 90-day Ordering Window during which the Exchange may accept orders and deposits pursuant to the terms below. Paragraph (a) would specify that if the Exchange announces an Ordering Window while the Cabinet and Power Purchasing Limits in Colocation Note 6 and/or the Cabinet and Combined Waitlist provisions in Colocation Note 7 are in effect, the terms of the Ordering Window as set out in Colocation Note 8 would temporarily supersede those terms.[10]

Paragraph (b) of Colocation Note 8 would specify the procedures for placing orders and paying deposits during the Ordering Window. Subparagraph (1) would provide that during the Ordering Window, Users may submit orders for their anticipated power needs, subject to the following. First, a User and its Affiliates, if any, may finalize only one order for power during the Ordering Window. Second, the provision of Colocation Note 7 that prohibits the Exchange from accepting orders for more than four dedicated cabinets and/or 32 kW of power would not apply. Third, a User may submit an order during the Ordering Window even if it already has an order pending on a waitlist pursuant to Colocation Note 7.

Subparagraph (2) of paragraph (b) would provide that orders submitted during the Ordering Window are subject to deposits equal to two months' worth of the monthly recurring costs of the amount of new power ordered.[11] The subparagraph would further provide that a User's order would be finalized when the User's signed order form and deposit are received by the Exchange, and that orders that are not finalized before the Ordering Window closes will be considered void. Subparagraph (2) of paragraph (b) would further provide that the deposit would be applied to the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted. If the User withdraws its order during the Ordering Window, the deposit would be returned.[12]

Subparagraph (3) of paragraph (b) would provide that a User may modify its order during the Ordering Window, but such modification would not be finalized until the User's signed modified order form and any additional deposit are received by the Exchange.

Paragraph (c) of Colocation Note 8 would specify the Exchange's procedure for allocating available power after the Ordering Window ends. After determining the total amount of power available to allocate, the Exchange would allocate the available power as follows. In Step 1, per subparagraph (1) of paragraph (c), the Exchange would allocate power to fill any orders on any waitlist in effect pursuant to Colocation Note 7 (*e.g.,* the current waitlist of 32 kW orders totaling 700 kW).

In Step 2, per subparagraph (2) of paragraph (c), the Exchange would allocate up to 32 kW of power to each User that finalized an order during the Ordering Window, subject to the following. If sufficient power is available, the Exchange would allocate 32 kW of power to each User, except that orders for less than 32 kW would be filled only up to the number of kilowatts actually ordered. If sufficient power is not available to allocate 32 kW of power to each User, the Exchange would allocate the available power equally among all Users (rounded to a whole number of kilowatts), except that no User would be allocated more kilowatts than it actually ordered. If no

[10] During the Ordering Window, any orders submitted by Users must meet the requirements of Colocation Note 8. The Exchange would not accept new orders to the waitlist established under Colocation Note 7 while the Ordering Window is open.

[11] For instance, the required deposit would be calculated as the number of kilowatts ordered by the User in its Ordering Window order, multiplied by the appropriate ''Per kW Monthly Fee'' as indicated in the Connectivity Fee Schedule. The Per kW Monthly Fee is a factor of the total number of kilowatts allocated to all of a User's dedicated cabinets and varies based on the total kilowatts allocated to a User.

[12] In the event that a User wishes to reduce an order that it placed during the Ordering Window, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is depleted.

power remains to be allocated after Step 2, all orders finalized during the Ordering Window would be considered to be completed.[13]

In Step 3, per subparagraph (3) of paragraph (c), if any power remains to be allocated after Step 2, the Exchange would allocate power to any orders that were not completely filled during Step 2, as follows. If sufficient power is available, the Exchange would allocate power to completely fill all remaining orders finalized during the Ordering Window. If sufficient power is not available to completely fill all such orders, the Exchange would allocate power to fill an identical percentage of each remaining order (rounded to a whole number of kilowatts). All such orders would then be considered completed.[14]

Paragraph (d) of Colocation Note 8 would specify that any orders received by the Exchange after the end of the Ordering Window would not be included in the allocation process described in Colocation Note 8. Such orders would be subject to the terms of Colocation Notes 6 and 7.

Application and Impact of the Proposed Changes

The Exchange currently anticipates invoking the proposed Ordering Window procedure to assist in determining Users' power needs and to allocate power in Hall 5. The procedure could also be used in the future each time the Exchange or ICE must assess customer demand for additional space and power in the MDC or allocate large amounts of power that become available at one time.

The Exchange does not propose to eliminate or alter the existing purchasing limits and waitlist procedures in Colocation Notes 6 and 7. Rather, those procedures would be temporarily superseded during the Ordering Window and would resume immediately after the Ordering Window ends.

The Exchange expects that the proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the opening of the Ordering Window; the Ordering Window dates would be the same for all Users; and each order during the Ordering Window would be secured with a deposit equal to two months of the monthly recurring costs of the power ordered during the Ordering Window.

The proposed Ordering Window procedure would not disadvantage Users on the current waitlist pursuant to Colocation Note 7, since power would be allocated to those orders first under the Ordering Window procedure.

Smaller Users with more modest power needs would not be disadvantaged by the proposed changes. In Step 2, each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled. This would ensure that all Users that participate in the Ordering Window would receive at least some power and no Users would be shut out of the allocation. In addition, because the deposit is proportional to the size of the order, and not a fixed amount, smaller Users would not be disproportionately affected by the deposit requirement.

The proposed changes are not otherwise intended to address any other issues relating to colocation services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, because it is 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by creating an alternative procedure by which the Exchange can allocate power in the MDC. The current procedures provide for only two allocation methods: orders that must be limited to 32 kW when the Purchasing Limits are in effect, and unlimited orders that the Exchange must fill on a first-come, first-served basis when the Purchasing Limits are not in effect. Neither of those current procedures gives the Exchange a way to obtain accurate information from Users about their actual and anticipated power needs—information that the Exchange requires in order to properly plan for future hall expansions at the MDC. The current procedures are not well-tailored to allocating large amounts of power that become available all at once, such as when a new colocation hall opens. When a large amount of power becomes available at one time, such as through a hall expansion, the current procedures could create a race condition in which the largest Users place early orders for many hundreds of kilowatts of power that the Exchange must fill on a first-come, first-served basis, effectively shutting out other customers with more modest power needs. In contrast, the proposed alternative procedure would remove impediments and perfect the mechanism of a free and open market and a national market system by permitting the Exchange to allocate up to 32 kW of power (subject to sufficient power being available) to each User before any User's order for more than 32 kW would be filled. This would ensure that each User submitting a finalized order during the Ordering Window would be guaranteed to receive at least some power and no Users would be shut out of the allocation.

The proposed requirement that orders submitted during the Ordering Window be guaranteed by a deposit is also designed to remove impediments and to perfect the mechanism of a free and open market and a national market system. The current procedures give the Exchange no way to accurately measure User demand for additional power. The existing waitlist is no indication of Users' actual demand, since waitlist orders are capped at 32 kW. Users' comments that they are interested in purchasing hundreds more kilowatts of power are mere casual mentions, which, in the Exchange's experience, Users sometimes walk back when the power actually becomes available. Without

[13] To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated 32 kW of power during Step 2 and no further power remained to be allocated after Step 2, the User's order would be considered completed. The residual 68 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect).

[14] To illustrate, if a User finalized an order for 100 kW during the Ordering Window and was allocated a total of 90 kW of power in Steps 2 and 3, the order would be considered completed. The residual 10 kW ordered would not be transferred to a waitlist. The User would be free to submit a new order for additional power after the Ordering Window (subject to the Purchasing Limits, if then in effect).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

firm, guaranteed commitments from Users to purchase the power if it is made available, the Exchange runs the risk of underestimating or overestimating Users' true demand for power. The proposed deposit requirement would address these issues by discouraging Users from submitting orders for more power than they actually intend to purchase and would indicate the true amount of additional power that each User would agree to purchase if it were made available. The proposed deposit requirement of two months' worth of the monthly recurring costs of the amount of new power ordered during the Ordering Window is reasonable because, on the one hand, it is not so onerous as to dissuade Users from submitting orders, and, on the other hand, it is not so trivial that it would fail to deter Users from submitting exaggerated orders.[17] The Exchange requires market participants to submit deposits in other contexts, and as such, the deposit requirement here would not be novel.[18]

Under the proposed procedure, if a User wishes to reduce an order that it placed during the Ordering Window, its deposit would not be reduced or returned, but rather would be applied against the User's first and subsequent months' invoices after the power is delivered until the deposit is completely depleted. The Exchange believes that this would remove impediments and perfect the mechanism of a free and open market and a national market system because it would ensure that a User would be reimbursed for all of its deposit even if it reduces its order after the Ordering Window closes. This would remove any incentive a User otherwise might have to understate its needs for power out of a concern that it would not be reimbursed for the full amount of its deposit.

The proposed rule change would protect investors and the public interest in that it would provide the Exchange with accurate insight into Users' true power requirements. It is in the public interest for the Exchange to take User demand into account and to make reasoned, informed decisions about whether and how to expand the MDC.

The proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes would apply equally to all types and sizes of market participants. All Users would receive equal notice of the opening of the Ordering Window; the Ordering Window dates would be the same for all Users; and each order during the Ordering Window would be secured with a deposit equal to two months of the monthly recurring costs of the power ordered. Smaller Users with more modest power needs would not be disadvantaged by the proposed changes. In Step 2, each User that finalized an order during the Ordering Window would be allocated up to 32 kW of power (subject to sufficient power being available) before any User's order for more than 32 kW would be filled. This would ensure that all Users that participate in the Ordering Window would receive at least some power and no Users would be shut out of the allocation. In addition, because the deposit is proportional to the size of the order and not a fixed amount, smaller Users would not be disproportionately affected by the deposit requirement. Finally, the proposed Ordering Window procedure would not disadvantage Users on the current waitlist pursuant to Colocation Note 7, since power would be allocated to those orders first under the Ordering Window procedure.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[19] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed rule change would not place any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would provide an alternative procedure by which the Exchange can allocate power in the MDC that both provides the Exchange with reliable information about Users' true power needs and allows all Users that submit deposit-guaranteed orders during the Ordering Window to be assured of receiving at least some additional power. The Exchange does not expect the proposed rule change to impact intra-market or intermarket competition between exchanges, Users, or any other market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSECHX–2023–16 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–NYSECHX–2023–16. 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 website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

[17] To illustrate, for a large User ordering an additional 300 kW of power, the deposit required would be $540,000 (*i.e.,* two times the monthly recurring cost of $270,000), while a smaller User ordering an additional 32 kW of power would pay an estimated deposit of $60,000 (*i.e.,* two times the monthly recurring cost of $30,000), depending on how much power it already had at the MDC.

[18] For example, since 2012, the Exchange has required prospective issuers to pay a $25,000 initial application fee as part of the process for listing a new security on the exchange. This fee functions as a deposit that is credited toward the issuer's listing fees after it is listed on the exchange. The deposit functions as ''a disincentive for impractical applications by issuers.'' The deposit is forfeited if the issuer does not ultimately list on the exchange. *See* Securities Exchange Act Release No. 68470 (December 19, 20212), 77 FR 76116 at 76117 (December 26, 2012) (SR–NYSE–2012–68).

[19] 15 U.S.C. 78f(b)(8).

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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2023–16 and should be submitted on or before September 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17983 Filed 8–21–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98143; File No. SR–ICC–2023–010]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts

August 16, 2023.

I. Introduction

On June 13, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clear additional credit default swap (''CDS'') contracts. The proposed rule change was published for comment in the **Federal Register** on July 3, 2023.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts. Chapter 26 of ICC's Rulebook covers the CDS contracts that ICC clears, with each subchapter of Chapter 26 defining the characteristics and additional Rules applicable to the various specific categories of CDS contracts that ICC clears. Among other CDS contracts, ICC currently clears Standard Emerging Market Sovereign Single Name CDS (''SES'') contracts and Standard Western European Sovereign Single Name (''SWES'') contracts.

The purpose of the proposed rule change is to amend ICC's rules to permit ICC to clear additional SES and SWES contracts, specifically, SES contracts on Romania and the Socialist Republic of Vietnam and SWES contracts on the Kingdom of Sweden.

To carry out this change, the proposed rule change would amend Subchapter 26D and Subchapter 26I of Chapter 26. In Rule 26D–102 (Definitions), ''Eligible SES Reference Entities,'' the proposed rule change would add Romania and the Socialist Republic of Vietnam to the list of specific Eligible SES Reference Entities to be cleared by ICC. Likewise, in Rule 26I–102 (Definitions), ''Eligible SWES Reference Entities,'' the proposed rule change would add the Kingdom of Sweden to the list of specific Eligible SWES Reference Entities to be cleared by ICC.

As discussed below, these additional SES and SWES contracts have terms consistent with the other SES and SWES contracts that ICC is already clearing. Likewise, to clear these additional contracts, ICC will be able to rely on its existing Risk Management Framework and other policies and procedures without making any changes.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[4] For the reasons given below, the Commission finds that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act[5] and Rule 17Ad–22(e)(1) thereunder.[6]

a. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[7]

The Commission finds that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act.[8] The Commission has reviewed the terms and conditions of the additional SES and SWES contracts proposed for clearing and has determined that those terms and conditions are substantially similar to the terms and conditions of the other contracts listed in Subchapter 26D and 26I of the ICC Rules, all of which ICC currently clears, with the key difference being the underlying reference obligations. For the additional SES contracts, the underlying reference obligations will be issuances by Romania and the Socialist Republic of Vietnam. For the additional SWES contracts, the underlying reference obligations will be issuances by the Kingdom of Sweden.

After reviewing the Notice and ICC's Rules, policies, and procedures, the Commission also finds that ICC would be able to clear the additional SES and SWES contracts pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. Commission staff also conducted a review of data on volume, open interest, and the number of ICC Clearing Participants (''CPs'') that currently trade in the SES and SWES contracts, as well as certain model parameters for the additional contracts. Based on this review, as well as its own experience and expertise, the Commission finds that ICC's rules, policies, and procedures are reasonably designed to price and measure the potential risk presented by the additional SES and SWES contracts, collect financial resources in proportion to such risk, and liquidate the additional contracts in the event of a CP default. This should help ensure ICC's ability to maintain the financial resources it needs to provide its critical services and function as a

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts; Exchange Act Release No. 97808 (June 27, 2023), 88 FR 42807 (July 3, 2023) (File No. SR–ICC–2023–010) (''Notice'').

[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 240Ad–22(e)(1).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

central counterparty, thereby promoting the prompt and accurate settlement of the additional SES and SWES contracts and other credit default swap transactions.

Therefore, the Commission finds that clearance of the additional SES and SWES contracts would promote the prompt and accurate clearance and settlement of securities transactions, consistent with section 17A(b)(3)(F) of the Act.[9]

b. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[10]

The Commission believes that the proposed rule change would help provide a well-founded, clear, transparent, and enforceable legal basis for ICC's clearance of SES contracts on Romania and the Socialist Republic of Vietnam as well as SWES contracts on the Kingdom of Sweden. By amending Rule 26D–102 to add both the Socialist Republic of Vietnam and Romania to the list of specific Eligible SES Reference Entities to be cleared by ICC, the proposed rule change would help to ensure that ICC can clear SES contracts on those countries pursuant to its existing rules in Subchapter 26D. Likewise, by amending Rule 26I–102 to add the Kingdom of Sweden to the list of specific Eligible SWES Reference Entities to be cleared by ICC, the proposed rule change would help to ensure that ICC can clear SWES contracts on the Kingdom of Sweden pursuant to its rules in Subchapter 26I. The Commission believes Subchapter 26D and Subchapter 26I each would provide a well-founded, clear, transparent, and enforceable legal basis for ICC to clear these contracts, consistent with the requirements of Rule 17Ad–22(e)(1).[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of section 17A(b)(3)(F) of the Act[12] and Rule 17Ad–22(e)(1) thereunder.[13]

It is therefore ordered pursuant to section 19(b)(2) of the Act[14] that the proposed rule change (SR–ICC–2023–010), be, and hereby is, approved.[15]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17977 Filed 8–21–23; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240Ad–22(e)(1).

[11] 17 CFR 240.17Ad–22(e)(1).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(1).

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–107, OMB Control No. 3235–0116]

Proposed Collection; Comment Request; Extension: Form 6–K—Exchange Act Rules 13a–16 and 15d–16

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 6–K (17 CFR 249.306) is a disclosure document under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) that must be filed by a foreign private issuer to report material information promptly after the occurrence of specified or other important corporate events that are disclosed in the foreign private issuer's home country. The purpose of Form 6–K is to ensure that U.S. investors have access to the same information that foreign investors do when making investment decisions. Form 6–K takes approximately 8.7 hours per response and is filed by approximately 34,794 issuers annually. We estimate that 75% of the 8.7 hours per response (6.525 hours) is prepared by the issuer for a total annual reporting burden of 227,031 hours (6.525 hours per response × 34,794 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on 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 by October 23, 2023.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: August 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–18011 Filed 8–21–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98147; File No. SR–ICC–2023–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Amendment No. 1 and Partial Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 and Partial Amendment No. 2, Relating to the ICC Default Auction Procedures—Initial Default Auctions

August 16, 2023.

I. Introduction

On June 22, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the ICC Default Auction Procedures—Initial Default Auctions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Auction Procedures''). The proposed rule change was published for comment in the **Federal Register** on July 11, 2023.[3] On July 20, 2023, ICC filed Amendment No. 1 to the proposed rule change.[4] On August 8, 2023, ICC filed Partial Amendment No. 2 to the proposed rule change.[5] The Commission did not receive comments regarding the proposed rule change.

The Commission is publishing this notice to solicit comments on Amendment No. 1 and Partial Amendment No. 2 from interested persons, and, for the reasons discussed below, is approving the proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2 (collectively, the ''proposed rule change''), on an accelerated basis.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing Credit Default Swap (''CDS'') contracts. ICC clears CDS contracts for its clearing members, which ICC calls Clearing Participants.[6] In clearing CDS contracts, ICC is exposed to a variety of risks, including exposure to losses and liquidity demands, in situations such as a Clearing Participant default. One way ICC protects against such risk is by ensuring that it has the authority and operational capacity to take timely action during a Clearing Participant default. To minimize impact on non-defaulting Clearing Participants and its own obligations, ICC established the Auction Procedures, which document requirements and processes for holding an auction in the event of a Clearing Participant default. The Auction Procedures are designed to facilitate liquidation of a defaulting Clearing Participant's portfolio through a multi-lot modified Dutch auction.[7]

The proposed rule change would revise the Auction Procedures to (1) provide an additional exception to ICC's minimum bid requirement under particular conditions, and (2) treat all Auction Participants[8] as senior bidders in certain market-dependent circumstances. These proposed amendments, as described below, are intended to incorporate feedback received from market participants during ICC's 2022 default test.[9] The proposed revisions would also better align ICC's Auction Procedures with those of other clearing houses (*e.g.,* LCH Ltd, LCH SA, and Eurex),[10] according to market participants' feedback.[11]

A. Additional Exception to Minimum Bid Requirement

Generally, in the event of an auction to liquidate a defaulting Clearing Participant's portfolio, all non-defaulting Auction Participants are required to submit minimum bids (''Minimum Bid Requirement''). Currently, Section 2.4 requires Auction Participants to bid for a minimum notional amount of contracts for each auction, the lot determined *pro rata* based on its required contribution to the ICC guaranty fund, subject to certain exceptions.[12] The proposed rule change would amend the Auction Procedures to provide an additional exception to the Minimum Bid Requirement. Under the proposed exception, the Minimum Bid Requirement would not apply if ICC determined that it would be inappropriate for certain Auction Participants in light of: (i) the operational and other capabilities of such an Auction Participant to clear contracts in the relevant auction lot, or (ii) the conditions in the market for the contracts in the relevant auction lot.[13] For example, under the proposed rule change, ICC would be allowed to determine whether the Minimum Bid Requirement would apply to an Auction Participant if the Auction Participant does not have risk management or other operational capabilities to clear the types of contracts involved in a particular auction,[14] or if market conditions change for certain types of contracts.[15] ICC represents that the proposed change is designed to disapply minimum bid requirements where they might lead to an increase in systemic risk or be inappropriate or undesirable in light of ICC's goal of running a successful auction.[16]

B. Treatment of Auction Participants as Senior Bidders

Currently, ICC's rules specify how losses from a default auction will be applied.[17] Under such prioritization, losses would be applied to the collateral of a member that does not participate in a default auction before being applied to other members' collateral (''juniorization''). ICC proposes to amend the Auction Procedures to allow ICC to disapply such juniorization where ICC determines that juniorization may make it more difficult to run a successful auction or is otherwise inappropriate or undesirable for the particular lot in light of certain market conditions or circumstances at the time. In effect, under the proposed rule change, ICC would be allowed to determine that juniorization of Lot Guaranty Fund Contributions and Lot Assessment Contributions will not occur, such that all such contributions will be applied on a pro rata basis rather than based on the relative competitiveness of bids made.[18]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Default Auction Procedures-Initial Default Auctions; Exchange Act Release No. 97840 (July 5, 2023), 88 FR 44171 (July 11, 2023) (File No. SR–ICC–2023–009) (''Notice'').

[4] Amendment No. 1 amended and restated in its entirety the Form 19b–4, Exhibit 1A, and Exhibit 5 to correct a typographical error in the Auction Procedures. Amendment No. 1 does not change the purpose or basis of the proposed rule change.

[5] Partial Amendment No. 2 replaced and superseded Amendment No. 1, and amended and restated in its entirety the Form 19b–4, Exhibit 1A, and Exhibit 5, in addition to including Exhibit 4, to correct a typographical error in the Auction Procedures. Partial Amendment No. 2 does not change the purpose or basis of the proposed rule change.

[6] Capitalized terms not otherwise defined herein have the meanings assigned to them in the ICC Default Auction Procedures—Initial Default Auctions or the ICC Clearing Rules.

[7] Notice, 88 FR at 44171.

[8] Auction Participants are all non-defaulting Clearing Participants and any Direct Participating Customer(s), defined as a Clearing Participant's customer(s) that ICC has authorized to participate directly in an ICC default auction pursuant to the requirements set out in Section 2.6 of the Auction Procedures. *Id.* at n.4.

[9] Notice, 88 FR at 44171.

[10] These three clearing houses have rules and/or default procedures that, in general, exclude non-defaulting clearing members from mandatory participation in default auctions where such non-defaulting clearing members do not have exposure to the products in the default auction portfolio. Notice, 88 FR at 44172.

[11] Notice, 88 FR at 44172.

[12] Notice, 88 FR at 44171. For example, a Minimum Bid Requirement shall not apply to an Auction Participant for a particular Lot to the extent it would be in breach of applicable law or ICC Rules, or the Lot includes Contracts that are sovereign CDS referencing the country in which the Auction Participant or its parent company is domiciled. *See* ICC Initial Auction Procedure, Section 2.4.

[13] *Id.*

[14] For instance, certain market participants may not trade, or have the operational, risk management, or other capacity to trade or otherwise manage particular products cleared through ICC, such as index swaptions. In that case, if such a participant were forced to bid for lots that included these types of products during the course of the auction, the participant might acquire products for which it may not have the ready capability to manage the risk of its positions, thereby potentially increasing systemic risk. *Id.*

[15] Notice, 88 FR at 44171–2.

[16] Notice, 88 FR at 44172.

[17] *See* Auction Procedures, Section 3.3.

[18] Such changes would maintain the incentives for competitive bidding in a default auction as Auction Participants still would be incentivized to protect their guaranty fund deposits and assessment contributions, and juniorization would be expected to continue to apply in most circumstances. Notice, 88 FR at 44172.

organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[19] For the reasons given below, the Commission finds that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act [20] and Rule 17Ad–22(e)(13) [21] thereunder.

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Credit ''are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.'' [22] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Auction Procedures are consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions.

The proposed additional exception to the Minimum Bid Requirement provides ICC with greater flexibility to administer a default auction with the appropriate set of Auction Participants and respond to changing market conditions promptly, while maintaining its clearance and settlement responsibilities with the least possible disruption. The proposed amendments would allow ICC to determine whether an Auction Participant has the operational or other capabilities required to clear contracts in a particular lot, thus ensuring an appropriate fit between the Auction Participants and the types of contracts involved in the auction. The proposal would also give ICC the leeway to respond to changing market forces to hold a timely default auction that is responsive to the characteristics and implications of the contracts in the relevant auction lot. Similarly, the proposed revisions to the Auction Procedures would give ICC the latitude to disapply the Default Auction Priority and treat all Auction Participants as senior bidders in limited circumstances, thus helping ICC run a successful, effective, and efficient default auction in circumstances where the juniorization of Auction Participants would be unsuitable for the auction, and facilitating the prompt and accurate close-out of the defaulter's portfolio.

As such, the Commission finds that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act.[23]

B. Consistency With Rule 17Ad–22(e)(13)

Rule 17Ad–22(e)(13) requires ICC to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to [. . .] [e]nsure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations [. . .].'' [24] Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed changes to the Auction Procedures are consistent with the requirements of Rule 17Ad–22(e)(13).[25]

The proposed exception to the Minimum Bid Requirement would provide ICC the authority to not force a Clearing Participant to bid on lots containing contracts that the Clearing Participant is not equipped to manage financially or operationally. Excepting such a Clearing Participant from the bidding process should reduce the likelihood of ICC receiving poor quality bids, thereby improving the auction process. In foregoing the Minimum Bid Requirement for Auction Participants who are not appropriately positioned to take on certain types of contracts, ICC would be giving itself the ability to take steps, in limited circumstances, to streamline the auction process and limit potential losses or liquidity demands resulting from a Clearing Participant's default. Similarly, the proposed change to allow ICC to disapply the juniorization of certain Clearing Participants' guaranty fund contributions would better align ICC's default management practices with its members' financial and operational capacities. Imposing the Minimum Bid Requirement or incentivizing bidding through the juniorization process where a Clearing Participant lacks necessary financial or operational capabilities could result in that Clearing Participant acquiring products whose risks it is not prepared to manage. The proposed rule change would allow ICC to protect the integrity of the default auction and increase its likelihood of success by ensuring that the bids received are provided by members most able to value and risk manage the defaulter's portfolio.

IV. Solicitation of Comments on Amendment No. 1 and Partial Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2023–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2023–009. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–ICC–2023–009 and

[19] 15 U.S.C. 78s(b)(2)(C).
[20] 15 U.S.C. 78q–1(b)(3)(F).
[21] 17 CFR 240.17Ad–22(e)(13).
[22] 15 U.S.C. 78q–1(b)(3)(F).
[23] 15 U.S.C. 78q–1(b)(3)(F).
[24] 17 CFR 240.17Ad–22(e)(13).
[25] *Id.*

should be submitted on or before September 12, 2023.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 and Partial Amendment No. 2

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[26] to approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing of Amendment No. 1 and Partial Amendment No. 2 in the **Federal Register**. As discussed above, Amendment No. 1 amended and restated in its entirety the Form 19b–4, Exhibit 1A, and Exhibit 5 to correct a typographical error in the Auction Procedures, and Partial Amendment No. 2 replaced and superseded Amendment No. 1, and amended and restated in its entirety the Form 19b–4, Exhibit 1A, and Exhibit 5, in addition to including Exhibit 4, to correct a typographical error in the Auction Procedures. Amendment No. 1 and Partial Amendment No. 2 do not change the purpose of or basis for the proposed changes.

For similar reasons as discussed above, the Commission finds that Amendment No. 1 and Partial Amendment No. 2 are consistent with the requirement that ICC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions under section 17A(b)(3)(F) of the Act.[27] Accordingly, the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2, on an accelerated basis, pursuant to section 19(b)(2) of the Act.[28]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1 and Partial Amendment No. 2, is consistent with the requirements of the Act, and in particular, with the requirements of section 17A(b)(3)(F) of the Act, and Rule 17Ad–22(e)(13) thereunder.[29]

It is therefore ordered pursuant to section 19(b)(2) of the Act [30] that the proposed rule change (SR–ICC–2023–009), as modified by Amendment No. 1 and Partial Amendment No. 2, be, and hereby is, approved on an accelerated basis.[31]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17979 Filed 8–21–23; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(2).

[27] 15 U.S.C. 78q–1(b)(3)(F).

[28] 15 U.S.C. 78s(b)(2).

[29] 15 U.S.C. 78q–1(b)(3)(F); 17 CFR 240.17Ad–22(e)(13).

[30] 15 U.S.C. 78s(b)(2).

[31] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before October 23, 2023.

ADDRESSES: Send all comments to Eric Wall, Senior Loan Officer, Disaster Policy, Planning & Partnerships, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Eric Wall, Senior Loan Officer, Disaster Policy, Planning & Partnerships *eric.wall@sba.gov* 202–205–6739, or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The Governor of the State U.S. territory or possession affected by a disaster submits this information collection to request that SBA issue a disaster declaration. The information identifies the time, place and nature of the incident and helps SBA to determine whether the regulatory criteria for a disaster declaration have been met, and disaster assistance can be made available to the affected region.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0121.

(1) Title: Governor's Request for Disaster Declaration.

Description of Respondents: Disaster victim's seeking assistance.

Form Number: N/A.

Total Estimated Annual Responses: 58.

Total Estimated Annual Hour Burden: 1,160.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–18049 Filed 8–21–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2013–0259]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Advisory Circular: Reporting of Laser Illumination of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval renew information collection. Advisory Circular 70–2B provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations.

DATES: Written comments should be submitted by September 15, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Barbara Hall by email at: Barbara Hall, Federal Aviation Administration, ASP–110, 10101 Hillwood Parkway, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0698.

Title: Advisory Circular (AC): Reporting of Laser Illumination of Aircraft.

Form Numbers: Advisory Circular 70–2B, Reporting of Laser Illumination of Aircraft.

Type of Review: Renewal of an information collection.

Background: Advisory Circular 70–2B provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations. Information is collected from pilots and aircrews that are affected by an unauthorized illumination by lasers. The requested reporting involves an immediate broadcast notification to Air Traffic Control (ATC) when the incident occurs, as well as a broadcast warning of the incident if the aircrew is flying in uncontrolled airspace. In addition, the AC requests that the aircrew supply a written report of the incident and send it by fax or email to the Washington Operations Control Complex (WOCC) as soon as possible.

Respondents: Approximately 1,100 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 183 hours.

Issued in Washington, DC, on August 17, 2023.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2023–17998 Filed 8–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0049]

North County Transit District Request for Approval To Begin Field Testing on Its Positive Train Control Network Comment Extension Notice

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of extension for request for comments.

SUMMARY: On July 25, 2023, North County Transit District (NCTD) submitted a request to field test its new Crash Energy Management (CEM) Bi-Level cab cars that have been equipped with NCTD's Interoperable Electronic Train Management System (I–ETMS) technology as part of its positive train control (PTC) system. FRA published a notice inviting public comment on NCTD's request to test its PTC system, with the initial comment period closing on August 30, 2023. This document provides the public with notice that FRA is extending the comment period on NCTD's test request from August 30, 2023, to October 10, 2023.

DATES: FRA will consider comments received by October 10, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0049. For convenience, all active PTC documents are hyperlinked on FRA's website at *https://railroads.dot.gov/reserch-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. On September 21, 2018, FRA certified NCTD's I–ETMS PTC system under 49 CFR 236.1015 and 49 U.S.C. 20157(h). Pursuant to 49 CFR 236.1035, a railroad must obtain FRA's approval before field testing an uncertified PTC system, or a product of an uncertified PTC system, or any regression testing of a certified PTC system on the general rail system. *See* 49 CFR 236.1035(a). NCTD's test request, including a complete description of NCTD's Concept of Operations and its specific test procedures, including the measures that will be taken to ensure safety during testing, are available for review online at *https://www.regulations.gov* in Docket No. FRA–2010–0049.

Interested parties are invited to comment on NCTD's test request by submitting written comments or data. During its review of the test request, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying testing of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1035. FRA, however, may elect not to respond to any particular comment, and under 49 CFR 236.1035, FRA maintains the authority to approve, approve with conditions, or deny the test request at its sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, FRA encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–17990 Filed 8–21–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Nos. NHTSA–2019–0030 and NHTSA–2021–0066; Notice 2]

Volkswagen Group of America, Inc., Denial of Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petitions.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen or the ''Petitioner'') has determined that certain model year (MY) 2019 and 2021 Audi motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 135, *Light Vehicle Brake Systems.* Volkswagen filed noncompliance reports dated March 27, 2019, and July 26, 2021. Volkswagen petitioned NHTSA (the ''Agency'') on April 17, 2019, and August 25, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the denial of Volkswagen's petitions.

FOR FURTHER INFORMATION CONTACT: Vince Williams, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2319.

SUPPLEMENTARY INFORMATION:

I. Overview

Volkswagen has determined that certain MY 2019 Audi A6 and Audi A7 and MY 2021 Audi A6 Sedan, A6 Allroad, A7, RS6 Avant, RS7, S6 Sedan, and S7 motor vehicles do not comply with the requirements of paragraph S5.4.3 of FMVSS No. 135, *Light Vehicle Brake Systems* (49 CFR 571.135). Volkswagen filed noncompliance reports dated March 27, 2019, and July 26, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen petitioned NHTSA on April 17, 2019, and August 25, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notices of receipt of Volkswagen's petitions were published on August 21, 2019 (84 FR 43660) and June 17, 2022 (87 FR 36574) in the **Federal Register** with a 30-day public comment period. No comments were received. To view the petitions and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket numbers ''NHTSA–2019–0030'' and ''NHTSA–2021–0066.''

II. Vehicles Involved

Approximately 3,908 MY 2019 Audi A6 and Audi A7 vehicles, manufactured between July 27, 2018 and November 6, 2018, are potentially involved.

Additionally, approximately 4,267 MY 2021 Audi A6 Sedan, A6 Allroad, A7, RS6 Avant, RS7, S6 Sedan, and S7 vehicles, manufactured between January 11, 2021, and April 14, 2021, are potentially involved.

III. Noncompliance

Volkswagen determined that a small number of the vehicles have a European-specification brake fluid reservoir cap instead of the reservoir cap required in S5.4.3 of FMVSS No. 135. The noncompliant brake fluid reservoir caps do not include the warning label required by FMVSS No. 135.

IV. Rule Requirements

S5.4.3 of FMVSS 135 requires that each vehicle equipped with hydraulic brakes have a brake fluid warning statement that reads as follows, in letters at least 3.2 mm (⅛ inch) high: ''WARNING: Clean filler cap before removing. Use only __ fluid from a sealed container.'' (Manufacturers must insert the recommended type of brake fluid, as specified in 49 CFR 571.116, (*e.g.,* ''DOT 3.'') The lettering shall be permanently affixed, engraved, or embossed, and located so it is visible by direct view, either on or within 100 mm (3.94 inches) of the brake fluid reservoir filler plug or cap. The color of the lettering must also contrast with its background, if it is not engraved or embossed.

V. Summary of Petition

The following views and arguments presented in this section, ''V. Summary of Volkswagen's Petition,'' are the views and arguments provided by Volkswagen and do not reflect the views of the Agency. Volkswagen describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Volkswagen explains that it believes the subject noncompliance is inconsequential to motor vehicle safety because ''the brake fluid cap clearly shows the specification of the brake fluid required'' and ''provides clear symbols including one for caution and one for referring to owner manual instructions.'' Volkswagen says that the owner's manual also ''indicates the proper brake fluid specification for use in the vehicle.'' Volkswagen states that the ''brake fluid cap conforms to the requirements of ISO 9128:2006 which is a requirement of UN–ECE Regulations 13 and 13h.''

Volkswagen contends that NHTSA has previously granted the following inconsequentiality petitions, which Volkswagen believes are similar to the subject petition:

- Jaguar Land Rover North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 84 FR 13095 (April 3, 2019).
- Ford Motor Company, Grant of Petition for Decision of Inconsequential Noncompliance, 78 FR 69931 (November 21, 2013).
- Hyundai Motor Company, Grant of Petition for Decision of Inconsequential Noncompliance, 73 FR 38290 (July 3, 2008).

According to Volkswagen, ''service to the brake system involving an exchange of the brake fluid is not a standard maintenance activity'' and repairs to the brake system ''requires basic technical knowledge regarding the brake system and should be performed by a trained technician.''

Volkswagen states that it has not received any field or customer complaints or notifications about any accidents or injuries related to the subject noncompliance. In Volkswagen's petition dated April 17, 2019, Volkswagen states that, as of November 7, 2018, production of the subject vehicles has been corrected (*i.e.,* are now compliant) and the vehicles ''at the factory have been corrected and unsold units will be correct prior to sale.'' In Volkswagen's petition dated August 25, 2021, Volkswagen again states that production has been corrected and, as of April 14, 2021, the vehicles at its factory have been corrected and the subject vehicles still in its control will be corrected prior to sale.

Volkswagen concludes each petition by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who

experience the type of event against which a recall would otherwise protect.[1] In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.[2]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected also do not justify granting an inconsequentiality petition.[3] Similarly, mere assertions that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance are unpersuasive. The percentage of potential occupants that could be adversely affected by a noncompliance is not relevant to whether the noncompliance poses an inconsequential risk to safety. Rather, NHTSA focuses on the consequence to an occupant who is exposed to the consequence of that noncompliance.[4] The Safety Act is preventive, and manufacturers cannot and should not wait for deaths or injuries to occur in their vehicles before they carry out a recall.[5] Indeed, the very purpose of a recall is to protect individuals from risk. *Id.*

NHTSA has evaluated the merits of these inconsequentiality petitions and determined that Volkswagen has not met its burden of persuasion that the subject noncompliance is inconsequential to motor vehicle safety. S5.4.3 of FMVSS No. 135 requires the following four essential components of the brake fluid cap label: (1) the brake fluid warning statement ''Warning: Clean filler cap before removing. Use only fluid from a sealed container.'' (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, *e.g.* ''DOT 3''), the lettering shall be (2) permanently affixed, engraved or embossed, (3) located so as to be visible by direct view, either on or within 100mm (3.94in) of the brake fluid reservoir filler plug or cap, and (4) of a color that contrasts with its background, if it is not engraved or embossed. Of the required components of the brake fluid cap reservoir labeling, the statements ''Clean filler cap before removing.'' and ''Use only fluid from a sealed container.'' are missing and an exclamation point symbol is used instead of the word ''Warning''. Volkswagen argues that the brake fluid cap indicates the proper fluid type and contains the symbols conforming to ISO 9128:2006, which is a requirement of UN–ECE Regulations 13 and 13h. These include the aforementioned exclamation mark, a symbol for the brake system, and a third symbol apparently directing the viewer to consult the vehicle's owner's manual or service information. NHTSA notes that the symbols on the ISO brake fluid cap are, at best, partially familiar to U.S. vehicle owners and users and are not the equivalent of the printed information required by the safety standard.

Furthermore, Volkswagen added that normal brake fluid upkeep is not considered a basic maintenance that a consumer would handle on their own and the servicing of the brake system should be performed by a trained technician with technical knowledge of the brake system. The contention that owners do not perform brake service was not supported by data and is an assumption that becomes increasingly more indefensible as a vehicle ages. When a consumer must check or add brake fluid, it is important to have the required warnings in place to preserve the performance and durability of the brake system.

While prior NHTSA determinations that a noncompliance was inconsequential are not considered as binding precedent and the Agency considers each petition on its own merits, the prior decisions cited by the Petitioner have limited applicability in this case. One decision involved a placard with all the required warnings permanently attached to the brake fluid reservoir, but not to the cap itself. The two other decisions that the Petitioner cited involved a single symbol being substituted for a required word or phrase. Conversely, the Petitioner's subject noncompliance involves multiple symbols that are missing from the noncompliant cap including the statement ''Clean filler cap before removing'' which is required to prevent unnecessary contamination from being introduced into the brake system when a customer or service technician tries to inspect the brake fluid, as well as the statement ''Use only fluid from a sealed container'' which is intended to prevent a customer or technician from adding the incorrect grade of brake fluid or contaminated fluid when adding or replenishing the brake fluid. Both of the aforementioned conditions could lead to a degradation of the vehicle's brake system performance and present an unintended risk to the driver and the driving public.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Volkswagen has not met its burden of persuasion that the subject FMVSS No. 135 noncompliance is inconsequential to motor vehicle safety. Accordingly, these petitions are hereby denied and Volkswagen is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

The Agency also notes that these petitions involve the same noncompliance that occurred initially in several months of production in 2018 and then reoccurred again in vehicles produced over several months in 2021. Vehicle manufacturers have a legal obligation to ensure that their vehicles manufactured for the U.S. fully comply with applicable FMVSS and are required to exercise reasonable care in certifying their vehicles as compliant. 49 U.S.C. 30115(a). Volkswagen should ensure it has improved its processes to prevent further reoccurrence of this issue.

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[1] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[2] *See Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016); *see also United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[3] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[4] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

[5] *See, e.g., United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977).

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke, III,

Acting Associate Administrator for Enforcement.

[FR Doc. 2023–18020 Filed 8–21–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0094; Notice 2]

Hitachi Cable America Inc., Now Known as Proterial Cable America, Inc., and Harley-Davidson Motor Company, Receipt of Supplemental Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of supplemental petitions.

SUMMARY: Hitachi Cable America Inc. (HCA), now known as Proterial Cable America, Inc. (PCA), and Harley-Davidson Motor Company (Harley-Davidson) (collectively, ''the Petitioners'') have determined that certain PVC, Nylon, and ''Revised Socket'' Nylon brake hose assemblies equipped in certain model year (MY) 2008–2022 Harley-Davidson motorcycles, and also sold to Harley-Davidson dealers as replacement parts, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses.* The Petitioners filed the appropriate noncompliance reports and subsequently petitioned NHTSA (the ''Agency'') for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. Notice of receipt was first published on April 13, 2023. This document announces receipt of the Petitioners' supplemental petitions.

DATES: The comment period for the notice published on April 13, 2023, at 88 FR 22523, is extended. Send comments on or before September 21, 2023.

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 in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the 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 10:00 a.m. to 5:00 p.m., except on Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://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 comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petitions are granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for these petitions is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Manuel Maldonado, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7235.

SUPPLEMENTARY INFORMATION:

I. Overview: The Petitioners determined that certain PVC, Nylon, and ''Revised Socket'' Nylon brake hose assemblies equipped in certain MY 2008–2022 Harley-Davidson Touring, CVO Touring, Trike, Softail, Revolution Max, VRSC, XG750A, and XL Sportster motorcycles, and also sold as replacement parts, do not fully comply with paragraph S5.3 of FMVSS No. 106, *Brake Hoses* (49 CFR 571.106).

PCA filed its initial noncompliance report on July 27, 2022, and amended the report on August 25, 2022, October 18, 2022, October 26, 2022, November 16, 2022, March 30, 2023, and May 15, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* PCA petitioned NHTSA on August 19, 2022, and later amended its petition on November 10, 2022, December 2, 2022, April 21, 2023,[1] and May 15, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that the subject noncompliances are inconsequential as they relate to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Harley-Davidson filed its initial noncompliance report on August 9, 2022, and later amended the report on December 6, 2022, February 7, 2023, February 8, 2023, March 8, 2023, May 11, 2023, and June 21, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Harley-Davidson petitioned NHTSA on September 2, 2022, and amended its petition on December 29, 2022, and June 2, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of the Petitioners' prior petitions was published on April 13, 2023, in the **Federal Register** (88 FR 22523). To view the petitions and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2022–0094.''

This notice of receipt of the Petitioners' supplemental petitions is

[1] The supplemental petition submitted on April 21, 2023, was incorrectly dated as April 21, 2022.

published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or another exercise of judgment concerning the merits of the petitions.

II. Motorcycles and Equipment Involved: Approximately 6,139,858 PVC, Nylon, and ''Revised Socket'' Nylon brake hose assemblies manufactured by PCA, between February 28, 2007, and October 13, 2022, were reported by PCA as the population of the recall. Approximately 1,662,246 MY 2008–2022 Harley-Davidson Touring, CVO Touring, Trike, Softail, Revolution Max, VRSC, XG750A, and XL Sportster motorcycles, manufactured between May 17, 2007, and October 16, 2022, may have been equipped with the noncompliant brake hoses assemblies manufactured by PCA, as reported by Harley-Davidson as the population of the recall.

III. Noncompliance: The Petitioners explain that certain Nylon, and ''Revised Socket'' Nylon assemblies do not meet constriction, whip resistance, water absorption and whip resistance, brake fluid compatibility (BFC), and high temperature impulse (HTI) requirements, and certain PVC assemblies did not meet the constriction, expansion and burst strength, whip resistance, water absorption and whip resistance, tensile strength, water absorption and tensile strength, water absorption and burst strength, and high temperature impulse requirements. Therefore, the subject Nylon brake hose assemblies do not comply with paragraphs S5.3.1, S5.3.3, S5.3.7, S5.3.9 and S5.3.12 of FMVSS No. 106. The subject PVC brake hose assemblies do not comply with paragraphs S5.3.1, S5.3.2, S5.3.3, S5.3.4, S5.3.6, S5.3.7, and S5.3.12 of FMVSS No. 106.

IV. Rule Requirements: Paragraphs S5.3, S5.3.1, S5.3.2, S5.3.3, S5.3.4, S5.3.6, S5.3.7, S5.3.9, and S5.3.12 of FMVSS No. 106 include the requirements relevant to the petitions, and are broadly summarized herein. A hydraulic brake hose assembly must be capable of meeting the requirements when tested under the conditions specified in the standard and the applicable procedures of paragraph S6. Paragraph S5.3.1 pertains to the constriction requirement that every inside diameter of the brake hose assembly shall not be less than 64 percent of the nominal inside diameter of the brake hose. Paragraph 5.3.2 pertains to the expansion and burst strength requirement that the maximum expansion of a hydraulic brake hose assembly not exceed the values specified by Table 1 at the given psi. The hydraulic brake hose assembly must then withstand a water pressure of 4,000 psi for 2 minutes without rupture, then not rupture at the less than 7,000 psi for a ⅛ inch hose or smaller or at less than 5,000 psi for a hose with a diameter larger than ⅛ inch. Paragraph S5.3.3 pertains to the whip resistance requirement that the brake hose assembly not rupture when subjected to a 35-hour continuous run on a flexing machine. Paragraph S5.3.4 pertains to the forces that a brake hose assembly must withstand without separation of the hose from its end fittings. Paragraph S5.3.6 pertains to the tensile strength requirement that the brake hose assembly shall withstand after immersion in water for 70 hours. Paragraph S5.3.7 pertains to water absorption and whip resistance, and requires the hose not to rupture when subjected to a 35-hour continuous run on a flexing machine after immersion in water for 70 hours. Paragraph S5.3.9 provides the requirements for BFC after the brake hose assembly has been exposed to brake fluid for a specified time at a specified temperature. These requirements include compliance with constriction, per S5.3.1, as well as withstanding water pressure of 4,000 psi for 2 minutes, and then shall not rupture at less than 5,000 psi. Paragraph S5.3.12 describes the HTI test, which requires the brake hose assembly to withstand pressure cycling, followed by a 2-minute, 4,000 psi pressure hold test, during which the hose shall not rupture, and then shall not subsequently burst at a pressure less than 5,000 psi.

V. Summary of the Petitioners' Supplemental Petitions: The following views and arguments presented in this section, are the views and arguments provided by PCA. These views and arguments have not been evaluated by the Agency and do not reflect the views of the Agency. PCA and Harley-Davidson contend that the additional noncompliances identified since their prior filings are also inconsequential as they relate to motor vehicle safety.

On April 21, 2023, PCA submitted its second supplemental petition and a technical report in support of its petition for a decision of inconsequential noncompliance. PCA says that supplemental testing was performed on similar or affected brake hose assemblies and argues those test results support a determination of inconsequential noncompliance. PCA claims that the supplemental technical report shows that the subject noncompliances in the affected brake hose assemblies are inconsequential to motor vehicle safety because all of the noncompliant assemblies are ''robust to very severe conditions that exceed motorcycle lifetime demands with no adverse impact on brake performance.''

PCA says that in the contractor's testing in support of its petitions and supplemental submissions, nearly 1,000 assemblies overall were subjected to testing which included: pressure and time sensitivity testing, accelerated durability pressure, accelerated durability suspension stroke testing, field inspections of assemblies for evidence of fatigue, master cylinder leaking testing, and dynamic response time testing. PCA says the test results show that the subject noncompliances, including in assemblies affected by multiple noncompliances, ''presents no incremental risk to motor vehicle safety.''

PCA believes that the Agency's 2022 decision [2] on a petition submitted by FCA US LLC further supports a finding of inconsequentiality for the subject noncompliance. PCA says that FCA US's petition involved constricted brake hose assemblies for use in four-wheeled vehicle. PCA says the Agency denied FCA's petition because, while any potential safety consequence resulting from FCA US's noncompliance may not present itself initially, it can emerge over the service life of the product. PCA argues that this concern does not apply to the subject brake hose assemblies because PCA's contractor conducted testing of the subject assemblies to ''conditions far beyond what they would experience over a lifetime.'' Furthermore, PCA says that the constriction level for FCA US's noncompliance was 53 percent of the nominal inside diameter and PCA's assemblies are closer to the 64 percent minimum required by FMVSS No. 106.

PCA adds that the Agency may have denied a 2001 petition by Federal Mogul that involved constricted brake hoses.[3] Federal Mogul described testing in its petition however, PCA says that their testing ''does not appear to have included any accelerated aging component'' and the constriction present in the affected assemblies appears to be as low as 51.2 percent.

In addition to the decisions on petitions for inconsequential noncompliance PCA cited in its original petition, PCA says that the following decisions support a finding of inconsequentiality for the subject noncompliances:

[2] FCA US LLC, 87 FR 61432 (Oct. 11, 2022).

[3] HCA notes that the Agency's decision does not appear to be publicly available online, but Federal Mogul's petition is available at *https://www.regulations.gov/document/NHTSA-2001-9956-0001.*

• Nissan North America, Inc., Grant of Petition for Determination of Inconsequential Noncompliance; 85 FR 39678 (July 1, 2020).

• Kolcraft Enterprises, Inc., Grant of Application for Determination of Inconsequential Noncompliance; 63 FR 24585 (May 4, 1998).

PCA concludes by stating its belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety and its petition to be exempted from providing notification of the noncompliances, as required by 49 U.S.C. 30118, and a remedy for the noncompliances, as required by 49 U.S.C. 30120, should be granted.

On May 15, 2023, PCA submitted an addendum to its April 21, 2023, technical report. The technical report described testing that was in process and the addendum summarizes the completed testing and provides additional information concerning brake hoses that are affected by multiple noncompliances. PCA says that the completed testing supports the findings discussed in the prior technical reports.

On June 2, 2023, Harley-Davidson submitted its second supplemental petition and a second supplemental technical report in support of its petition. Harley-Davidson summarizes additional vehicle and brake hose assembly testing that took place after its initial technical report which Harley-Davidson believes further supports the granting of its petition. Further, Harley-Davidson expanded on its prior review of NHTSA's VOQ records, legal claims and suits, warranty data and customer contacts which it argues supports a determination of inconsequential noncompliance. In the second supplemental petition, Harley-Davidson adds that the Agency's 2006 decision on a petition involving a noncompliance with FMVSS No. 213, *Child Restraints,* which Harley-Davidson believes ''highlight[s] the lack of direct correlation between the requirements for brake hose constriction and motorcycle safety in this specific vehicle application.'' (*See Grant of Petition for Determination of Inconsequential Noncompliance,* 67 FR 21798, May 1, 2002).

VI. Prohibition on sale, offer for sale, introduction or delivery for introduction of noncompliant motor vehicle equipment and vehicles: 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 motorcycles and brake hose assemblies that the Petitioners no longer controlled at the time when the Petitioners determined that the noncompliances existed. However, any decision on these petitions does not relieve equipment and motorcycle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motorcycles and brake hose assemblies under their control.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–18021 Filed 8–21–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0113; Notice 2]

Mack Trucks, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petition.

SUMMARY: Mack Trucks, Inc., (Mack Trucks), has determined that certain model year (MY) 2015–2023 Mack GU/GR Class 8 trucks and truck-tractors do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Mack Trucks filed an original noncompliance report dated November 1, 2022, and amended the report on November 3, 2022. Mack Trucks petitioned NHTSA on November 23, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Mack Trucks' petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Safety Compliance Engineer, Office of Vehicle Safety Compliance, NHTSA, (202) 366–5304.

SUPPLEMENTARY INFORMATION:

I. Overview: Mack Trucks determined that certain MY 2015–2023 Mack GU/GR Class 8 trucks and truck-tractors do not fully comply with paragraph S6.4.3(a) and Table V-b of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108).

Mack Trucks filed an original noncompliance report dated November 1, 2022, and amended the report on November 3, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Mack Trucks petitioned NHTSA on November 23, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*[1]

Notice of receipt of Mack Trucks' petition was published with a 30-day public comment period, on January 17, 2023, in the **Federal Register** (88 FR 2759). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2022–0113.''

II. Vehicles Involved: Approximately 27,544 MY 2015–2023 Mack GU/GR Class 8 trucks and truck-tractors, manufactured between September 1, 2014, and September 30, 2022, are potentially involved:

III. Noncompliance: Mack Trucks explains that the subject vehicles are equipped with turn signal lamps that do not meet the visibility requirement at all angles specified by S6.4.3(a) and Table V–b of FMVSS No. 108. Based upon different axle positions and frame extension configurations, the forward turn signals on specific vehicles are not compliant with the 45 degree inboard and/or 15 degree downward angle visibility requirement.

IV. Rule Requirements: Paragraph S6.4.3 of FMVSS No. 108 includes the requirements relevant to this petition. A manufacturer is required to certify compliance of each lamp function to

[1] Mack Trucks' petition failed to include all of the necessary components of a petition pursuant to 49 CFR 556.4. The petition described the noncompliance, but failed to include any reasoning for why the noncompliance is inconsequential to safety. A petition is required to: ''Set forth all data, views, and arguments of the petitioner supporting [the] petition.'' *Id.* § 556.4. Absent any reasoning, a petitioner cannot meet its burden of persuasion that a noncompliance is inconsequential to safety. Such an invalid petition does not require a response by the agency. Nevertheless, in this instance, the agency is publishing this notice to help ensure Mack Trucks and other petitioners are aware that a petition for inconsequentiality must be properly justified. In the future, the agency may reject such incomplete petitions without further consideration.

one of two visibility requirement options: the lens area option or the luminous intensity option. The manufacturer may not thereafter choose a different option for that vehicle.

V. Summary of Mack Trucks' Petition: The following statements presented in this section, ''V. Summary of Mack Trucks' Petition,'' are the statements provided by Mack Trucks. They do not reflect the views of the Agency. Mack Trucks describes the subject noncompliance and contends, without explanation, that the noncompliance is inconsequential as it relates to motor vehicle safety.

Mack Trucks explains that after FMVSS No. 108 was updated in 2014, certain vehicle configurations were not updated accordingly which resulted in the subject vehicles being noncompliant with the taillamp signal visibility requirements provided in S6.4.3. Mack Trucks states that due to an unrelated engineering change, the subject noncompliance was identified. Mack Trucks found the subject vehicles did not meet the minimum unobstructed view requirement of 1,250 sq mm at all the required angles. The standard requires the unobstructed view to be met at all angles between the corner points, up to and including 15 degrees down and 45 degrees inboard toward the vehicle's longitudinal centerline; however, for the GU and GR Axle Back models of the subject vehicles failed to meet the requirements past 15 degrees down and 37 degrees inboard angle. For the GU and GR Axle Forward and Axle Forward Extended Frame Rails models of the subject vehicles, Mack Trucks found that the subject vehicles failed to meet the requirements past 7 degrees down and 45 degrees inboard angle. Mack Trucks provides illustrations to show the noncompliances on the affected vehicle configurations.

Mack Trucks concludes by stating its belief that the subject noncompliance is inconsequential to motor vehicle safety and its petition for relief from providing notice and remedy for the noncompliance be granted. Mack Trucks failed to include any reasoning for why the noncompliance was purportedly inconsequential to safety.

VI. NHTSA's Analysis:

Mack Trucks did not provide any data, views, or arguments supporting its belief that this noncompliance is inconsequential to safety, as required by 49 CFR 556.4. It is the petitioner's burden to establish the inconsequentiality of a failure to comply with a FMVSS. FMVSS are adopted to ''meet the need for motor vehicle safety.'' 49 U.S.C. 30111(a). ''[M]otor vehicle safety'' is ''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.'' 49 U.S.C. 30102(a)(9). Given the safety need for the FMVSS, an invalid petition that fails to provide justification that a specific noncompliance is inconsequential to motor vehicle safety need not be considered. Nevertheless, in this instance, the agency is publishing this notice to help ensure petitioners are aware of the requirement to provide ''all data, views, and arguments of the petitioner supporting [the] petition.'' 49 CFR 556.4. Mack Trucks and other petitioners are on notice that the agency may reject incomplete petitions without further consideration and they must carry out their statutory recall obligations without delay.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that Mack Trucks has not met its burden of persuasion that the subject FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety. Accordingly, Mack Trucks' petition is hereby denied and Mack Trucks is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke, III,

Acting Associate Administrator for Enforcement.

[FR Doc. 2023–18022 Filed 8–21–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[OCC Charter Number 703519]

Home Federal Savings and Loan Association of Grand Island, Grand Island, Nebraska; Approval of Conversion Application

Notice is hereby given that on August 14, 2023, the Office of the Comptroller of the Currency (OCC) approved the application of Home Federal Savings and Loan Association of Grand Island, Grand Island, Nebraska, to convert to the stock form of organization. Copies of the application are available on the OCC website at the FOIA Reading Room (*https://foia-pal.occ.gov/palMain.aspx*) under Mutual to Stock Conversion Applications. If you have any questions, please contact Licensing Activities at (202) 649–6260.

(Authority: 12 CFR 192.205).

Dated: August 14, 2023.

By the Office of the Comptroller of the Currency.

Stephen A. Lybarger,

Deputy Comptroller for Licensing.

[FR Doc. 2023–18006 Filed 8–21–23; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Enforcement, Compliance & Analysis, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On August 16, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individual

1. NAHLA, Zuhair Subhi (Arabic: زهير صبحي نحلة) (a.k.a. NAHLAH, Zuhayr Subi; a.k.a. NAHLI, Zouher), Nabatiyeh, Lebanon; DOB 18 Nov 1967; POB Dakar, Senegal; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; National ID No. 429658 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(E) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (collectively, E.O. 13224, as amended), for being a leader or official of GREEN WITHOUT BORDERS, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entity

1. GREEN WITHOUT BORDERS (Arabic: أخضر بلا حدود) (a.k.a. NATIONAL ASSOCIATION FOR THE PROTECTION AND DEVELOPMENT OF FOREST, ENVIRONMENTAL, AND ANIMAL WEALTH (Arabic: الجمعية الوطنية لحماية وتنمية الثروة الحرجية والبيئية والحيوانية)), Property No. 335, Section No. 13, Ground Floor, Nabatiyeh, Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Target Type Charity or Nonprofit Organization; Registration Number 1128 (Lebanon) issued 20 Jun 2013 [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: August 16, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–17985 Filed 8–21–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing updates to the identifying information of one or more persons currently included on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On August 15, 2023, OFAC published revised information for the following entity on OFAC's SDN List, which remains blocked under the relevant sanctions authorities listed below.

Entity

1. UNICIOUS ENERGY PTE. LTD. (a.k.a. UNICIOUS ENERGY PTE; a.k.a. UNICIOUS SA), Suntec Tower Four, 6 Temasek Boulevard #10–05, 38986, Singapore, Singapore; Dubai, United Arab Emirates; Quai des Bergues 29, 1201, Geneva, Switzerland; website *https://unicious.com/;* Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 15 Nov 2019; Company Number 98450014F53C71A88A79

(Singapore); Business Registration Number 201938747K (Singapore) [IRAN–EO13846] (Linked To: TRILIANCE PETROCHEMICAL CO. LTD.).

Dated: August 15, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–17973 Filed 8–21–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On August 17, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals

1. OSIPOV, Ivan Vladimirovich (Cyrillic: ОСИПОВ, Иван Владимирович) (a.k.a. OSIPOV, Ivan (Cyrillic: ОСИПОВ, Иван); a.k.a. SPIRIDONOV, Ivan (Cyrillic: СПИРИДОНОВ, Иван); a.k.a. SPIRIDONOV, Ivan Vasilyevich), Moscow, Russia; DOB 21 Aug 1976; alt. DOB 21 Aug 1975; Gender Male (individual) [NPWMD] [MAGNIT] (Linked To: FEDERAL SECURITY SERVICE).

   Designated pursuant to sections 404(a)(3) and 406(a)(1) of the Sergei Magnitsky Rule of Law Accountability Act of 2012, Public Law 112-208, Title IV (the Magnitsky Act), for having acted as an agent of or on behalf of a person in a matter relating to extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals seeking to expose illegal activity carried out by officials of the Government of the Russian Federation.

2. ALEXANDROV, Alexey Alexandrovich (Cyrillic: АЛЕКСАНДРОВ, Алексей Александрович) (a.k.a. ALEXANDROV, Aleksey Alexandrovich; a.k.a. ALEXANDROV, Alexey (Cyrillic: АЛЕКСАНДРОВ, Алексей); a.k.a. FROLOV, Aleksey Andreevich; a.k.a. FROLOV, Alexey (Cyrillic: ФРОЛОВ, Алексей)), Moscow, Russia; DOB 16 Jun 1981; alt. DOB 16 Jun 1980; nationality Russia; Gender Male (individual) [NPWMD] [MAGNIT] (Linked To: FEDERAL SECURITY SERVICE).

   Designated pursuant to sections 404(a)(3) and 406(a)(1) of the Magnitsky Act for having acted as an agent of or on behalf of a person in a matter relating to extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals seeking to expose illegal activity carried out by officials of the Government of the Russian Federation.

3. PANYAEV, Vladimir Alexandrovich (Cyrillic: ПАНЯЕВ, Владимир Александрович) (a.k.a. ALEXEEV, Vladimir; a.k.a. ALEXEYEV, Vladimir; a.k.a. PANAIEV, Vladimir Aleksandrovich; a.k.a. PANYAEV, Vladimir (Cyrillic: ПАНЯЕВ, Владимир)), Moscow, Russia; DOB 25 Nov 1980; POB Serdobsk, Penza Oblast, Russia; Gender Male (individual) [NPWMD] [MAGNIT] (Linked To: FEDERAL SECURITY SERVICE).

   Designated pursuant to sections 404(a)(3) and 406(a)(1) of the Magnitsky Act for having acted as an agent of or on behalf of a person in a matter relating to extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals seeking to expose illegal activity carried out by officials of the Government of the Russian Federation.

4. KUDRYAVTSEV, Konstantin (Cyrillic: КУДРЯВЦЕВ, Константин) (a.k.a. KUDRYAVTSEV, Konstantin Borisovich; a.k.a. SOKOLOV, Konstantin; a.k.a. SOKOLOV, Konstantin Yevgenievich), Russia; DOB 28 Apr 1980; alt. DOB 28 Apr 1979; nationality Russia; Gender Male (individual) [NPWMD] [MAGNIT] (Linked To: FEDERAL SECURITY SERVICE).

   Designated pursuant to sections 404(a)(3) and 406(a)(1) of the Magnitsky Act for having acted as an agent of or on behalf of a person in a matter relating to extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals seeking to expose illegal activity carried out by officials of the Government of the Russian Federation.

Dated: August 17, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–18038 Filed 8–21–23; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing updated information for one person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person is blocked, and U.S. persons are generally prohibited from engaging in transactions with this person.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On August 15, 2023, OFAC published updated information for the name of one person on OFAC's SDN List, who remains blocked under the relevant sanctions authorities listed below.

Individual

1. SHAHRIYARI, Behnam (a.k.a. HAMID, Huseyini; a.k.a. MARALLU, Behnam Shahriyari; a.k.a. MIR VAKILI, Seyed Ali Akbar; a.k.a. MIRVAKILI, Seyed Aliakbar; a.k.a. MIRVAKILI, Seyedaliakbar; a.k.a. SHAHCHERAGHI, Seyed Hamid Reza; a.k.a. SHAHRIARI, Behnam; a.k.a. SHAHRYARI, Behnam), Iran; DOB 1968; alt. DOB 22 Sep 1967; alt. DOB 30 Sep 1965; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport K47248790 (Iran) expires 20 Oct 2023; alt. Passport D10007350 (Iran) expires 13 Oct 2025 (individual) [SDGT] [IFSR].

Dated: August 15, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–17972 Filed 8–21–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
Yemen

Lindsay Kitzinger,

International Tax Counsel, (Tax Policy).

[FR Doc. 2023–18015 Filed 8–21–23; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Sand Dune Phacelia and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2021–0070; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BF89

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Sand Dune Phacelia and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), list the sand dune phacelia (*Phacelia argentea*), a plant species from coastal southern Oregon and northern California, as a threatened species with a rule issued under section 4(d) of the Endangered Species Act of 1973, as amended (Act). We also designate critical habitat for the species under the Act. In total, approximately 180.8 acres (73.2 hectares) within 13 units in Coos and Curry Counties in Oregon, and Del Norte County in California, fall within the boundaries of the critical habitat designation. This rule extends the protections of the Act to this species and its designated critical habitat.

DATES: This rule is effective September 21, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov at* Docket No. FWS–R1–ES–2021–0070.

The coordinates or plot points (or both) from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R1–ES–2021–0070 and at the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, below). The critical habitat shapefile is available on the Service's Environmental Conservation Online System (ECOS) portal at *https://www.ecos.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Kessina Lee, State Supervisor, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone (503) 231–6988. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). We have determined that the sand dune phacelia meets the definition of a threatened species; therefore, we are listing it as such and finalizing a designation of its critical habitat. Listing a species as an endangered or threatened species and designation of critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule lists the sand dune phacelia (*Phacelia argentea*) as a threatened species with a rule issued under section 4(d) of the Act (a ''4(d) rule'') and designates critical habitat comprised of 13 units totaling approximately 180.8 acres (ac) (73.2 hectares (ha)) in Coos and Curry Counties in Oregon, and Del Norte County in California.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any one or more of the following five factors or the cumulative effects thereof: (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 primary threats to sand dune phacelia are invasive species encroachment and competition, climate change, and small population size (Factors A and E).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Previous Federal Actions

Please refer to our March 22, 2022, proposed rule (87 FR 16320) for a detailed description of previous Federal actions concerning the sand dune phacelia.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the sand dune phacelia. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the sand dune phacelia SSA report. As discussed in the proposed rule, we sent the SSA report to three independent peer reviewers and received three responses. The peer reviews can be found at *https://www.regulations.gov.* In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found in the Summary of Comments and Recommendations below.

Summary of Changes From the Proposed Rule

We made several changes in this final rule in response to public comments we received on the March 22, 2022,

proposed rule (87 FR 16320). Specifically, we:

- Completed minor editorial changes and reorganized various sections of the rule to improve readability, and made many small, nonsubstantive clarifications and corrections throughout the rule in order to ensure better consistency, clarify information, and update or add new references;
- Corrected a mapping error that resulted in proposed critical habitat Unit 10 (Pacific Shores) being too large, and we produced a new map and description for Unit 10 (see details under *Our Response* to *(6) Comment* below). The correction decreased Unit 10's acreage from 92.3 ac (37.4 ha) to 21 ac (8.5 ha); and
- Corrected the statement of land ownership for critical habitat Unit 13 (Pebble Beach) based on new information provided by Del Norte County.

We conclude that the information we received during the comment period for the proposed rule did not change our previous analysis of the magnitude or severity of threats facing the species or our determination that the sand dune phacelia meets the definition of a threatened species under the Act (16 U.S.C. 1531 *et seq.*).

Summary of Comments and Recommendations

In our March 22, 2022, proposed rule (87 FR 16320), we requested that all interested parties submit written comments on the proposal by May 23, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposed rule. Newspaper notices inviting general public comment were published in the Eureka Times Standard and The Oregonian on March 27, 2022. We also notified members of Congress, Tribes, and Federal and State agencies within the range of the species by email on March 18, 2022. On March 21, 2022, email notifications were sent to County Commissioners and relevant nonprofit organizations within the sand dune phacelia's range. All substantive information provided during the comment period has either been incorporated directly into this final rule or is addressed below. Examples of nonsubstantive comments include those that emphasized the importance of sand dune phacelia in the ecosystem and the importance of preserving biodiversity. Other commenters made suggestions for public engagement and outreach to protect sand dune phacelia and its habitat. While these comments were not incorporated into this final rule, we have noted them, and look forward to working with our partners on these topics during recovery planning for sand dune phacelia.

Peer Reviewer Comments

As discussed above, we received comments from three peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the content contained in the SSA report. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the document, including an added emphasis on the importance of invasive species control to maintain the viability of sand dune phacelia populations. No substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and peer reviewer comments are addressed in version 1.0 of the SSA report, which is available for public review at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2021–0070.

Public Comments

We received public comments from 24 entities in response to our March 22, 2022, proposed rule (87 FR 16320). We reviewed all the comments we received during the public comment period for substantive issues and new information regarding the proposed rule. Eleven commenters provided substantive comments or new information concerning the proposed listing and designation of critical habitat for the sand dune phacelia. Substantive comments that were similar in content are grouped together and are addressed collectively below. Comments outside the scope of the proposed rule or those without supporting information did not warrant an explicit response and, therefore, are not presented here. All comments are available at *https://www.regulations.gov* in Docket No. FWS–R1–ES–2021–0070.

(1) Comment: Four commenters expressed their concern that the acreage of proposed critical habitat is too small to adequately protect and recover sand dune phacelia.

Our Response: Each proposed critical habitat unit currently contains sand dune phacelia populations of at least 25 individuals. We determined that these units, if recovered, would be sufficient to conserve the species because they are distributed across the three representation units and across the historical range of the species, thereby encompassing the full array of ecological diversity that exists within the species' range. Therefore, if these populations were recovered to sufficient resiliency, they would provide adequate redundancy and representation for the species. Because we found areas currently occupied by sand dune phacelia populations of at least 25 individuals sufficient to recover the species, we conclude that the critical habitat designation is adequate.

Please note that, as we discuss below (see Background under III. Critical Habitat), habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, 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 the sand dune phacelia; and (3) the prohibitions found in the 4(d) rule for this species.

(2) Comment: Five commenters stated that the proposed listing and designation of critical habitat will negatively affect public access and recreation in California, including the Pacific Shores Subdivision, the Lake Earl Wildlife Area, Tolowa Dunes State Park, and Point Saint George.

Our Response: The designation of critical habitat does not prevent access to any land, whether private, Tribal, State, or Federal. 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.

None of the lands supporting sand dune phacelia populations or designated as critical habitat in California are owned or managed by Federal agencies. Public access and use of critical habitat for recreational activities is managed under the jurisdiction of the current land

management entity or owner (*e.g.,* State, County, or private) and, in the absence of a Federal nexus, may continue under their guiding authorities or private property rights. In addition, existing roads that may provide public access are, by definition, not included within critical habitat, nor are other developed areas such as buildings, airports, parking lots, piers, and similar facilities.

(3) Comment: One commenter stated that because Crissey Fields State Park in Oregon includes open dune habitat with greater than 25 individual sand dune phacelia plants, it meets our criteria for critical habitat and should be designated as such.

Our Response: We proposed designating critical habitat only where naturally occurring sand dune phacelia populations exist that consist of 25 or more individuals. We did not include augmented or introduced populations because of the high incidence of plant mortality generally observed following transplantation efforts, and significant uncertainty as to whether these populations are capable of contributing to the maintenance or enhancement of sand dune phacelia populations over time. The population at Crissey Fields is, for the most part, the result of a population augmentation effort in which 111 individuals were planted in 2018. The declining natural population was last counted in 2017 and consisted at the time of 24 plants. Invasive grasses and granivory were cited as threats, larger plants were dying, and there was little evidence of natural recruitment. Because the most recent information available on the natural population at Crissey Fields indicates that it consists of fewer than 25 individuals, it does not meet the criteria we defined for identifying critical habitat. Monitoring of the transplanted individuals in 2019 documented 49 remaining plants of those transplanted, with a 44 percent decline in transplant viability in the first year. However, because this rule lists the sand dune phacelia as a threatened species under the Act, and thereby extends the protections of the Act to this species, this rule protects the sand dune phacelia at Crissey Fields and in other areas it occupies even absent a critical habitat designation.

(4) Comment: Two commenters stated that public outreach regarding the listing of sand dune phacelia and designation of critical habitat was inadequate and that the comment period should be extended.

Our Response: Our March 22, 2022, proposed rule (87 FR 16320) opened a 60-day public comment period, ending May 23, 2022, for the proposed listing, 4(d) rule, and critical habitat designation for this species. As required by section 4(b)(5) of the Act (16 U.S.C. 1533(b)(5)), newspaper notices inviting general public comment were published in the Eureka Times Standard and The Oregonian on March 27, 2022. We also sent notices of the proposed rule and opportunity to comment to members of Congress, Tribes, States, and other interested parties, and notified each County Commissioner within the range of the sand dune phacelia.

The Act requires the Service to publish a final rule within 1 year from the date we propose to list a species (see 16 U.S.C. 1533(b)(6)(A)), and consequently our standard comment period for listing actions is limited to 60 days. This 1-year timeframe can only be extended if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, but only for 6 months and only for purposes of soliciting additional data (see 16 U.S.C. 1533(b)(6)(B)). Based on the comments received and data evaluated regarding our proposed determination for sand dune phacelia, there is not substantial disagreement concerning the sufficiency or accuracy of the data and therefore no grounds for delaying our final determination.

(5) Comment: Three commenters stated that the need to breach Tolowa Lake and Lake Earl in California when necessary will continue, and that water management would be negatively affected by the listing of sand dune phacelia, the designation of its critical habitat, or both.

Our Response: Del Norte County's ability to breach Lake Earl and Lake Tolowa for water management purposes requires permitting by the U.S. Army Corps of Engineers (Corps). Permitting through a Federal agency establishes a Federal nexus whereby the Corps must consult with the Service to ensure that the action, in this case dune breaching, will not jeopardize the continued existence of listed species within the action area and will not adversely modify designated critical habitat. As discussed in the SSA report, we acknowledge that sand dune phacelia may be negatively influenced by factors other than competition from invasive species, including flooding. However, the available data and historical information do not indicate that flooding is a threat that drives population decline for sand dune phacelia. Therefore, while consultation between the Corps and the Service may be required for breaching Lake Earl and Lake Tolowa, the Service does not anticipate that the listing of the sand dune phacelia and the designation of its critical habitat will substantially affect Del Norte County's ability to manage lake levels.

(6) Comment: One commenter questioned why proposed Unit 10 (Pacific Shores) is so large. They wondered if unoccupied areas were included for future restoration activities (*i.e.,* European beachgrass (*Ammophila arenaria*) removal).

Our Response: The boundaries of proposed Unit 10 were incorrectly mapped in our March 22, 2022, proposed rule (87 FR 16320), and this final rule corrects that error. We delineated critical habitat unit boundaries by joining patches of sand dune phacelia within each population to form discrete areas (*i.e.,* units). This was accomplished by joining patch vertices and creating minimum convex polygons. In California, we considered patches to be part of the same population if they were within 0.25 miles (0.40 kilometers (km)) of each other, as defined by the California Natural Diversity Database (CNDDB 2020, unpaginated). In Oregon, patches were considered part of the same population if they were within 0.30 miles (0.48 km) of each other, as defined by the Oregon Biodiversity Information Center (ORBIC 2020, unpaginated). The Pacific Shores sand dune phacelia population is made up of one main patch that contains the majority of the individuals in the population, and two much smaller patches with fewer individuals to the north of the main population. Even though the California Natural Diversity Database (CNDDB 2020, unpaginated) considers all three patches to be part of a single population, the two smaller patches to the north are just outside of the 0.25-mile (0.40-km) range within which individuals are usually considered to be of the same population, as well as beyond the measure by which we joined patches of sand dune phacelia for the critical habitat designation. For this reason, the area between the main population and the two patches to the north should not have been included in the proposed designation. In the corrected map in this final rule, the two patches to the north (which are within 0.25 miles of one another) are joined into a separate subunit from the main subunit to the south. The corrected acreage for the Unit 10 is 21 ac (8.5 ha). The Unit 10 map, as well as acreages associated with this unit, have all been corrected in this final rule.

(7) Comment: Two commenters stated that removal of European beachgrass is harmful to coastal areas as it destabilizes dunes, causes erosion, and exposes infrastructure to storm damage,

and questioned why we did not analyze those impacts.

Our Response: The analysis of effects was based on impacts to sand dune phacelia, not coastal infrastructure. Prior to the introduction of European beachgrass, sand dunes moved in response to ocean tides, storms, and wind. Native plant communities evolved to adapt to this dynamic landscape. Dune restoration activities, including the removal of stabilizing monocultures of invasive beachgrass, have been demonstrated to be beneficial to and promote the recovery of sand dune phacelia populations. Whether or not the removal of European beachgrass negatively affects other aspects of coastal areas is outside the scope and intent of this rulemaking.

(8) Comment: Two commenters requested that the Service not allow the California Department of Fish and Wildlife (CDFW) to fence off or buffer the portion of Unit 11 that is on the Lake Earl Wildlife Area.

Our Response: 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. Unless there is a Federal nexus, such as a federally issued permit, for an activity affecting designated critical habitat, the Service does not have the authority to direct activities, or have any other jurisdiction, over lands managed by CDFW. For more information, see our response to *(2) Comment,* above.

(9) Comment: One commenter notified us that the California Transportation Department (CALTRANS) does not have any ownership in proposed Unit 13, Pebble Beach. Rather, they stated that all land in proposed Unit 13 belongs to Del Norte County.

Our Response: We obtained land ownership data from the Protected Areas Database v2.1, and we appreciate corrections to our land ownership data. In this final rule, we revise acreages to show all land ownership in Unit 13 as belonging to Del Norte County.

(10) Comment: One commenter stated that there is no evidence that sand dune phacelia existed historically in significant quantities in northern California.

Our Response: We found the California Natural Diversity Database (CNDDB 2020, unpaginated) to be the best information available regarding the historical abundance and location of sand dune phacelia populations in California. The earliest record of sand dune phacelia in California is from 1929. Another population, now extirpated, that straddled the Oregon and California border was observed in 1913. The issue of ''significant quantities'' is subjective, but there is consistent documentation of sand dune phacelia in northern California from 1913 to the present (Kalt 2008, table 1), with population estimates showing a steady decline from the 1980s onward.

(11) Comment: Two commenters stated that road maintenance may be required within critical habitat units in California, and that continued road maintenance would be required to provide for public access.

Our Response: In our March 22, 2022, proposed rule (87 FR 16320), and in this final rule, we state that critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule (see **DATES**, above). Therefore, maintenance activities on roadways will not be affected by this critical habitat designation. Further, the designation of critical habitat along roadways does not prevent access to that land (*e.g.,* for road maintenance activities), but may require that Federal agencies ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat under section 7 of the Act.

(12) Comment: One commenter stated that the maps supplied in the March 22, 2022, proposed rule are poor representations of what specific lands are included in the critical habitat areas near Lake Tolowa (proposed Unit 11). They further stated that a more detailed map is needed to assess whether all occupied areas are included within Unit 11, and that the maps do not accurately display public and private land boundaries within proposed Unit 10 (Pebble Beach).

Our Response: The maps we present in the proposed rule and in this final rule comply with the parameters for publication in the Code of Federal Regulations. These maps and the subsequent textual unit descriptions are the official delineation of the critical habitat designation for the sand dune phacelia. Critical habitat shapefiles, which can provide more detail and metadata on each unit, are available to the public on the species' profile page at *https://ecos.fws.gov/ecp/species/Q2FB,* and then by clicking on Critical Habitat (*https://ecos.fws.gov/ecp/species/Q2FB#crithab*).

(13) Comment: One commenter stated that the entire Tolowa Dunes State Park (TDSP)/Lake Earl Wildlife Area (LEWA) joint restoration area (376 acres) should be included in proposed Unit 11, Tolowa Dunes. They stated that the minimum LEWA acreage is approximately 6 acres, not 4 acres as mapped, and that the additional 2 acres were not surveyed by the Service's contractor. They also stated that other areas in the LEWA (outside of the 6 acres) have isolated sand dune phacelia plants that were also not included in proposed Unit 11. Additionally, they stated that other historically occupied sites in the TDSP/LEWA joint restoration area may also have been omitted. They stated that the entire area, including areas not yet restored and potentially unoccupied, is necessary for the conservation of the species and that the entire restoration area (376 acres) should be included in Unit 11 to support and encourage the restoration of former sand dune phacelia and western snowy plover (*Charadrius alexandrinus nivosus*) habitat.

Our Response: We determined that the areas occupied by sand dune phacelia that we proposed for designation as critical habitat are adequate to ensure the conservation of the species, and, therefore, no other areas are included in this critical habitat designation (see our response to *(1) Comment,* above). As described in the SSA report (Service 2021, pp. 22–23), locations and data related to sand dune phacelia populations were available primarily from the Oregon Biodiversity Information Center (ORBIC 2020, unpaginated) and the California Natural Diversity Database (CNDDB 2020, unpaginated), but also via information provided by our partners (such as the Bureau of Land Management (BLM)) during our early outreach to partners with requests for information on the species. Most of the populations we identified from our review of available data were surveyed in 2017 by the Oregon Department of Agriculture's Plant Conservation Program (Brown 2020a, unpaginated). The 2017 survey enumerated current population size, examined historical data to discern population trends, delineated the area occupied, briefly described the habitat, and identified stressors at each site. However, nine of the populations we identified during our data review were not visited during the 2017 survey, and for these populations we instead used the best data available prior to 2017 to determine current status. Similarly, if data for some populations more recent than 2017 were available, then we used that most recent data to determine current status. Further, if available

occurrence records of sand dune phacelia did not meet our criteria for inclusion as critical habitat (*e.g.,* they consisted only of isolated individuals), we did not include those areas as critical habitat (see also our responses to *(4) Comment* and *(7) Comment,* above). Conversely, some populations, due to restoration efforts, have expanded since 2017, and therefore may be larger than last documented in the SSA report. Nonetheless, the data provided by the 2017 survey and other sources gathered during our data review and request for information from our partners constitute the most comprehensive dataset that we are aware exists and represents the best scientific data available upon which to base our critical habitat designation.

According to section 7(a)(2) of the Act, the regulatory effect of critical habitat designation is to ensure that any action authorized, funded, or carried out by a Federal agency is not likely to result in the destruction or adverse modification of that habitat. As noted above in our response to *(3) Comment,* critical habitat designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal or Federal landowners, nor does it establish specific land management standards or prescriptions. However, the Act provides many tools to advance the conservation of listed species. Conservation of sand dune phacelia is dependent upon working partnerships with a wide variety of entities, including the voluntary cooperation of non-Federal landowners. Building partnerships and promoting cooperation of landowners are essential to understanding the status of species on non-Federal lands and may be necessary to implement recovery actions such as habitat restoration and habitat protection. Support provided by the Service for sand dune phacelia includes funding under section 6 of the Act and from our Coastal Program grants to the States to implement conservation actions. This support is not limited to designated critical habitat but may occur wherever the species is found throughout its range.

(14) Comment: One commenter claimed that illegal vehicle trespass should be identified as a significant threat to sand dune phacelia.

Our Response: In the SSA report, we acknowledge that legal and illegal off-highway vehicle (OHV) use can damage or kill sand dune phacelia (Service 2021, p. 17). While OHV use is listed as a threat to sand dune phacelia in various sources, documented impacts to the species from OHVs are limited to individuals at a small number of sites throughout its range, most notably in California. Further, the best available information on OHV use and its impacts does not indicate that the influence of this stressor is of the scope and magnitude sufficient to cause population-level impacts to sand dune phacelia. We agree with the commenter that recreational impacts, primarily from OHV use, can be destructive to individuals, may be especially deleterious to small populations, and may negatively affect sand dune phacelia habitat at some sites, but it does not appear to be a key driver in sand dune phacelia population decline; therefore, we did not carry it forward in our analysis of current and future condition. As noted in this final rule, any damage to the species on non-Federal land in violation of a State law (such as damage caused by illegal vehicle trespass) is prohibited by the 4(d) rule for sand dune phacelia.

(15) Comment: One commenter requested information on where the agency responsible for managing the sand dune phacelia is located.

Our Response: U. S. Fish and Wildlife Service (Service) offices responsible for promoting the recovery of endangered species within the range of the sand dune phacelia are located in Arcata, California; Newport, Oregon; and Portland, Oregon. These offices work with the public and our partner agencies to restore habitat and populations of listed species and provide consultation and technical assistance to landowners and land managers wherever there is a Federal nexus.

(16) Comment: One commenter requested information on methods used to remove European beachgrass and wanted to know what, if any, plans the Service has to remove invasive species within sand dune phacelia critical habitat.

Our Response: Commonly used techniques to remove European beachgrass include hand-pulling, herbicide application, and mechanical removal by machinery such as excavators or bulldozers. Removal techniques are chosen based on the scale and objectives of the project, and the accessibility and topography of the landscape. More information on beachgrass removal can be obtained by contacting Service offices in Arcata, California (*https://www.fws.gov/office/arcata-fish-and-wildlife*), and Newport, Oregon (*https://www.fws.gov/office/oregon-fish-and-wildlife/visit-us/locations/newport-field-office*). Invasive species removal has been ongoing in some of the areas we are designating as critical habitat, such as North Bandon, Lost Lake, Floras Lake, and Tolowa Dunes, and the Service will continue to work with our conservation partners on sand dune phacelia restoration activities as funding allows.

(17) Comment: One commenter wanted to know if and how the Service will post on the landscape within the critical habitat units information related to the designation of critical habitat and the listing of the sand dune phacelia.

Our Response: This rule makes final the designation of critical habitat for the sand dune phacelia. For more information on this critical habitat designation, please see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**, above. The Service does not have management authority to require the physical posting of signs at critical habitat units. The placement of informational signs at sites where critical habitat is located is voluntary and under the purview of the landowner.

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the sand dune phacelia is presented in the SSA report (Service 2021, pp. 7–20). The full SSA report is available at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2021–0070.

Sand dune phacelia (*Phacelia argentea*), also known as silvery phacelia, is an evergreen, herbaceous, flowering perennial in the forget-me-not family (Boraginaceae), and its status as a taxonomically valid species is well-accepted (Nelson and MacBride 1916, p. 34). It is found only on coastal dune habitat in southern Oregon (Coos and Curry Counties) and far northern California (Del Norte County) coasts. A rangewide survey conducted in 2017 documented 26 occupied sites (including 1 entirely introduced population), with 16 sites in Oregon and the remaining 10 in California (Brown 2020a, unpaginated). Sand dune phacelia occurs on the open sand above the high tide line, farther inland on semi-stabilized and open dunes, and on coastal bluffs (Kalt 2008, p. 2). It has been described as occurring at elevations ranging from 10 to 40 feet (3 to 12 meters) and on slopes less than 30 percent composed of sand or (rarely) gravel (Rodenkirk 2019, p. 7).

Sand dune phacelia exhibits multiple adaptations for living in drought-like, nutrient-poor areas with high winds, blowing sand, and salt spray. It forms mats that reduce its exposure to wind and spray and has silvery hairs on its leaves, which allow it to resist desiccation in its harsh environment of blowing sand. Its tap root may be

extensive, facilitating life in an environment of shifting sands and maximizing the plant's ability to uptake water (Rodenkirk 2019, p. 12).

Sand dune phacelia occurs in sandy habitats that are sufficiently free of competing vegetation to provide space and a high light environment to allow for seedling establishment and growth (Kalt 2008, p. 4; Meinke 2016, p. 2). Reproductively mature plants begin to bloom in late April and May, with flowers persisting through August (Meinke 1982, p. 282). Sand dune phacelia appears to be largely incapable of significant self-pollination (Meinke 2016, p. 3), relying upon pollination by bees (Rittenhouse 1995, p. 8).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following 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.

These factors represent broad categories of natural or human-caused actions or conditions that could influence a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all the threats on the species. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the Act's definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Our analysis of the foreseeable future uses the best scientific and commercial data available and considers the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report (Service 2021, entire) documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the sand dune phacelia, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess sand dune phacelia viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and

described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R1–ES–2021–0070 on *https://www.regulations.gov* and at *https://www.fws.gov/office/oregon-fish-and-wildlife.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Individual Needs

Sand dune phacelia occurs in sandy habitats that are sufficiently free of competing vegetation to allow for seedling establishment and growth (Kalt 2008, p. 4; Meinke 2016, p. 2). Drought has been implicated in low seedling recruitment and adult mortality (Rodenkirk 2019, p. 17), but precise moisture requirements are unknown. Nutritional needs are evidently low, as sand is nutrient poor. Whether sand dune phacelia is mycorrhizal (like many other dune species) is unknown. A high light environment is important for sand dune phacelia to complete its life cycle and reproduce. There is evidence that high light exposure is needed for seed germination (Meinke 2016, p. 5) as well as for seedling establishment and growth (Rodenkirk 2019, p. 19; Jacobs 2019, p. 92).

Population Needs

To be adequately resilient, populations of sand dune phacelia need sufficient numbers of reproductive individuals to withstand stochastic events. Sufficient annual seed production and seedling establishment is necessary to offset mortality of mature sand dune phacelia plants within a population. Because large individuals produce the most seed (Meinke 2016, p. 3), their loss is likely to have the greatest impact on the overall population. However, no quantitative analyses have been completed to determine minimum viable population size for sand dune phacelia.

Sandy habitat that is relatively free of vegetative competition is important for population persistence (Rodenkirk 2019, p. 16; Rittenhouse 1995, p. 8). Historically, sand dunes shifted as dictated by prevailing winds, tides, and storm surge, and these forces maintained and supported native dune plant communities adapted to highly dynamic environments. In the absence of sand-disturbing forces, dune habitats are susceptible to rapid colonization by nonnative species such as European beachgrass (*Ammophila arenaria*) and gorse (*Ulex europaea*), as well as encroachment by native successional species like shore pine (*Pinus contorta* ssp. *contorta*) (Meinke 2016, p. 2).

Sand dune phacelia is largely dependent upon pollination by bees. In coastal dune habitats, bee abundance and species richness are positively correlated with the presence of sand dune phacelia (Julian 2012, p. 3), and negatively correlated with cover of European beachgrass and other invasive vegetation (Julian 2012, p. 21).

Species Needs

To maintain viability, sand dune phacelia should have a sufficient number of sustainable populations that are well-distributed throughout its geographic range and throughout the variety of ecological settings in which the species is known to exist. Suitable habitat must be available, and the number and distribution of adequately resilient populations must be sufficient for the species to withstand catastrophic events. No quantitative analysis exists upon which to determine the minimum number of populations or the quantity of suitable habitat necessary for sand dune phacelia to maintain viability as a species.

The historical extent and distribution of sand dune phacelia across the southern Oregon and far northern California coasts is not precisely known. The species may have been more abundant, widespread, and contiguously distributed on the landscape prior to the loss and stabilization of sand dune habitats, off-highway vehicle use, and the introduction of invasive species (particularly European beachgrass) (Meinke 2016, p. 2). Due to its specialized adaptations to the sand dune environment, it is unlikely that sand dune phacelia ever occurred in a diverse range of ecological environments, and no information exists on the genetics of sand dune phacelia that would allow an assessment of whether populations demonstrate sufficient genetic variability to persist under changing environmental conditions.

In summary, individual sand dune phacelia plants require sandy substrate with limited vegetative competition for light, moisture, and growing space. Populations must be sufficiently large and sustainable to withstand stochastic events, have sufficient annual seed production, and have an adequate pollinator community. For species viability, sand dune phacelia must have sufficiently resilient populations that are well distributed across its range and sufficient genetic diversity to adapt to changing conditions (see table 1, below).

TABLE 1—INDIVIDUAL, POPULATION, AND SPECIES NEEDS OF SAND DUNE PHACELIA

Individuals	Populations	Species
Bare sandy substrate	Sufficiently large number of reproductive individuals per population to withstand stochastic events.	Sufficient number of adequately resilient populations well distributed across the range.
High light environment.	Sufficient annual seed production to offset mortality	Sufficient genetic diversity to adapt to change over time (no information on genetics).
Water	Dune/sandy habitat with low degree of invasive species.	
Pollinators	Sufficient abundance and diversity of pollinators for outcrossing/optimal seed production.	

Threats

We considered a comprehensive set of sand dune phacelia stressors that have been cited in the literature, in the data provided from our partners, and in the petition (Center for Biological Diversity et al. 2014, entire). For each stressor we assessed whether there was sufficient evidence that the influence of the stressor rose to the scope and magnitude necessary to impact sand dune phacelia populations, and thus be carried forward in our analysis of current and future condition. We also examined positive influence factors (conservation efforts) in a similar manner.

Invasive Plants

Invasive, introduced plant species are considered one of the most influential stressors to sand dune phacelia and its habitat (Kalt 2008, p. 7; Rodenkirk 2019, p. 6). European beachgrass, gorse, and other invasive plant species outcompete sand dune phacelia throughout its range (Rodenkirk 2019, p. 6). Introduced to the Pacific Northwest region of the United States and California in the 1800s, European beachgrass is an aggressive, perennial, rhizomatous grass. It was extensively planted to stabilize sand and build dunes parallel to the ocean shore to protect infrastructure from the effects of ocean storms and tides (Hacker et al. 2011, p. 2; Oregon Department of Fish and Wildlife (ODFW) 2016, pp. 6–7). Colonizing European beachgrass captures sand with its deep roots and spreading shoots, forming dense monocultures of grass that outcompete many native dune species, including sand dune phacelia, for growing space, sunlight, and moisture (Rittenhouse 1996, p. 3). The steep, heavily vegetated foredunes seen today along much of the Oregon, and to a lesser extent California, coastlines are the result of European beachgrass colonization (Rittenhouse 1995, p. 9; Zarnetske et al. 2010, pp. 1–2). Dune stabilization by European beachgrass also facilitates the establishment and succession of native trees and shrubs that proliferate in the absence of natural disturbance regimes, thereby resulting in the conversion, and ultimate loss, of native dune habitat (Rittenhouse 1996, p. 3; Brown 2020a, unpaginated).

According to population surveys conducted in California, European beachgrass poses the most consequential threat to sand dune phacelia populations in that State (Jacobs 2019, p. 9; Imper 1987, p. 1; Kalt 2008, p. 7). In Oregon, the expansion of European beachgrass was a likely factor in the extirpation of two sand dune phacelia populations near Bandon (Christy 2007, p. 15), and adverse effects to sand dune phacelia populations from European beachgrass have been documented at multiple locations throughout its range (Rittenhouse 1995, p. 9; Kagan and Titus 1998a, p. 10; Kagan and Titus 1998b, p. 3; Titus 1998, p. 12; Rodenkirk 2019, entire; Brown 2020a, unpaginated).

We are also aware that under certain ocean shore alteration permits in Oregon, landowners are required to stabilize the dune against erosion in order to protect properties and shoreline. European beachgrass is often used because it is readily available and effective for that purpose (Bacheller 2021, pers. comm.). This permitting requirement may promote the spread of European beachgrass, although to our knowledge this is not currently occurring within the range of sand dune phacelia.

Gorse is an introduced spiny shrub that forms impenetrable thickets that overtake dune habitats. It is widely recognized as a threat to native plant species and dune habitats (Christy 2007, entire; ODFW 2016, p. 7). Widespread in the Bandon, Oregon, area, it poses a threat to sand dune phacelia populations in the northern region of its range (Kagan and Christy 1998, p. 14; Christy 2007, p. 17; Kalt 2008 p. 8; Rodenkirk 2019, p. 6; Brown 2020a, unpaginated). Gorse is also highly flammable and produces copious amounts of seed that can persist in the environment for 30 years or more (Goodwin 2018, p. 119).

There is broad consensus in the scientific literature and available data that invasive species presently pose a population-level threat to sand dune phacelia rangewide and will continue to do so into the future.

Sea Level Rise

The best available data do not indicate that sea level rise is currently influencing sand dune phacelia, and it is unknown how changes in sea levels may have affected the species in the past. However, because sea level rise is expected to increase in the future with climate change, and near-shore species could be affected by sea level rise and associated erosion and storm surge (Intergovernmental Panel on Climate Change (IPCC) 2014, p. 67), we consider the impact of projected sea level rise on sand dune phacelia in our analysis of future conditions.

Small Population Size

We acknowledge that, prior to habitat fragmentation, many of the populations, especially those south of the town of Bandon, Oregon, and near Crescent City, California, were most likely functionally continuous (Brown 2020b, pers. comm.). Our assessment of population abundance and habitat quality from recent surveys indicates that the number of populations of sand dune phacelia is reduced compared to documented historical occurrences. Many of the remaining populations are very small in size, and most populations are isolated from one another by large tracts of unsuitable habitat, making genetic exchange and dispersal among most populations unlikely without human intervention. No information exists on the minimum number of individuals required to support a sand dune phacelia population. However, a population size of about 25 individuals appears to be biologically relevant given the best available data. Specifically, the current abundance of nearly every extant population falls either below 25 (1 to 24 individuals) or well above 25 (100 or more individuals), with all populations with fewer than 25 individuals also undergoing population decline (Brown 2020a, unpaginated). Therefore, in the absence of any existing minimum viable population analysis to draw upon, we assume that at least 25 individuals are necessary for sand dune phacelia population viability. As such, low abundance was a factor in our analysis of current condition, and we considered small populations that currently support fewer than 25 individuals as unlikely to persist in our future condition analysis.

We also considered several other potential threats to sand dune phacelia, but because we found no evidence that these factors were having an influence at the magnitude and scope to be impacting sand dune phacelia populations, we did not include them in our analysis of current and future condition. For example, damage to sand dune phacelia due to off-highway vehicle (OHV) use has been documented but appears to be limited to individual plants at a small number of sites, most notably in California. Pedestrian or equestrian trampling may negatively affect individual plants but may also benefit habitat through light disturbance, and there is no evidence that this type of activity is affecting sand dune phacelia populations. Coastal development may have had historical impacts for the species but no longer appears influential, and based on land ownership of extant population sites, it seems unlikely to become influential in the future. Because sand dune phacelia is largely reliant upon pollination to successfully reproduce, pollinator decline is cited as a potential threat to

sand dune phacelia, but we found no evidence that pollinator decline was affecting sand phacelia populations. Additionally, we considered livestock grazing and overutilization but found no evidence of negative impacts to sand dune phacelia from these factors. Details on these potential threats can be found in the SSA report (Service 2021, chapter IV).

Summary of Threats

The primary threat currently acting upon sand dune phacelia populations is that of invasive species, which is expected to continue impacting the species into the future and was therefore included in our analysis of current and future condition. In addition, our current and future condition analysis included the consideration of sea level rise and small population size. Other stressors mentioned above may act on sand dune phacelia individuals, or have highly localized impacts, but do not rise to the level of impacting populations. However, we acknowledge that all stressors may exacerbate the effects of other ongoing threats.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

Sand dune phacelia is listed as threatened by the Oregon Department of Agriculture (ODA) and has a State listing status of 1, indicating that it is threatened or endangered throughout its range (Oregon Biodiversity Information Center 2019, p. 33). Native plant species that are listed as threatened or endangered in Oregon are protected on all non-Federal public lands (Oregon Revised Statutes (ORS), volume 15, title 46, chapter 564 at section 564.105 (ORS 564.105)). Any land action on Oregon public lands that results, or might result, in the collection or disturbance of a threatened or endangered species requires either a permit or a consultation with ODA staff. The State consultation process for public land managers requires a written evaluation of projects that impact listed plant species, and the ODA may recommend alternatives to avoid or minimize impacts to those species; a formal consultation or permit may be required. Prohibitions for listed plant species in the State of Oregon are provided by Oregon Administrative Rules (OAR), chapter 603, division 73, at section 603–073–0003, which states, ''Willful or negligent cutting, digging, trimming, picking, removing, mutilating, or in any manner injuring, or subsequently selling, transporting, or offering for sale any plant, flower, shrub, bush, fruit, or other vegetation growing on the right of way of any public highway within this state, within 500 feet of the center of any public highway, upon any public lands, or upon any privately owned lands is prohibited without the written permission of the owner or authorized agent of the owner.'' Additionally, ORS 564.105(3) calls for the State to establish programs for the protection and conservation of plant species that are threatened species or endangered species, and the State participates in conservation management actions as staffing and funding allows. In practice, however, resource limitations often prevent implementation of the full suite of affirmative management actions required to achieve the recovery of State-listed plants. As an example, the eradication or control of widespread invasive species such as gorse, one of the primary threats to sand dune phacelia, would pose enormous resource requirements that far exceed the State's capacity.

Oregon State Parks contain nearly 50 percent of all sand dune phacelia populations rangewide. Under the master-plan level designation for Oregon State parks, sites that contain listed species are automatically placed in a category of administrative conservation designation, which provides sand dune phacelia populations with protection from development. While no formal conservation plans to benefit sand dune phacelia are in place, invasive control actions at several parks improve sand dune habitat and may assist with restoring or maintaining suitable conditions for sand dune phacelia in the future (Bacheller 2020, pers. comm.). Oregon State Parks are not supported by tax dollars, as are other State agencies, but are supported by a combination of State Park user fees, recreational vehicle license fees, and a portion of State lottery revenues. As a result, Oregon State Park budgets can be subject to significant fluctuations in revenue, which can affect the agency's capacity to implement management actions for conservation, such as habitat restoration for rare plants on State Park lands.

In California, sand dune phacelia is designated as a California Rare Plant with a rank of 1B.1, meaning that it is rare, threatened, or endangered in California and elsewhere, and is seriously endangered in California. Impacts to species of this rank or their habitat must be analyzed during preparation of environmental documents relating to the California Environmental Quality Act (CEQA). Under CEQA, State public agencies (including State Parks) must provide measures to reduce or avoid adverse environmental impacts of proposed projects, including impacts to designated rare plants such as sand dune phacelia. Designation as a California Rare Plant generally reduces negative impacts to sand dune phacelia caused by development or other land use programs and actions but does not ameliorate the primary threat to the species, which is that of invasive species encroachment. All the plants constituting California Rare Plant Rank 1B meet the definitions of the California Endangered Species Act of the California Fish and Game Code and are eligible for State listing, but sand dune phacelia is not listed under the California Endangered Species Act.

The Federal Lands Policy and Management Act of 1976, as amended (FLPMA; 43 U.S.C. 1701 *et seq.*), governs the management of public lands administered by the Bureau of Land Management (BLM). Under FLPMA, the BLM administers a special status species policy that calls for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands. BLM special status species are any species listed or proposed for listing under the Endangered Species Act, or species designated as ''Bureau sensitive'' by the State Director(s). Sand dune phacelia is designated as a Bureau sensitive special status plant species and is thus the recipient of proactive conservation efforts on BLM lands as staffing and resources allow. On Federal lands in Oregon, the BLM regularly restores sand dune phacelia habitat through the removal or control of invasive species at Lost Lake, Floras

Lake, and Storm Ranch (Rodenkirk 2019; entire). The BLM is updating its management plan for the New River Area of Critical Environmental Concern, where the majority of sand dune phacelia populations on BLM land occurs (Wright 2020, pers. comm.). The new plan will include an emphasis on restoring native dune plant communities, including those with sand dune phacelia.

Voluntary Conservation Efforts

Rangewide, the largest sand dune phacelia population is located on private land at the Bandon Dunes Golf Resort, and while no formal conservation agreements or commitments exist, the private landowner has been actively maintaining sand dune phacelia habitat through ongoing removal of European beachgrass and gorse (Gunther 2012, unpaginated; Nice 2020, pers. comm.). In California, the South Lake Tolowa Restoration effort has removed European beachgrass from approximately 25 ac (10 ha) at Tolowa Dunes State Park and the Lake Earl Wildlife Area (Jacobs 2019, pp. 24–25). Conducted by California State Parks and a volunteer group called the Tolowa Dunes Stewards (Jacobs 2019, p. 10), restoration efforts initiated in 2010 increased the sand dune phacelia population from approximately 2,300 plants to 5,936 plants in 2017 (Brown 2020a, unpaginated). The South Lake Tolowa population is now the largest in California, and the second largest rangewide. Volunteers from the Tolowa Dunes Stewards have also restored 30 ac (12 ha) of habitat at the nearby East Dead Lake population via the removal of European beachgrass (Jerabek 2020, pers. comm.). However, in the absence of committed funding or agreements associated with these restoration efforts, they are almost entirely reliant on grant funding and volunteer efforts (Jerabek 2020, pers. comm.). The significant gains made for sand dune phacelia at these sites could quickly be lost without continuous maintenance efforts, given the aggressive nature of European beachgrass and other invasive species.

Rangewide, actions to control invasive species have demonstrated success in maintaining or increasing populations of sand dune phacelia (Gunther 2012, unpaginated; Meinke 2016, p. 25; Jacobs 2019, p. 10; Rodenkirk 2019; entire). Sand dune phacelia is a management-dependent species, as restoration of dune habitat through ongoing control of invasive species is essential to the continuing viability of sand dune phacelia rangewide. Therefore, we considered the contribution of habitat management actions, and in particular control of invasive species, in our analysis of future conditions.

In addition to habitat restoration activities, augmentation of sand dune phacelia populations using transplants has been carried out at several sites by the BLM in partnership with Oregon State University (Meinke 2016, entire) and the ODA (Brown 2017, entire). While transplant efforts appear to be beneficial initially, transplant mortality over time tends to be high as outplanted individuals succumb to environmental conditions (Meinke 2016, p. 18). Refinements to sand dune phacelia cultivation protocols are necessary to improve transplanting success (Meinke 2016, entire; Brown 2017, p. 5).

Attempts are also underway by the BLM to enhance or establish populations by directly seeding sand dune phacelia into suitable habitat (Wright 2020, pers. comm.). The recently introduced population at Storm Ranch is the largest population that occurs on Federal lands (Rodenkirk 2019, p. 28). Attempts to establish the Storm Ranch population began in 2012 with a seeding of 2 ac (0.8 ha) (Rodenkirk 2019, p. 28). Initial seedings were unsuccessful, but eventually a population was established, with 1,596 plants counted in 2018. The population drastically declined in 2019, with only 620 plants observed (Rodenkirk 2019, p. 29). Long-term monitoring will assess whether this seeded population can maintain viability.

Because of the high levels of plant mortality observed following transplantation efforts, and the significant uncertainty as to whether augmented or introduced populations may be capable of contributing to the maintenance or enhancement of sand dune phacelia populations over time, we did not include the seeded population at Storm Ranch, or outplanted individuals at other sites, in our analysis of current and future conditions. More information on this population, which is made up entirely of individuals that resulted from a seeding effort, can be found in the SSA report (Service 2021, p. 20, Table 3).

We determined that habitat restoration in the form of invasive species removal is the primary conservation effort influencing sand dune phacelia at the population level, and therefore carried it through our analysis of future condition. Augmentation and reintroduction are likely having a positive influence on sand dune phacelia, but we lack evidence that these conservation efforts are having population-level effects at this time.

Current Condition

Methodology

We delineated three representation units (Oregon–North, Oregon–South, and California) based on geographic breaks in the distribution of the species, because they could not otherwise be characterized by marked differences in genetic makeup, phenotypic variation, habitats, or ecological niches. No population viability assessment models exist to inform the categorization of population condition for the sand dune phacelia. Therefore, we used the best available science to score the overall current condition of each population qualitatively as high, moderate, or low, based upon our assessment of habitat condition, population abundance, and population trend over time. The average score was then used to rate the overall current condition of each population.

In 2017, sand dune phacelia populations were surveyed rangewide in Oregon and California by the ODA's Plant Conservation Program (Brown 2020a, unpaginated). The 2017 survey enumerated current population size, examined historical data to discern population trends, delineated the area occupied, briefly described the habitat, and identified stressors at each site. This effort provides the most current data available on nearly every extant population of sand dune phacelia.

We did not include sites consisting of *Phacelia* species with intermediate morphology (those that appear hybridized). These plants were determined to most likely be crosses between sand dune phacelia and *P. nemoralis* ssp. *oregonensis* (Brown 2020a, unpaginated; Meinke 1982, p. 260). In addition to different morphological attributes, the intermediate plants occur in rockier habitats as compared to areas occupied by sand dune phacelia, and rockier habitat is more indicative of *P. nemoralis.* While we suspect that these plants are most likely hybrids and not representatives of sand dune phacelia, no genetic information is available upon which to base this conclusion. Whether the presumed intergrades affect sand dune phacelia population viability is unknown. More information on intermediate populations, as well as on all populations, is included in the SSA report (Service 2021, entire).

Abundance categories were defined as ''low'' (100 or fewer plants), ''moderate'' (101–500 plants), and ''high'' (more than 500 plants). These rating categories were derived to reflect relative abundance

between populations only, or an index of population size, because there is no information available on the minimum number of individuals necessary to maintain a viable population.

Habitat condition was scored based on the most recently available observations at sand dune phacelia population sites. Because sand dune phacelia habitat quality is highly influenced by invasive species, the scores reflect the relative encroachment of invasive species at a given site as reported by the 2017 rangewide survey (Brown 2020a, unpaginated) and by the BLM. Quantitative data on invasive species in sand dune phacelia populations, such as percent cover of invasive species, are not available.

Population trend data were derived from the 2017 rangewide survey (Brown 2020a, unpaginated) and reflect documented abundance data across historical records. Trend data are necessarily coarse, as many populations were rarely or sporadically monitored prior to 2017. Increasing trends were rated as ''high,'' stable trends as ''moderate,'' and decreasing trends as ''low.''

The overall condition scores for all known extant populations of sand dune phacelia are presented in table 2.

Table 2—Current Condition of Extant Sand Dune Phacelia Populations

Representation Unit	Resiliency Unit (Population)	Parameters			Overall Current Condition
		Habitat Condition	Abundance	Population Trend	
Oregon - North	Pacific Dunes Golf Course	Moderate	Moderate	Unknown	Moderate
Oregon - North	Bandon Preserve & Golf Course	Moderate	High	High	High
Oregon - North	Bandon State Natural Area	Low	Low	Low	Low
Oregon - North	Lost Lake	High	Moderate	High	High
Oregon - North	Fourmile Creek	Low	Low	Low	Low
Oregon - North	Floras Lake	Low	Moderate	Low	Low
Oregon - North	Cape Blanco State Park	Low	Low	Low	Low
Oregon - North	Paradise Point	Moderate	Moderate	Unknown	Moderate
Oregon - North	Hubbard Creek	Low	Low	Low	Low
Oregon - South	Ophir Dunes	Low	Low	Low	Low
Oregon - South	Nesika Beach	Moderate	Low	Low	Low
Oregon - South	Pistol River Mouth	Moderate	Moderate	High	Moderate
Oregon - South	Pistol River State Park – South	Low	Low	Moderate	Low
Oregon - South	Lone Ranch Beach	Moderate	High	High	High
Oregon - South	Crissey Fields State Park	Low	Low	Low	Low
California	N. Kellogg Road	Low	Low	Low	Low
California	Pacific Shores Subdivision	Low	Moderate	Low	Low
California	South Lake Tolowa Restoration	High	High	High	High
California	Old Mill Road	Unknown	Low	Unknown	Low
California	NNW of Dead Lake	Low	Low	Low	Low
California	East Dead Lake	Moderate	Low	Low	Low
California	N End Del Norte Cty. Airport	Low	Low	Low	Low
California	NW End Del Norte Cty. Airport	Low	Low	Low	Low
California	Point St. George	Moderate	Low	Low	Low
California	Pebble Beach	Moderate	Moderate	Low	Moderate

Current Resiliency, Redundancy, and Representation

Resiliency refers to the ability of populations to withstand stochastic events, and we assessed the resiliency of each population using the current habitat condition, population abundance, and population trend. Of the 25 naturally occurring (we did not include the 1 entirely introduced population) extant sand dune phacelia populations we assessed, 4 are currently in high condition, 4 are in moderate condition, and 17 are in low condition (see table 2, above). Therefore, resiliency is low for most populations rangewide, with 68 percent of all populations rated with low overall condition (figure 1).

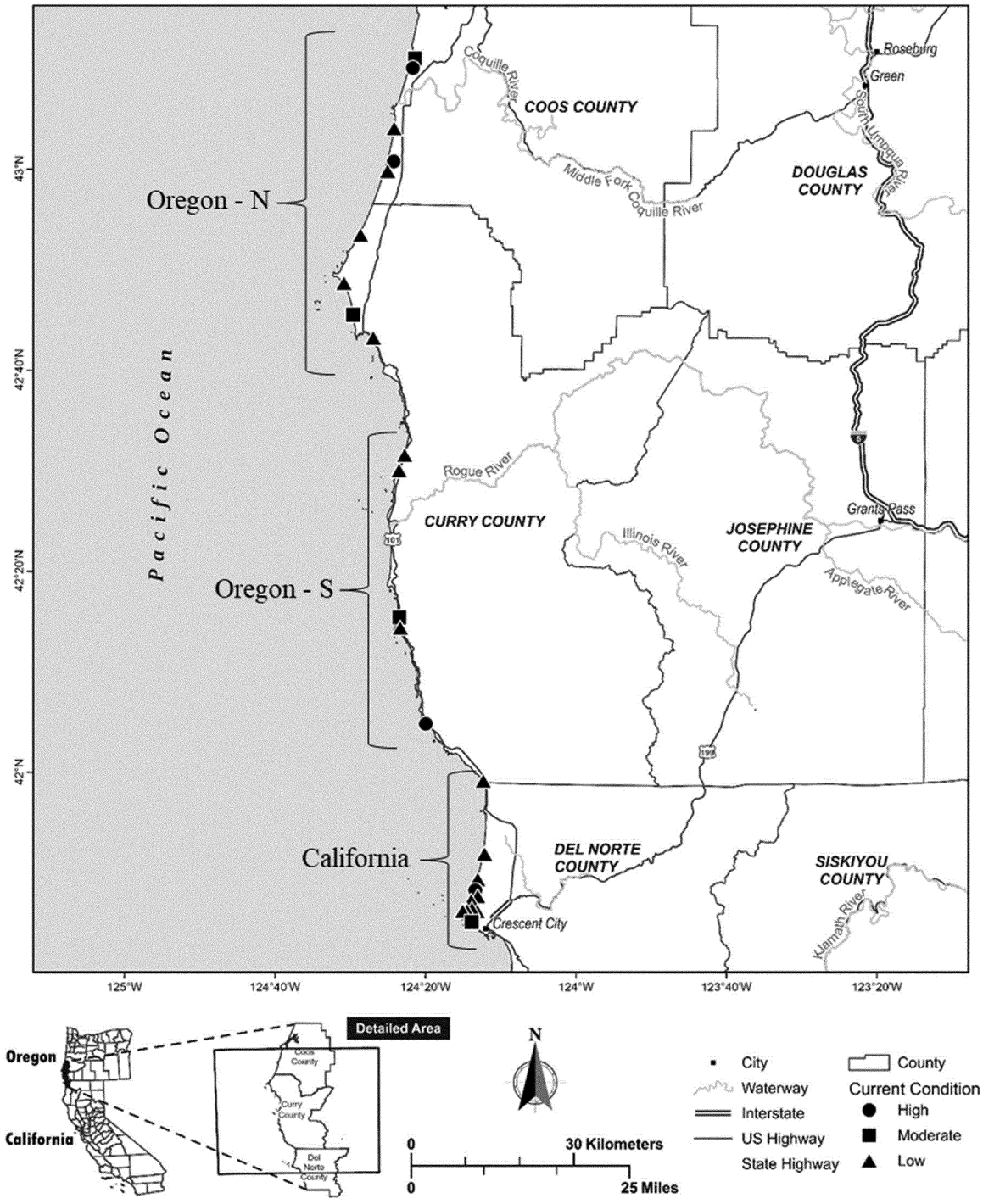


Figure 1. Current condition of extant sand dune phacelia populations across the three representation units (Oregon–North, Oregon–South, and California).

Redundancy is a species' ability to withstand catastrophic events and is determined by the number of its populations and their distribution across the landscape.

Currently, approximately 33,858 naturally occurring sand dune phacelia plants exist in 25 populations along roughly 100 miles (161 km) of coastline. Our analysis of current redundancy concludes that, although most extant populations exhibit low resiliency, it is unlikely that a single catastrophic event could eliminate all extant populations, which are well-distributed throughout all representation units, with the most robust populations located at either end of the range (see figure 1, above).

Representation refers to the ability of a species to adapt to change and is based upon considerations of phenotypic, genetic, and ecological diversity, as well as the species' ability to colonize new areas. There is little evidence of phenotypic variation among individuals of sand dune phacelia, and no data are available on potential genetic diversity. As a narrow endemic, sand dune phacelia is highly specialized and restricted in its ecological niche, with all occupied sites sharing similar features, and differences being largely related to the population's distance from the ocean and position in relation to the

dune (*e.g.,* foredune, backdune). As such, sand dune phacelia demonstrates little ecological diversity. However, the ability of a species to adapt is gauged not only by diversity among individuals, but also by its ability to colonize new areas. Currently, populations of sand dune phacelia are patchy and dispersed, often isolated by large tracts of intervening habitat made unsuitable by human development or invasive species. The lack of available and unoccupied suitable habitat leaves less opportunity for a species to exploit new resources outside of the area it currently occupies and to adapt to changing conditions. Further, the lack of connectivity between populations may result in reduced gene flow and genetic diversity, rendering the species less able to adapt to novel conditions.

The low level of phenotypic and ecological diversity demonstrated within this species, as well as restricted opportunity for colonization into new areas, indicates some limitations in representation for sand dune phacelia. However, sand dune phacelia continues to be represented by multiple populations distributed throughout the known historical range of the species, although the resiliency of most of these populations is low.

Future Condition

The intent of this analysis is to assess the viability of sand dune phacelia into the future under various plausible future scenarios. Further explanation on our methodology and assumptions for our future condition analysis can be found in our SSA report (Service 2021, chapter 6). We assessed the future condition of sand dune phacelia by considering how invasive species competition, the effects of climate change, small population size, and habitat management efforts may affect populations over time. We considered the impacts of both habitat management (invasive species removal) and climate change on the extent of invasive species cover expected to occur in the future at each site. Climate change is also projected to affect sea levels; thus, we assessed each site for potential effects of inundation due to sea level rise. In addition to the overall current condition categories of ''high,'' ''moderate,'' and ''low'' that were based on current habitat and demographic factors, we included for the future condition analysis the additional categories of ''very high,'' ''very low,'' and ''extirpated'' for populations where the overall condition was already high but projected to improve, was already low but projected to deteriorate further, or where the population (with fewer than 25 individuals) was expected to become extirpated, respectively.

Future Timeframe

We considered a timeframe for this analysis based upon the extent into the future for which we could reasonably forecast the impact of the threats on the species and the species' response to those threats, given the data and models available to us. We determined that the period of time from the present to about mid-century to be the timeframe over which we could most reliably project the future condition of the sand dune phacelia.

Climate model projections are fairly aligned until about mid-century when they start to diverge more, as this is the timeframe during which our near-future carbon emissions begin to manifest in projections of future climate. Although all projections into the future show global temperature and sea level rise increasing, our uncertainty in the magnitude of changes expected and the impacts of these changes on sand dune phacelia becomes much greater at this point. While we can be fairly confident in projecting drought and sea level rise out past mid-century, we found that these threats were not likely to have population-level impacts or drive sand dune phacelia viability into the future. Instead, we found that the primary threat to sand dune phacelia is habitat loss due to invasive species, and while the proliferation of invasive species will likely be influenced by climate change into the future, the impact of climate change on this threat is much less predictable. Most of the literature indicates that climate change will exacerbate the problem of invasive species in general. However, the extent to which this will occur with European beach grass and gorse (the invasive species most prevalent in sand dune phacelia habitat), and to what extent habitat management efforts will mitigate the impacts of invasive species to sand dune phacelia, are less clear into the future especially the farther out we try to predict. As such, we determined that we could confidently project the population-level threats, including that of invasive species as influenced by climate change, and the species' response to those threats out to mid-century, or approximately 2060.

Climate Change

Global climate models project changes in global temperature and other associated climatic changes based on potential future scenarios of greenhouse gas concentrations in the atmosphere (*i.e.,* representative concentration pathways, or RCPs). RCP 4.5 assumes major near-future cuts to carbon dioxide emissions, and RCP 8.5 assumes that current emissions practices continue with no significant change (Terando et al. 2020, p. 10). Thus, these RCPs represent conditions in the upper and lower ends of the range of what can reasonably be expected for the future effects of climate change (Terando et al. 2020, p. 17).

Warming temperatures have already been documented and are expected to continue in the Pacific Northwest, although changes will be somewhat muted in coastal areas (Mote et al. 2019, summary p. 1). There have been no clear discernible trends in annual precipitation, although there will likely be modest increases in the winter and decreases of similar scale in the summer (Mote et al. 2019, summary p. 1). Warming summer temperatures paired with decreased summer precipitation may lead to increased drought risk, which has the potential to cause stress, desiccation, and even mortality in plant communities. Although increased temperatures and decreased precipitation during the summer growing season are likely to have negative effects on sand dune phacelia, whether these changes will result in population-level impacts in the future timeframe under consideration is unclear given the available data. Therefore, we were unable to analyze the impacts of drought in our future scenarios.

Sea level rise projections in 1-foot increments were available at three locations that span the entire range of sand dune phacelia (Coos Bay and Port Orford in Oregon, and Crescent City in California). One foot (0.3 meter) of sea level rise is projected to occur under RCP 8.5 by 2060 in Oregon and by 2070 in northern California but is not projected to occur within this timeframe under RCP 4.5 (Climate Central 2020, unpaginated). According to the sea level rise modeling tool we used (National Oceanographic and Atmospheric Administration 2020, unpaginated), this amount of sea level rise under RCP 8.5 is not projected to inundate the areas currently occupied by sand dune phacelia. We also note that projections of two feet (0.6 meters) of sea level rise are not expected until 2080 at the earliest and were very similar to one-foot (0.3 meter) projections in terms of area inundated at sand dune phacelia sites; only a few sand dune phacelia populations would, to a very minor degree, be impacted by inundation caused by two feet of sea level rise (Service 2021, appendix 2). Further details of the sea level rise analysis we conducted, including potential indirect

effects such as erosion and storm surge that we were unable to project, are available in the SSA report (Service 2021, chapter 6, appendix 2).

Invasive Species

As noted earlier, invasive plant species, in particular European beachgrass and gorse, unequivocally represent the primary driver of the sand dune phacelia's status presently and into the future. Although some uncertainty remains as to how climate change will impact biological invasions into the future, it is widely agreed that changing climate, especially temperature and precipitation regimes, will exacerbate the invasions of many nonnative species under future conditions (Gervais et al. 2020, p. 1).

Although relatively few, some studies have demonstrated the impacts of climate change on invasive species by modeling the abundance, distribution, spread, and impact of invasive species in the Pacific Northwest relative to climate model projections (Gervais et al. 2020, p. 1). Further, there is evidence that climate-induced expansions of invasive species are already underway in this region (Gervais et al. 2020, p. 1). The best available information at this time does not allow us to quantify the magnitude of these expansions, nor does it allow us to predict how the population dynamics of sand dune phacelia at occupied sites may be affected. However, we expect that the pressure currently exerted upon sand dune phacelia populations due to encroachment by invasive plant species is likely to increase into the future in response to climate change. We expect the negative impacts to sand dune phacelia from climate-related invasive species expansion to be most evident under the higher emissions scenario (RCP 8.5).

Small Population Size

We considered populations with fewer than 25 individuals likely to become extirpated in the future. While small population size does not appear to be a threat at the species level because there are multiple adequately sized populations found throughout the range of the species, very small populations are at elevated risk for local extirpation, and thus small population size is a threat at the population level. None of the sites with very small populations currently have habitat management practices to remove invasive species, and we did not assume new efforts would be initiated but acknowledge that extirpation of very small populations could be prevented with management intervention.

Habitat Management

As previously described, the removal of invasive species has been shown to be the most effective strategy for maintaining and increasing populations of sand dune phacelia. Because there are no management plans in place at any of the population sites that would ensure the continuation of or initiate new habitat management practices, and funding for these practices is tenuous, we assumed that either habitat management currently in place would continue or cease, but that management efforts would not increase. We also assumed that populations with current management practices in place would improve in condition into the future with continued management, and those without management currently in place would decline in condition into the future.

Future Scenarios

We considered two plausible future scenarios in our analysis of future viability of the sand dune phacelia. Scenario 1 assumes that current habitat management actions to control invasive species will continue to occur and will continue to benefit sand dune phacelia into the future. Thus, the condition of populations of sand dune phacelia at sites that are currently receiving habitat management will continue to improve into the future. Conversely, under this scenario we assume that if no actions to control invasive species are currently being implemented in or adjacent to sand dune phacelia populations, no new efforts are likely to be initiated, and habitat conditions will subsequently worsen over time. Scenario 1 also assumes that RCP 4.5 is in effect, with associated effects to sea level rise and a moderate increase in invasive species expansion. Scenario 2 assumes that any habitat management actions that are presently occurring will be discontinued over time, and therefore no habitat management actions to control invasive species are in effect in the future. Scenario 2 also assumes that RCP 8.5 is in effect, with the associated effects to sea level rise and a greater increase in invasive species expansion. Therefore, these two scenarios represent our best understanding of the most optimistic and the least optimistic of plausible futures we can expect for sand dune phacelia.

Future Resiliency, Redundancy, and Representation

Rangewide, we conclude that under Scenario 1, nearly half (12 of 25) of all sand dune phacelia populations would become extirpated by 2060, and many of the remaining populations (7 of 13) would deteriorate to low or very low condition. However, the condition of those populations that currently benefit from the active control of invasive species would increase over time due to improved habitat conditions, such that five populations would be in high or very high condition under Scenario 1. Future population resiliency fares worse under Scenario 2, with well over half of all populations (17 of 25, or 68 percent) becoming extirpated, and all remaining populations projected to be in low or very low condition (see table 3, below). Thus, under either future scenario we considered, many populations will become extirpated, and future resiliency will be low among most remaining populations.

Table 3—Future Condition of Extant Sand Dune Phacelia Populations

Representation Unit	Population	Current Condition	Scenario 1	Scenario 2
Oregon - North	Pacific Dunes Golf Course	Moderate	High	Very Low
Oregon - North	Bandon Preserve & Golf Course	High	Very High	Low
Oregon - North	Bandon State Natural Area	Low	Extirpated	Extirpated
Oregon - North	Lost Lake	High	Very High	Low
Oregon - North	Fourmile Creek	Low	Extirpated	Extirpated
Oregon - North	Floras Lake	Low	Moderate	Extirpated
Oregon - North	Cape Blanco State Park	Low	Very Low	Extirpated
Oregon - North	Paradise Point	Moderate	Low	Very Low
Oregon - North	Hubbard Creek	Low	Extirpated	Extirpated
Oregon - South	Ophir Dunes	Low	Extirpated	Extirpated
Oregon - South	Nesika Beach	Low	Extirpated	Extirpated
Oregon - South	Pistol River Mouth	Moderate	Low	Very Low
Oregon - South	Pistol River State Park – South	Low	Very Low	Extirpated
Oregon - South	Lone Ranch Beach	High	Very High	Low
Oregon - South	Crissey Fields State Park	Low	Extirpated	Extirpated
California	N. Kellogg Road	Low	Extirpated	Extirpated
California	Pacific Shores Subdivision	Low	Very Low	Extirpated
California	South Lake Tolowa Restoration	High	Very High	Low
California	Old Mill Road	Low	Extirpated	Extirpated
California	NNW of Dead Lake	Low	Extirpated	Extirpated
California	East Dead Lake	Low	Extirpated	Extirpated
California	N End Del Norte Cty. Airport	Low	Extirpated	Extirpated
California	NW End Del Norte Cty. Airport	Low	Extirpated	Extirpated
California	Point St. George	Low	Very Low	Extirpated
California	Pebble Beach	Moderate	Low	Very Low

Future redundancy of the sand dune phacelia declines under both future scenarios we considered. Under Scenario 1, only 13 of the 25 extant populations would exist rangewide by 2060, with about half of those in low or very low condition. However, five populations would remain in high or very high condition, with at least one population considered in very high condition in each representation unit. In the event of a catastrophe in a part of its range, sand dune phacelia would likely continue to exist in other parts of its range, albeit in low numbers and condition. Under Scenario 2, only eight populations are estimated to remain extant in 2060 and would be evenly split between low and very low condition. Due to the greatly reduced number of remaining populations (mostly with low resiliency) under either future scenario, sand dune phacelia redundancy will be low, rendering the species vulnerable to catastrophic events within the future timeframe we considered.

Representation is not expected to change significantly under either future scenario we considered. All representation units will retain populations, and each will have at least one population in very high condition under Scenario 1. However, only 13 populations are projected to exist rangewide, with over half (54 percent) being in very low or low condition. Under Scenario 2, all populations are in very low or low condition, with very few populations existing in any of the representation units. Fewer populations in the future would provide less opportunity for diversity among individuals, with fewer individuals available to contribute to the adaptive capacity of the species. Isolation is also expected to increase in the future with the expected reduction in size and number of populations on the landscape, further decreasing the likelihood of genetic exchange. These factors may result in a modest reduction in representation into the future, but overall, populations (though fewer) will still be distributed across the range of the species providing adequate representation.

Overall, we expect the viability of the species to decline by varying degrees under the future scenarios considered. Persistence of the two populations that contain 89 percent of known individuals, even under the more favorable future scenario considered, appears to depend upon continued removal of introduced, invasive species. By mid-century (roughly 2060), we expect the sand dune phacelia will still occur on the landscape, but likely with

a significantly reduced number of sufficiently resilient populations that are even more sparsely distributed across the historical range of the species.

Determination of Sand Dune Phacelia's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an ''endangered species'' or a ''threatened species.'' The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an ''endangered species'' or a ''threatened species'' because of any of the following 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.

Status Throughout All of Its Range

We carefully assessed the best scientific and commercial information available regarding the past, present, and future stressors (and their cumulative effect) to the sand dune phacelia. The potential stressors we considered were invasive species encroachment and competition (Factors A and E), recreational impacts from OHV use and trampling (Factor A), coastal development (Factor A), livestock grazing (Factor A), climate change impacts including sea level rise and drought (Factor E), small population size (Factor E), and pollinator decline (Factor E). We also evaluated existing regulations and voluntary conservation efforts (Factor D). There is no evidence that overutilization (Factor B) or disease and predation (Factor C) are impacting the sand dune phacelia. We evaluated each potential stressor to determine which stressors were likely to be drivers of the species' current and future condition, and found that invasive species, climate change, and small population size are the population-level threats to the species.

There are 25 naturally occurring, extant populations of the sand dune phacelia. Nearly 70 percent (17) of these populations are currently in low condition according to our assessment, and nearly half (12) of the populations have fewer than 25 individuals. However, extant populations are distributed across the historical range of the species, and there remains at least one highly resilient population and one moderately resilient population in each of the three representative areas (in the northern, middle, and southern regions of the range). Populations that are currently in low condition, many of which have fewer than 25 individuals, are at risk of extirpation without management intervention. Many of these populations, especially those with very low abundance, may never be likely to contribute meaningfully to the species' viability. However, even without the small (fewer than 25 individuals) populations on the landscape, the species would still maintain 13 populations across the range, with 8 of those populations being in moderate or high condition and evenly distributed across all 3 representation units. The distribution and maintenance of sufficiently resilient populations, albeit few of them, across the historical range of the species indicates an adequate degree of redundancy, making it unlikely that a single catastrophic event would lead to the extirpation of all extant populations.

While we have little evidence of diversity among members of the species, the sand dune phacelia is a relatively localized endemic inhabiting a narrow ecological niche, so broad diversity is not necessarily expected. Populations of the sand dune phacelia remain distributed across the three representation units and throughout the species' known historical range, and therefore the species is currently represented across the breadth of any ecological diversity that exists within its range.

We know that the most influential threat to the sand dune phacelia, encroachment by invasive species (Factors A and E), can be successfully mitigated with active habitat management. Effective habitat management is currently ongoing at several population sites, including at the largest population strongholds at the northern and southern extents of the species' range (Bandon Preserve and Golf Course in Oregon and Tolowa Dunes in California). It is also possible that if management efforts continue or increase, they could promote the increase and expansion of populations into the future.

Because of the presence of multiple populations in moderate to high condition (or with adequate resiliency) distributed across all regions of the species' historical range (redundancy) and across the breadth of ecological conditions inhabited by the species (representation), as well as the success of current conservation efforts to mitigate the primary threat (invasive species) at population strongholds, we determined that the sand dune phacelia is not currently in danger of extinction throughout its range.

Upon determining that the sand dune phacelia is not at risk of extinction now, we consider whether it is likely to become endangered in the foreseeable future. According to our assessment of plausible future scenarios, we conclude that the species is likely to become endangered within the foreseeable future throughout all of its range through decreased resiliency, redundancy, and representation. For the purposes of this determination, the foreseeable future is considered out to approximately 2060, based on the timeframe for which we could most reliably project the population-level threats to sand dune phacelia and the species' response to those threats. The primary threat to sand dune phacelia is that of invasive species, which will likely be influenced in the future by both climate change (which exacerbates the threat) and by habitat management efforts (which mitigate the threat), and the influence of these factors on the impact of the primary threat to sand dune phacelia populations becomes progressively more difficult to predict the farther out into the future we project. As such, we determined that we could confidently project the population-level threats, including that of invasive species as influenced by climate change, and the species' response to those threats out to approximately 2060.

As previously noted, the primary driver of the sand dune phacelia's status is habitat loss due to encroachment and competition by invasive species (Factors A and E). This species is considered management-dependent, relying on active and continuous removal of invasive species such as European beachgrass and gorse to maintain habitat conditions to support the sand dune phacelia. Invasive species removal, especially that which is effective and consistent enough to maintain sand dune phacelia populations over time, is costly and labor-intensive, and requires a significant commitment of resources. Currently, while invasive species removal efforts are responsible for maintaining the few (8 of 25) sand dune phacelia populations that are in moderate to high condition, no formal

commitments or agreements are in place to continue these efforts, and many of these efforts are dependent upon the will and resources of volunteer groups or private landowners. The remaining strongholds of sand dune phacelia would likely decline quickly in the absence of effective habitat management efforts that are currently ongoing. Specifically, in the future scenario we considered that includes the cessation of all management efforts into the future, our analysis projects the extirpation of most (17) populations in the future, with those remaining (8) declining to low or very low condition.

Climate change (Factor E) may elevate the risk of drought, lead to increased erosion caused by sea level rise and the increased frequency and magnitude of storm surge, or potentially result in other negative influences to the sand dune phacelia, but we were unable to reliably project how these influences would impact the species in our future analysis. Climate change is expected to exacerbate the threat of invasive species into the future, regardless of which emissions scenarios we consider. Given the severity of the threat of invasive species and the tenuous nature of habitat management into the future, the synergistic effects of climate change and invasive species on the sand dune phacelia could be significant regardless of the magnitude of climate change impacts on their own.

Small population size (Factor E) is a threat that affects nearly half of the extant sand dune phacelia populations. These 12 populations have fewer than 25 individuals and have no programs in place or conservation efforts ongoing to ameliorate the threat of invasive species, which is the primary cause of low sand dune phacelia abundance at these sites. Without the implementation of habitat management practices at these sites, we expect these very small populations to become extirpated in the future.

Regulatory mechanisms (Factor D) and voluntary conservation efforts by the States of Oregon and California, the BLM, volunteer groups, and private landowners provide benefit to the sand dune phacelia at the affected population sites, mostly through invasive species removal efforts and to some degree augmentation and reintroduction efforts. However, while these efforts have helped reduce the impacts of invasive species and small population size locally at certain populations, these influences remain prominent threats to the sand dune phacelia and continue to affect the species as a whole.

Due to the continuation of threats at increasing levels into the future, we anticipate a significant reduction in the distribution of the sand dune phacelia as the result of the extirpation of multiple populations. Even in the optimistic future scenario we considered, nearly half of the extant populations of sand dune phacelia would likely become extirpated, with only six populations remaining with moderate to high/very high resiliency. The less optimistic future projection would result in most populations becoming extirpated, and any remaining populations would be in low or very low condition. These types of declines illustrate a loss of resiliency among most populations, as well as a significant reduction in redundancy and representation, with fewer populations on the landscape to withstand catastrophic events and maintain adaptive capacity. Remaining populations in either future scenario will have lower resiliency, leading to lower overall redundancy and representation. Even in the optimistic future scenario, the species will have low viability and is, therefore, at risk of becoming endangered within the foreseeable future.

Thus, after assessing the best available information, we conclude that the sand dune phacelia is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F.Supp.3d 69 (D.D.C. 2020) (*Everson*), vacated the aspect of 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'' (Final Policy; 79 FR 37578, July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for sand dune phacelia, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

We evaluated the range of the sand dune phacelia to determine if the species is in danger of extinction now in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species. For sand dune phacelia, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now in that portion. We examined the threats of invasive species and of climate change, including cumulative effects.

The threat of invasive species is equally pervasive throughout the range of sand dune phacelia, and sand dune phacelia's response to invasive species encroachment is consistent across its range. The type of invasive species may vary regionally (gorse, for example, is more prevalent in the northern extent of the range), but the threat of invasive species encroachment in general, and its effect on sand dune phacelia, are equal in severity throughout the range. Similarly, both the efficacy of mitigating the threat of invasive species through habitat restoration and the uncertainty related to funding availability to do so appear consistent throughout the species' range.

The effects of climate change appear to be similar across the range of sand dune phacelia. Increases in temperature and changes in seasonal precipitation that could increase the risk of drought in the future are expected to occur to a similar magnitude and with similar effect across the range of the species. Storm surge, which can lead to flooding and erosion at coastal sites, is also expected to increase with climate change, and we have no data to indicate that these impacts, and the species'

response to these impacts, would not be approximately equivalent across the range of sand dune phacelia. Sea level rise projections are also nearly identical across the coastal habitat occupied by sand dune phacelia. Specifically, RCP 8.5 indicates that the impacts of sea level rise are essentially equal across all sites: Within the foreseeable future all sites will experience a 1-foot (0.3-m) or less increase in sea level rise, which will not inundate any of the population sites. The synergistic effects of climate change and invasive species, with biological invasions being facilitated by climate change, are also expected to occur in approximately equal magnitude and effect throughout the range of the sand dune phacelia and likely represent the more influential effect of climate change on the species given that sea level rise is not projected to inundate any extant population sites.

The threat of small population size also appears to be distributed throughout the range, with low-abundance populations throughout the range and distributed across all three representation units. Further, there is no indication that sand dune phacelia's response to small population size differs across the range of the species.

Our viability analysis incorporated the impact to sand dune phacelia of these population-level threats individually, as well as the degree to which they collectively influenced risk to the species, and as such assesses cumulative effects of these threats to the species.

While there may be some variation in the source and intensity of each individual threat at each population location, we found no portion of the sand dune phacelia's range where the threats are impacting individuals differently from how they are affecting the species elsewhere in its range, such that the status of the species in that portion differs from any other portion of the species' range. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the sand dune phacelia meets the Act's definition of a threatened species. Therefore, we are listing the sand dune phacelia as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species 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. Section 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 consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''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. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/program/endangered-species*), or from our Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, 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.

Following publication of this final rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Oregon and California will be eligible for Federal funds to implement management actions that promote the protection or recovery of the sand dune phacelia. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for the sand dune phacelia. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is 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 ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or threatened 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 BLM.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a rule that is designed to address the sand dune phacelia's conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the sand dune phacelia. As discussed above under Summary of Biological Status and Threats, we have concluded that the sand dune phacelia is likely to become in danger of extinction within the foreseeable future primarily due to encroachment by invasive species, small population size, and the effects of climate change. The provisions of this 4(d) rule will promote conservation of the sand dune phacelia by encouraging management of the landscape in ways that meet the conservation needs of the sand dune phacelia. The provisions of this rule are one of many tools that we will use to promote the conservation of the sand dune phacelia.

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.

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, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of ''not likely to adversely affect'' continue to require the Service's written concurrence and actions that are ''likely to adversely affect'' a species require formal consultation and the formulation of a biological opinion.

Provisions of the Final 4(d) Rule

This 4(d) rule will provide for the conservation of the sand dune phacelia by prohibiting the following activities applicable to an endangered plant, except as otherwise authorized or permitted: import or export; certain acts related to removing, damaging, and destroying on areas under Federal jurisdiction or on any other area in knowing violation of any State law or regulation; delivery, receipt, carriage, transport, or shipment in interstate or foreign commerce in the course of commercial activity; and sale or offering for sale in interstate or foreign commerce.

As discussed above under Summary of Biological Status and Threats, encroachment by native and nonnative, invasive species (Factors A and E), small population size (Factor E), and climate change (Factor E) affect the status of the sand dune phacelia. Additionally, a range of activities have the potential to negatively affect

individual sand dune phacelia, including recreational impacts such as off-road vehicle use and inadvertent trampling through pedestrian or equestrian activities. To protect the species from these impacts, in addition to the protections that apply to Federal lands, the 4(d) rule prohibits a person from removing, cutting, digging up, or damaging or destroying the species on non-Federal lands in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. As most populations of the sand dune phacelia occur off Federal land, these protections in the 4(d) rule are key to its effectiveness. For example, any damage to the species on non-Federal land in violation of a State off-highway vehicle law is prohibited by the 4(d) rule, as is any damage to the species due to criminal trespass on non-Federal lands. Regulating these activities will help preserve the species' remaining populations, slow the rate of decline, and decrease synergistic, negative effects from other stressors. The 4(d) rule will help in the efforts to recover sand dune phacelia by limiting specific actions that damage individual populations.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. The regulations that govern permits for threatened plants state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species (50 CFR 17.72). Those regulations also state that the permit shall be governed by the provisions of that section unless a species-specific rule applicable to the plant is provided in sections 17.73 to 17.78. Therefore, permits for threatened plant species are governed by the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise. However, under our recent revisions to § 17.71, the prohibitions in § 17.71(a) do not apply to any plant listed as a threatened species after September 26, 2019. As a result, for threatened plant species listed after that date, any protections must be contained in a species-specific 4(d) rule. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in § 17.72, or to require that every species-specific 4(d) rule spell out any permitting provisions that apply to that species and species-specific 4(d) rule. To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of section 17.72 unless a species-specific 4(d) rule provides otherwise would likely avoid substantial duplication. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve sand dune phacelia that may result in otherwise prohibited activities without additional authorization.

The Service recognizes the beneficial and educational aspects of activities with seeds of cultivated plants, which generally enhance the propagation of the species and, therefore, would satisfy permit requirements under the Act. The Service intends to monitor the interstate and foreign commerce and import and export of these specimens in a manner that will not inhibit such activities, providing the activities do not represent a threat to the survival of the species in the wild. In this regard, seeds of cultivated specimens will not be subject to the prohibitions above, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container (*e.g.,* the seeds could be moved across State lines or between territories for purposes of seed banking or use for outplanting without additional regulations).

Nothing in this 4(d) rule changes 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 sand dune phacelia. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate.

III. Critical Habitat

Background

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. 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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

This critical habitat designation was proposed when the regulations defining ''habitat'' (85 FR 81411; December 16, 2020) and governing the 4(b)(2) exclusion process for the Service (85 FR 82376; December 18, 2020) were in place and in effect. However, those two regulations have been rescinded (87 FR 37757; June 24, 2022, and 87 FR 43433; July 21, 2022) and no longer apply to any designations of critical habitat. Therefore, for this final rule designating critical habitat for the sand dune phacelia, we apply the regulations at 424.19 and the 2016 Joint Policy on 4(b)(2) exclusions (81 FR 7226; February 11, 2016).

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are

necessary to bring an endangered or threatened species to the point at which the measures provided 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 also 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 Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must 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).

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 this final rule, we did not identify any unoccupied areas that may qualify as units of critical habitat.

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 from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the 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 those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting,

symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

The following features are essential to the conservation of sand dune phacelia:

Sandy Coastal Dune Habitat With Adequate Light Exposure, Water, and Growing Space

Sandy coastal dune habitat above the high tide line that provides a high light environment, room for growth, and adequate moisture is required to support sand dune phacelia populations. Sandy areas must have open (unvegetated) space within them to accommodate population expansion. The physical features of sunlight, space, and water are essential for seedling establishment and growth, and facilitate the development of large, mature plants that produce copious amounts of seed. While we lack information on specific quantities associated with this need (such as maximum percent canopy cover that the species can tolerate), it is clear that sandy habitats that provide the essential features of sunlight, space, and water for the sand dune phacelia tend to have lower cover of competitive invasive species, particularly European beachgrass and gorse.

Adequate Pollinator Community

A sufficient abundance of pollinators, particularly leafcutter bees (Family: Megachilidae), are required for genetic exchange among sand dune phacelia individuals. The sand dune phacelia appears to be largely incapable of significant self-pollination (Meinke 2016, p. 3), relying primarily on leafcutter bees (*Anthidium palliventre*) and bumblebees (*Bombus* spp.) for pollination. Ants (*Formica* spp.) and beetles (unidentified spp.) have also been observed in association with sand dune phacelia flowers, but it is unclear how effective they are at pollination (Rittenhouse 1995, p. 8).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the sand dune phacelia from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2021, entire, available on *https://www.regulations.gov* under Docket No. FWS–R1–ES–2021–0070). We have determined that the following physical or biological features are essential to the conservation of sand dune phacelia:

- Sandy coastal dune habitat above the high tide line that provides a high light environment, room for growth, and adequate moisture; and
- A sufficiently abundant pollinator community (which may include leafcutter bees and bumble bees) for pollination and reproduction.

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. In the case of the sand dune phacelia, these essential features include sandy dune habitat with high light exposure and adequate moisture and unvegetated space, as well as a sufficiently large and diverse pollinator community, and a minimum of 25 reproductively mature sand dune phacelia plants within dispersal distance of one another to sustain a population.

These features essential to sand dune phacelia conservation may require special management considerations or protection to reduce the threat of invasive species encroachment, and to withstand climate change effects such as drought and sea level rise. In addition, localized stressors related to recreational activity, such as off-road vehicle use and pedestrian or equestrian trampling, may also need to be mitigated by special management practices to maintain the sandy open dune habitat that sand dune phacelia populations require.

Management activities that could ameliorate these threats include, but are not limited to: (1) Habitat restoration activities in sand dune habitat that include the removal of invasive species such as nonnative European beachgrass and gorse, or native successional species such as shore pine; (2) efforts to restore a diverse and abundant pollinator community, such as through restricting land management practices that harm pollinator species, or through support of a diverse native nectar plant community; (3) access restrictions and enforcement for off-road vehicle use in areas occupied by the sand dune phacelia; and (4) recreational restrictions to prevent damage to sandy coastal dune habitat and the pollinator communities that support the species by pedestrians or equestrians.

These management activities will protect the physical or biological features essential for the conservation of the sand dune phacelia by providing native sandy dune habitat that allows for sand dune phacelia population growth and expansion, supporting the pollinator community that enables sand dune phacelia reproduction, protecting sand dune phacelia populations from trampling and crushing, and maintaining an adequate number of sand dune phacelia individuals necessary to sustain viable populations.

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 specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not designating any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. We determined that the areas currently occupied by populations of sand dune phacelia made up of at least 25 individuals, if recovered, will be sufficient to conserve the species. The extant populations with at least 25 individuals are distributed across the three representation units and across the historical range of the species and, therefore, also span any ecological diversity that may exist within the species' range. Therefore, if these populations were recovered to sufficient resiliency, they will provide adequate redundancy and representation for the species. Because currently occupied areas are sufficient to recover the

species, we conclude that currently unoccupied areas do not meet the definition of critical habitat because they are not essential to the conservation of the species. In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

Across the representation units, there are 25 naturally occurring sand dune phacelia populations consisting of a total of 94 polygons (patches of sand dune phacelia). We developed critical habitat units within each representation unit by joining patches of sand dune phacelia within each population to form discrete units; this was accomplished by joining patch vertices and creating minimum convex polygons. We considered patches to be part of the same population if they are within 0.30 miles (0.48 km) of each other in Oregon (as defined by the Oregon Natural Heritage Information Center) or 0.25 miles (0.4 km) of each other in California (or as otherwise defined by the California Natural Diversity Database) (CNDDB 2020, unpaginated).

A minimum of 25 reproductively mature plants are required for breeding purposes to maintain viability in a population. Extant sand dune phacelia populations are isolated from one another on the landscape, with no possibility of natural dispersal between populations. As such, each individual population relies on having an adequate number of its own members to sustain itself and avoid extirpation. Although there are no data related to the minimum number of individuals necessary to sustain the viability of a sand dune phacelia population, we estimate that at least 25 reproductively mature plants are needed for sufficient reproduction to allow the population to withstand stochastic events.

Because we consider populations comprising fewer than 25 plants as being in low condition and unlikely to contribute meaningfully to recovery, we designated critical habitat only around populations with equal to or greater than 25 individuals. This consideration resulted in the creation of 13 critical habitat units.

Some patches within the same population were separated by habitat that was unsuitable (*i.e.,* does not contain the essential physical or biological features). We avoided including unsuitable habitat within the critical habitat units by joining patches only if the intervening habitat contained at least one essential physical or biological feature. We further limited the inclusion of unsuitable habitat by removing areas from the unit that were clearly unsuitable (*e.g.,* forest, water bodies) to the maximum extent possible given the scale of mapping.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for sand dune phacelia. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not included in the designation as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied). Thirteen critical habitat units are designated based on the physical or biological features being present to support sand dune phacelia's life-history processes. All critical habitat units contain all of the identified physical or biological features and support multiple life-history processes necessary to support the sand dune phacelia's use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R1–ES–2021–0070, and on our internet site at *https://www.fws.gov/office/oregon-fish-and-wildlife.*

Final Critical Habitat Designation

We are designating 13 units as critical habitat for sand dune phacelia. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for sand dune phacelia. The 13 critical habitat units are: (1) North Bandon 1, (2) North Bandon 2, (3) Lost Lake, (4) Floras Lake, (5) Cape Blanco, (6) Paradise Point, (7) Pistol River North, (8) Pistol River South, (9) Lone Ranch, (10) Pacific Shores, (11) Tolowa Dunes, (12) Point St. George, and (13) Pebble Beach. All 13 critical habitat units are occupied by the species. Table 4 shows the critical habitat units and the approximate area, broken down by land ownership, for each unit.

TABLE 4—CRITICAL HABITAT UNITS FOR SAND DUNE PHACELIA

	Private (ac (ha))	Federal (ac (ha))	State (ac (ha))	County (ac (ha))	Total (ac (ha))
Oregon:					
North Bandon 1	0.6 (0.2)	0	0	0	0.6 (0.2)
North Bandon 2	54.4 (22)	0	6.9 (2.8)	0	61.3 (24.8)
Lost Lake	2.8 (1.1)	0.8 (0.3)	0.1 (0.04)	0	3.7 (1.5)
Floras Lake	0	5.8 (2.3)	0	0	5.8 (2.3)
Cape Blanco	0	0	2 (0.8)	0	2 (0.8)
Paradise Point	3.7 (1.5)	0	0	0	3.7 (1.5)
Pistol River North	0	0	3.2 (1.3)	0	3.2 (1.3)
Pistol River South	0	0	0.7 (0.3)	0	0.7 (0.3)
Lone Ranch	0	0	6.5 (2.6)	0	6.5 (2.6)
California:					
Pacific Shores	7.8 (3.2)	0	13.2 (5.3)	0	21 (8.5)
Tolowa Dunes	0	0	69.6 (28.2)	0	69.6 (28.2)
Pt. St. George	0.1 (0.04)	0	0	1.0 (0.4)	1.1 (0.4)

TABLE 4—CRITICAL HABITAT UNITS FOR SAND DUNE PHACELIA—Continued

	Private (ac (ha))	Federal (ac (ha))	State (ac (ha))	County (ac (ha))	Total (ac (ha))
Pebble Beach	0	0	0	1.6 (0.6)	1.6 (0.6)
Totals	69.4 (28.1)	6.6 (2.7)	102.2 (41.4)	2.6 (1.1)	180.8 (73.2)

Note: Area estimates reflect suitable habitat within critical habitat unit boundaries, with non-habitat (as identified by textual description) excluded. Area sizes may not sum due to rounding.

We present brief descriptions of all critical habitat units below. Note that all units of critical habitat described below meet the definition of critical habitat for the sand dune phacelia because all of the units are occupied by the sand dune phacelia, and all units contain all of the physical or biological features essential to the species.

Unit 1: North Bandon 1

Unit 1 consists of 0.6 ac (0.2 ha) in Coos County, Oregon. It is at the northernmost limit of the sand dune phacelia's range in Coos County and is located on the privately owned Bandon Dunes Golf Resort. Invasive species are an ongoing threat at this site, and therefore invasive species management may be required. A stated goal of the conservation-minded owner is to protect and enhance the sand dune phacelia at the site, and the population here has flourished due to the removal of heavy infestations of gorse (Gunther 2012, no pagination).

Unit 2: North Bandon 2

Unit 2 consists of 61.3 ac (24.8 ha) in Coos County, Oregon, and currently supports the largest population of the sand dune phacelia rangewide. The majority (54.4 ac (22 ha)) of the habitat at this site is on the privately owned Bandon Dunes Golf Resort. The population here is now the largest rangewide, with over 24,000 individuals (Brown 2020a, unpaginated). Invasive species are the primary threat, and therefore invasive species management may be required. Conservation and restoration implemented by the golf resort are largely responsible for the high condition of this population and its habitat. While there are no formal agreements in place to protect the sand dune phacelia at the resort, we have no evidence at this time that management efforts at this site will be discontinued. Part of the population (6.9 ac (2.8 ha)) is in State park ownership (Bullard's Beach) and implementation of invasive species control, particularly gorse, could result in an expanded sand dune phacelia population in the park.

Unit 3: Lost Lake

Unit 3 consists of 3.7 ac (1.5 ha) in Coos County, Oregon. The Lost Lake unit contains land within the Coos Bay New River Area of Critical Environmental Concern (ACEC) (0.8 ac (0.3 ha)) that is federally managed by the BLM, State-managed land (0.1 ac (0.04 ha)) within the Bandon State Natural Area (BSNA), and undeveloped private land (2.8 ac (1.1 ha)). Threats in Unit 3 include the persistent threat of invasive species. As such, invasive species management may be required to maintain it. The sand dune phacelia has greatly benefited from the BLM's efforts to remove invasive species in the Lost Lake area, and it is likely that there is room for expansion of this population provided that annual, or nearly annual, vegetation management continues. Augmentation efforts, including transplanting and seeding, have also occurred at Lost Lake on the ACEC.

Unit 4: Floras Lake

Unit 4 consists of 5.8 ac (2.3 ha) in Curry County, Oregon. Like Unit 3, Floras Lake is a part of the BLM's New River ACEC. The BLM monitors and regularly manages the habitat to maintain the open sand conditions that the sand dune phacelia requires, contributing to the fact that the population of sand dune phacelia at Floras Lake is the largest naturally occurring (*i.e.,* not introduced) population on Federal land. The BLM has augmented populations in this unit with transplants. In addition to the threat of invasive species, other stressors include trampling by hikers and wintertime flooding from Floras Lake. Dependent upon the intensity, these activities could also be beneficial as they mobilize sand and clear habitat of invasive species. As such, mitigating the impacts of pedestrian use, flooding, and invasive species may be required. Sea level rise may pose an additional threat. As determined by our future condition analysis, a 1-foot rise in sea level by 2060 would barely reach the seaward boundary of the unit; however, other accompanying effects of climate change, like increased storm surge, may also affect sand dune phacelia habitat in this unit.

Unit 5: Cape Blanco

Unit 5 consists of 2 ac (0.8 ha) in Curry County, Oregon. The unit is State-managed by the Oregon Parks and Recreation Department (OPRD) and consists of sandy bluffs above the high tide line. A naturally occurring population was augmented with transplants in 2018. Invasive species are a threat at this site, and therefore invasive species management may be required.

Unit 6: Paradise Point

Unit 6 consists of 3.7 ac (1.5 ha) in Curry County, Oregon. It is separated from Unit 5 by the Elk River and bounded to the east by private ranchlands. Unit 6 is made up of undeveloped private land, limited to sandy bluffs between the high tide line and adjacent pastureland. Although it is privately owned, the State (OPRD) has jurisdiction over the land in Unit 6 as well as some adjacent State-owned land. In addition to the threat of invasive species, other factors influencing the population at this site include erosion and storm surge associated with sea level rise. OHV use is permitted here, but most of it occurs outside of the area occupied by sand dune phacelia. As such, invasive species management may be required, and other management associated with mitigating the impacts of OHV use, erosion, and flooding may also be beneficial.

Unit 7: Pistol River North

Unit 7 consists of 3.2 ac (1.3 ha) in Curry County, Oregon. The land on Unit 7 lies southwest of the Pistol River and is State-managed by OPRD (Pistol River State Park) and the Oregon Department of Transportation. As with all other units, invasive species are a threat, and therefore invasive species management may be required. Another stressor affecting Unit 7 is erosion, as the mouth of the Pistol River changes location annually, scouring the dunes and carrying sand out to sea.

Unit 8: Pistol River South

Unit 8 consists of 0.7 ac (0.3 ha) in Curry County, Oregon. The land is south of Unit 7 and also located on Pistol River State Park. Invasive species are a threat here, and the site is surrounded by European beachgrass and encroaching shore pine. As such, invasive species management may be required.

Unit 9: Lone Ranch

Unit 9 consists of 6.5 ac (2.6 ha) in Curry County, Oregon, and currently supports the third largest population of sand dune phacelia throughout its range. It is composed entirely of land managed by the State (OPRD; Boardman State Park). There is a threat to the population at this site posed by a number of invasive species. As such, invasive species management may be required. Existing control of weedy species for recreational trail access may be maintaining existing suitable habitat.

Unit 10: Pacific Shores

Unit 10 consists of 21 ac (8.5 ha) in Del Norte County, California. State lands make up 13.2 ac (5.3 ha) of this unit, with the remaining 7.8 ac (3.2 ha) currently in private ownership. This area represents an abandoned real estate venture, where lands were subdivided into 0.5-ac (0.20-ha) lots in the 1960s for residential development. More than 1,500 lots were sold, and approximately 27 miles of road and electric transmission line were constructed. However, the area remains undeveloped due to permitting issues, and the empty lots are now being acquired for conservation by a coalition of entities for inclusion into the State's Lake Earl Wildlife Area. Approximately 430 lots remain in private ownership. Invasive species are a threat here, and therefore invasive species management may be required. In addition, because much of the sand dune phacelia population in the unit occurs adjacent to roadways or other readily accessible areas, the unit is considered heavily impacted by human activities that include OHV use. Special management considerations to mitigate the impact to sand dune phacelia habitat from these activities may be required.

Unit 11: Tolowa Dunes

Unit 11 consists of 69.6 ac (28.2 ha) in Del Norte County, California, and currently supports the second largest population of the sand dune phacelia rangewide. The unit is State-managed in part by California State Parks (on Tolowa Dunes State Park) and the California Department of Fish and Wildlife (on Lake Earl Wildlife Area). Invasive species including European beachgrass and annual invasive grasses such as ripgut brome (*Bromus diandrus*) are a threat here, and OHV use also impacts this site. As such, managing OHV use and invasive species may be required. The relatively high abundance of sand dune phacelia in Unit 11 is attributed to a concerted restoration program that has removed invasive species, particularly European beachgrass. These efforts have made this population the stronghold for the species in California and an important contributor to sand dune phacelia resiliency and redundancy rangewide. However, much of the restoration at this site has been conducted by volunteers, and funding to continue maintaining restored habitat is uncertain.

Unit 12: Point Saint George

Unit 12 consists of 1.1 ac (0.4 ha) in Del Norte County, California. The vast majority of the land (1 ac (0.4 ha)) is county-managed by Del Norte County Parks, and the other 0.1 ac (0.04 ha) is privately owned. Invasive species, particularly annual grasses, are prolific in this unit, and therefore invasive species management may be required. However, a large proportion of the sand dune phacelia population at this site occurs near a hiking trail where disturbance has kept the area relatively free of invasive species.

Unit 13: Pebble Beach

Unit 13 consists of 1.6 ac (0.6 ha) in Del Norte County, California. It is managed by Del Norte County. Invasive species pose a substantial threat at this site, primarily Hottentot fig or iceplant (*Carpobrotus edulis*), and therefore invasive species management may be required. Additionally, much of this unit is located within a road right-of-way, and therefore road development or maintenance activities could impact sand dune phacelia individuals, some of which are quite large and productive. As such, special management to mitigate the impact to sand dune phacelia habitat from these activities may be required.

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.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed 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, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented 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 Service 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 set forth requirements for Federal agencies to reinitiate consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action. The reinitiation requirement applies only to actions that remain subject to some discretionary Federal involvement or control. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (*e.g.,* land management plans issued by the Bureau of Land Management in certain circumstances).

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed 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 violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would destroy, alter, or convert sand dune habitat. Such activities could include, but are not limited to, the construction of new roads or utility lines, dune breaching or breaching of water bodies for flood control, bridge work, and the use of heavy equipment for regular maintenance activities (such as roadway maintenance). These activities could eliminate or reduce the sandy dune habitat necessary for sand dune phacelia growth and reproduction.

(2) Actions that would inhibit or reduce native plant communities and the pollinator communities they support. Such activities could include, but are not limited to, herbicide or insecticide application. These activities could limit the ability of sand dune phacelia to reproduce by inhibiting pollinator communities.

(3) Actions that would introduce or promote the proliferation of invasive or successional species plant species into sand dune habitat. Such activities could include, but are not limited to, vegetation management that encourages growth of competing native and nonnative species. These activities could increase competition for space for growth, sunlight, and nutrients between sand dune phacelia and nonnative or successional competitors such as European beachgrass and shore pine, respectively.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), 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. No DoD lands with a completed INRMP are within the final 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 based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016)—both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

The Secretary may exclude any particular area if she determines that the benefits of such exclusion outweigh the benefits of including 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 the determination to exclude a particular area, 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.

Exclusions Based on 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. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our economic analysis of the critical habitat designation and related factors (Industrial Economics, Inc. 2021). The analysis, dated May 21, 2021, was made available for public review from March 22, 2022, through May 23, 2022 (Industrial Economics, 2021). The economic analysis addressed probable economic impacts of critical habitat designation for sand dune phacelia. Following the close of the comment period, we reviewed and evaluated all

information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the sand dune phacelia is summarized below and available in the screening analysis for the sand dune phacelia (Industrial Economics, Inc. 2021), available at *https://www.regulations.gov.*

In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for the sand dune phacelia, first we identified, in the IEM dated April 14, 2021, probable incremental economic impacts associated with the following categories of activities: (1) Federal (Bureau of Land Management) lands management for recreational use, western snowy plover management, dune breaching, salt spray meadow restoration, and management plan updates; (2) bridge work; (3) breaching associated with water bodies for flood control purposes; and (4) road development and maintenance. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the sand dune phacelia is present, Federal agencies will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. Our consultation would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would 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 sand dune phacelia's critical habitat. Because the designation of critical habitat for the sand dune phacelia was 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 likely adversely affect the essential physical or biological features of critical habitat are also likely to adversely affect the species itself. 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 designation of critical habitat.

We are designating approximately 180.8 ac (73.2 ha) of critical habitat for the sand dune phacelia in Coos and Curry Counties, Oregon, and in Del Norte County, California. The designation is divided into 13 units, and all units are occupied by the sand dune phacelia. We are not designating any units of unoccupied habitat. Approximately 57 percent of the critical habitat designation is located on State lands, 38 percent is on privately owned lands, 4 percent is on Federal lands, and 1 percent is on County lands. Any actions that may affect critical habitat would likely also affect the species or its habitat, and therefore 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 sand dune phacelia. Therefore, only administrative costs are expected with the critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

The probable incremental economic impacts of the sand dune phacelia critical habitat designation are expected to be limited to additional administrative effort resulting from an estimated 3 programmatic consultations, 10 formal consultations, 3 informal consultations, and 7 technical assistance efforts related to section 7 consultation over the next 10 years. Because all the critical habitat units are occupied by the species, incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely. The incremental costs for each programmatic, formal, informal, and technical assistance effort are estimated to be $9,800, $5,300, $2,600, and $420, respectively. These estimates assume that consultation actions will occur even in the absence of critical habitat due to the presence of the sand dune phacelia, and the amount of administrative effort needed to address the critical habitat during this process is relatively minor. Applying these unit cost estimates, this analysis estimates that considering adverse modification of sand dune phacelia critical habitat during section 7 consultation will result in incremental costs of no more than $9,300 (2021 dollars) per year, which is well below the annual administrative burden threshold of $200 million of incremental administrative impacts in a single year.

As discussed above, we considered the economic impacts of the critical habitat designation, and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the sand dune phacelia based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

In preparing this rule, we determined that there are no lands within the designated critical habitat for the sand dune phacelia that are owned or managed by the DoD or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. We did not receive any additional information during the public comment period for the proposed designation regarding impacts of the designation on national security or homeland security that would support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19, as well as the 2016 Policy.

Exclusion 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 discussed above. Other relevant impacts may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements, or candidate conservation agreements with

assurances—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, public-health, community-interest, environmental, or social impacts that might occur because of the designation.

We are not excluding any areas from critical habitat. In preparing this final rule, we have determined that there are currently no HCPs or other management plans for sand dune phacelia, and the designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this final critical habitat designation. We did not receive any additional information during the public comment period for the proposed rule regarding other relevant impacts to support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19, as well as the 2016 Policy. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

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 whether 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.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies 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 critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period on the March 22, 2022 proposed rule (87 FR 16320) that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a 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 this critical habitat designation will significantly affect energy supplies, distribution, or use. We are not aware of any energy-related activities or facilities within the boundaries of the critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this final rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $200 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. Therefore, a Small Government Agency Plan is not required.

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 the sand dune phacelia 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 for the designation of critical habitat for the sand dune phacelia, and it concludes that this designation of critical habitat 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 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 requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. 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 for 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 State and local governments in long-range planning because they 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) of the Act will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the physical or biological features essential to the conservation of the species. The 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 information collection requirements, and a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are 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.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g., Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

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 Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the critical habitat designation for the sand dune phacelia, so no Tribal lands will be affected by the designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Oregon Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—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 § 17.12, in paragraph (h), amend the List of Endangered and Threatened Plants by adding an entry for ''*Phacelia argentea*'' in alphabetical order under Flowering Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	* * *
Phacelia argentea	Sand dune phacelia	Wherever found	T	88 FR [Insert **Federal Register** page where the document begins], 8/22/2023; 50 CFR 17.73(j); [4d] 50 CFR 17.96(a).[CH]
*	*	*	*	* * *

■ 3. Amend § 17.73 by adding paragraph (j) to read as follows:

§ 17.73 Special rules—flowering plants.

* * * * *

(j) *Phacelia argentea* (sand dune phacelia)—(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to the sand dune phacelia. Except as provided under paragraph (j)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession the species from areas under Federal jurisdiction, as set forth at § 17.61(c)(1) for endangered plants.

(iii) Maliciously damage or destroy the species on any areas under Federal jurisdiction, or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law, as set forth at section 9(a)(2)(B) of the Act.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(v) Sale or offer for sale, as set forth at § 17.61(e) for endangered plants.

(2) *Exceptions from prohibitions.* In regard to *Phacelia argentea,* you may:

(i) Conduct activities, including activities prohibited under paragraph (j)(1) of this section, if they are authorized by a permit issued in accordance with the provisions set forth at § 17.72.

(ii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.71(b).

(iii) Remove, cut, dig up, damage or destroy on areas not under Federal jurisdiction by any qualified employee or agent of the Service or State conservation agency which is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, when acting in the course of official duties.

■ 4. In § 17.96, amend paragraph (a) by adding an entry for ''Family Boraginaceae: *Phacelia argentea* (sand dune phacelia)'' after the entry for ''Family Boraginaceae: *Amsinckia grandiflora* (large-flowered fiddleneck),'' to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Boraginaceae: *Phacelia argentea* (sand dune phacelia)

(1) Critical habitat units are depicted for Coos and Curry Counties, Oregon, and Del Norte County, California, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the sand dune phacelia consist of the following components:

(i) Sandy coastal dune habitat above the high tide line that provides a high light environment, room for growth, and adequate moisture.

(ii) A sufficiently abundant pollinator community (which may include leafcutter bees and bumble bees) for pollination and reproduction.

(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 September 21, 2023.

(4) Data layers defining map units were created using Geographic Information Systems (GIS) feature classes from known extant populations. Critical habitat units were defined by applying the minimum convex polygon approach in GIS, thereby creating a single polygon from occupied habitat patches within each population consisting of 25 or more individuals. Several units have two polygons each to include individuals that are separated from the main populations by unsuitable or unoccupied habitat. In a few cases, the unit boundaries were modified to align with the coastal boundary based on current National Agriculture Imagery Program natural color imagery. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/oregon-fish-and-wildlife,* at *https://www.regulations.gov* at Docket No. FWS–R1–ES–2021–0070, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map for *Phacelia argentea* follows:

BILLING CODE 4333–15–P

Figure 1 to *Phacelia argentea* (sand dune phacelia) paragraph (5)

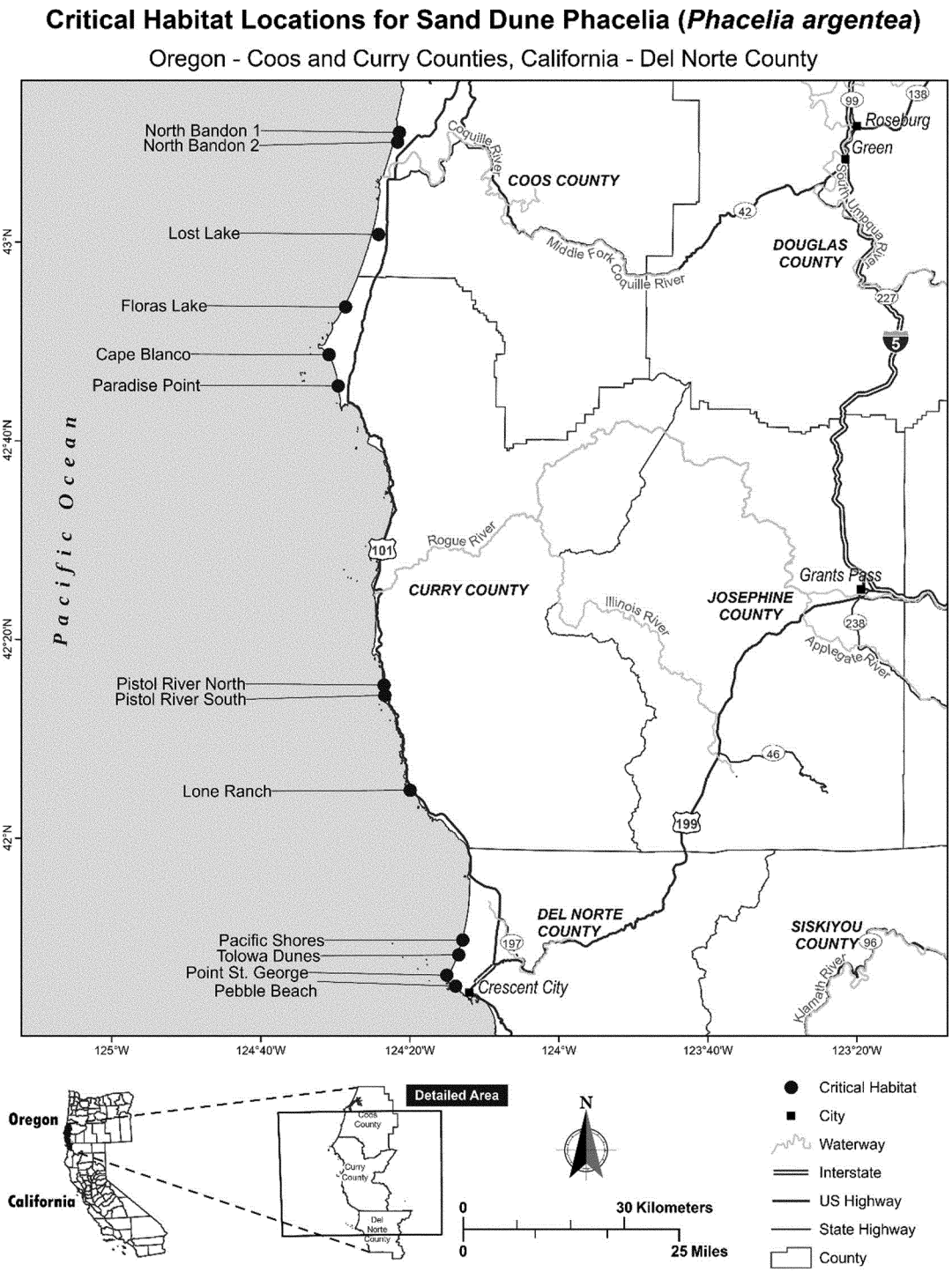
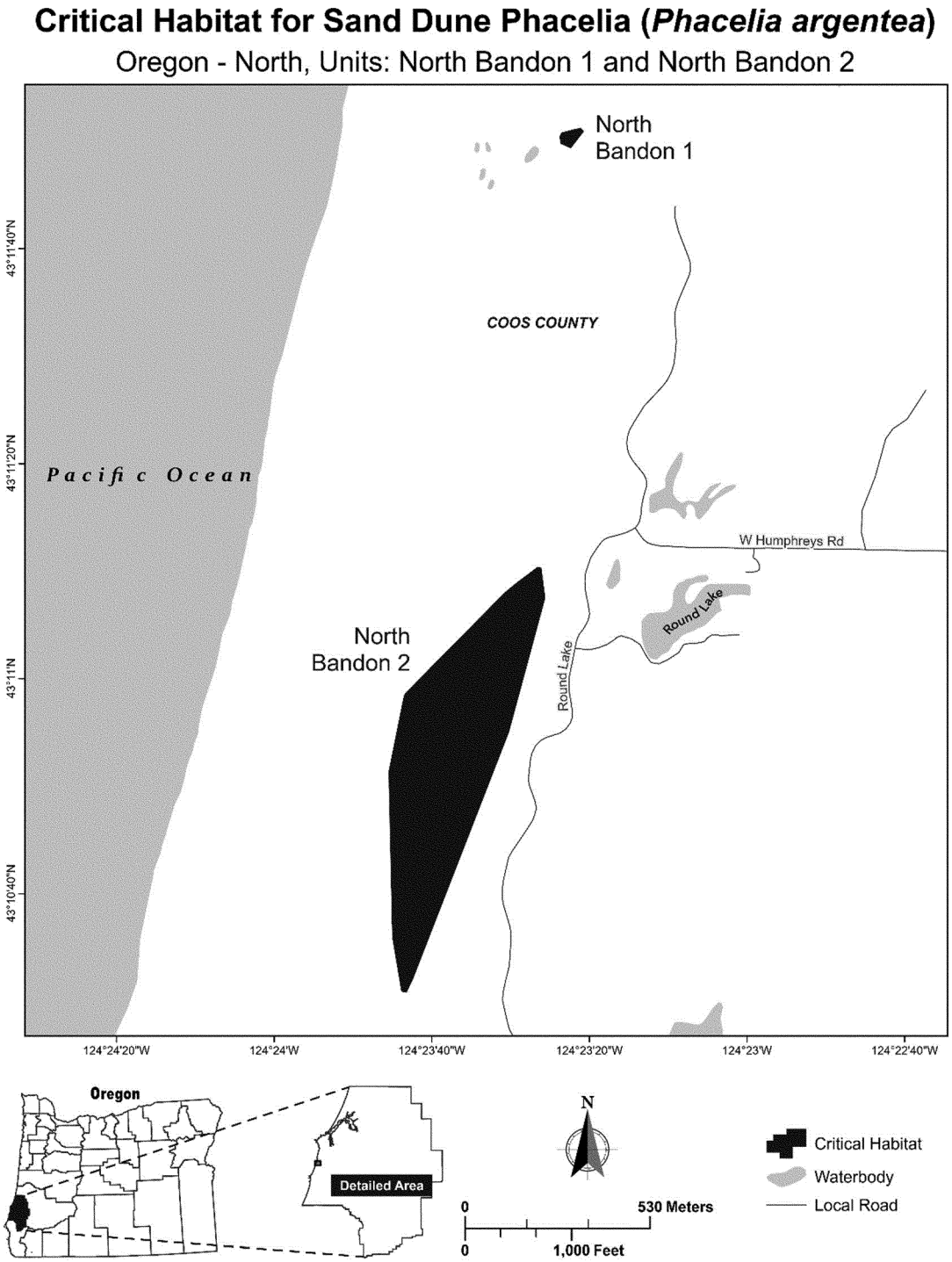


Figure 2 to *Phacelia argentea* (sand dune phacelia) paragraph (6)(ii)

(6) Unit 1: North Bandon 1, Coos County, Oregon.

(i) Unit 1 consists of 0.6 acres (ac) (0.2 hectares (ha)) in Coos County, Oregon, and is composed of land in private ownership.

(ii) Map of Units 1 and 2 follows:



(7) Unit 2: North Bandon 2, Coos County, Oregon.

(i) Unit 2 consists of 61.3 ac (24.8 ha) in Coos County, Oregon, and is composed of land in State (6.9 ac (2.8 ha)) and private (54.4 ac (22 ha)) ownership.

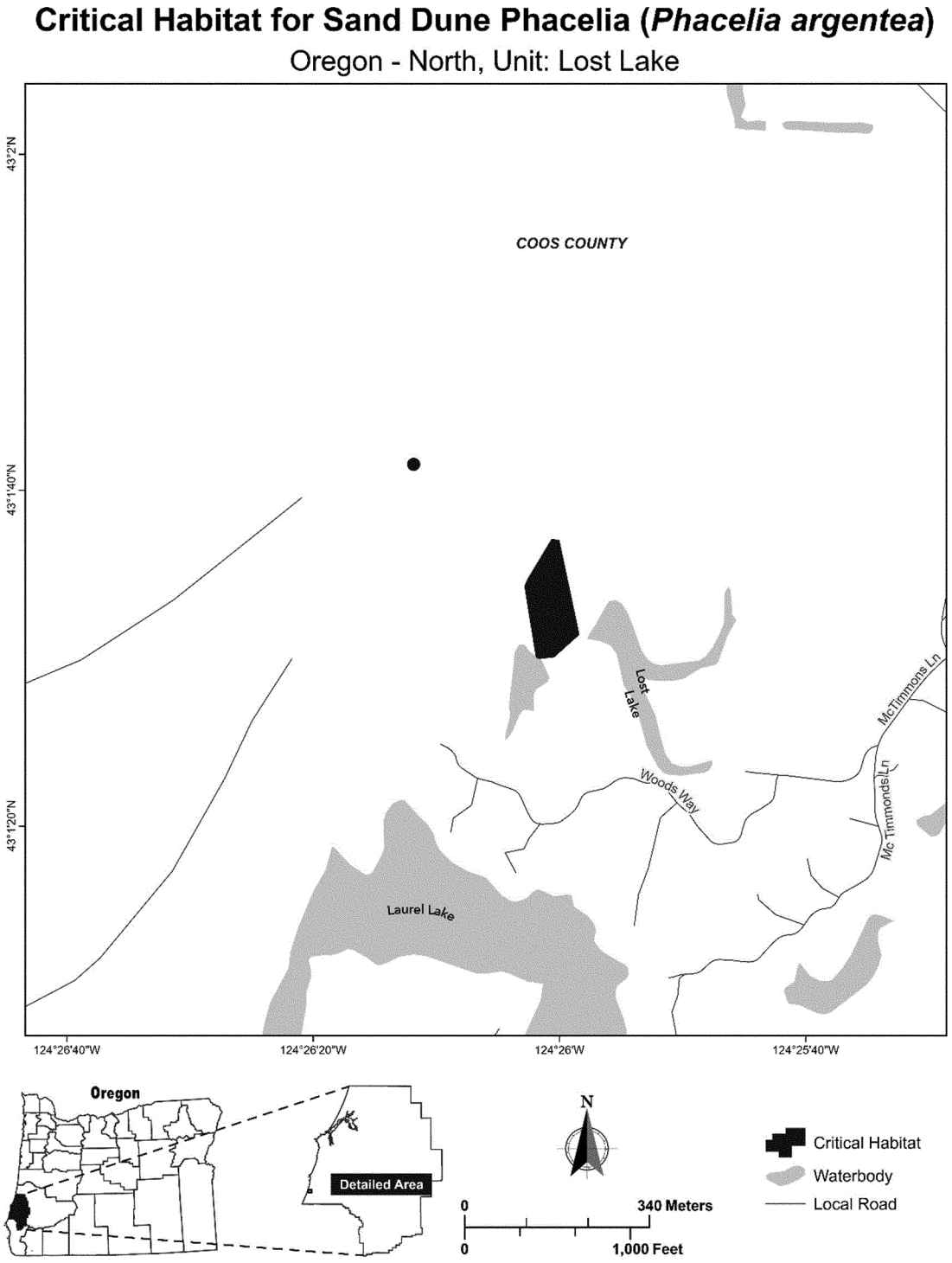
(ii) Map of Unit 2 is provided at paragraph (6)(ii) of this entry.

(8) Unit 3: Lost Lake, Coos County, Oregon.

(i) Unit 3 consists of 3.7 ac (1.5 ha) in Coos County, Oregon, and is composed of land in State (0.1 ac (0.04 ha)), Federal (0.8 ac (0.3 ha)), and private (2.8 ac (1.1 ha)) ownership.

(ii) Map of Unit 3 follows:

Figure 3 to *Phacelia argentea* (sand dune phacelia) paragraph (8)(ii)

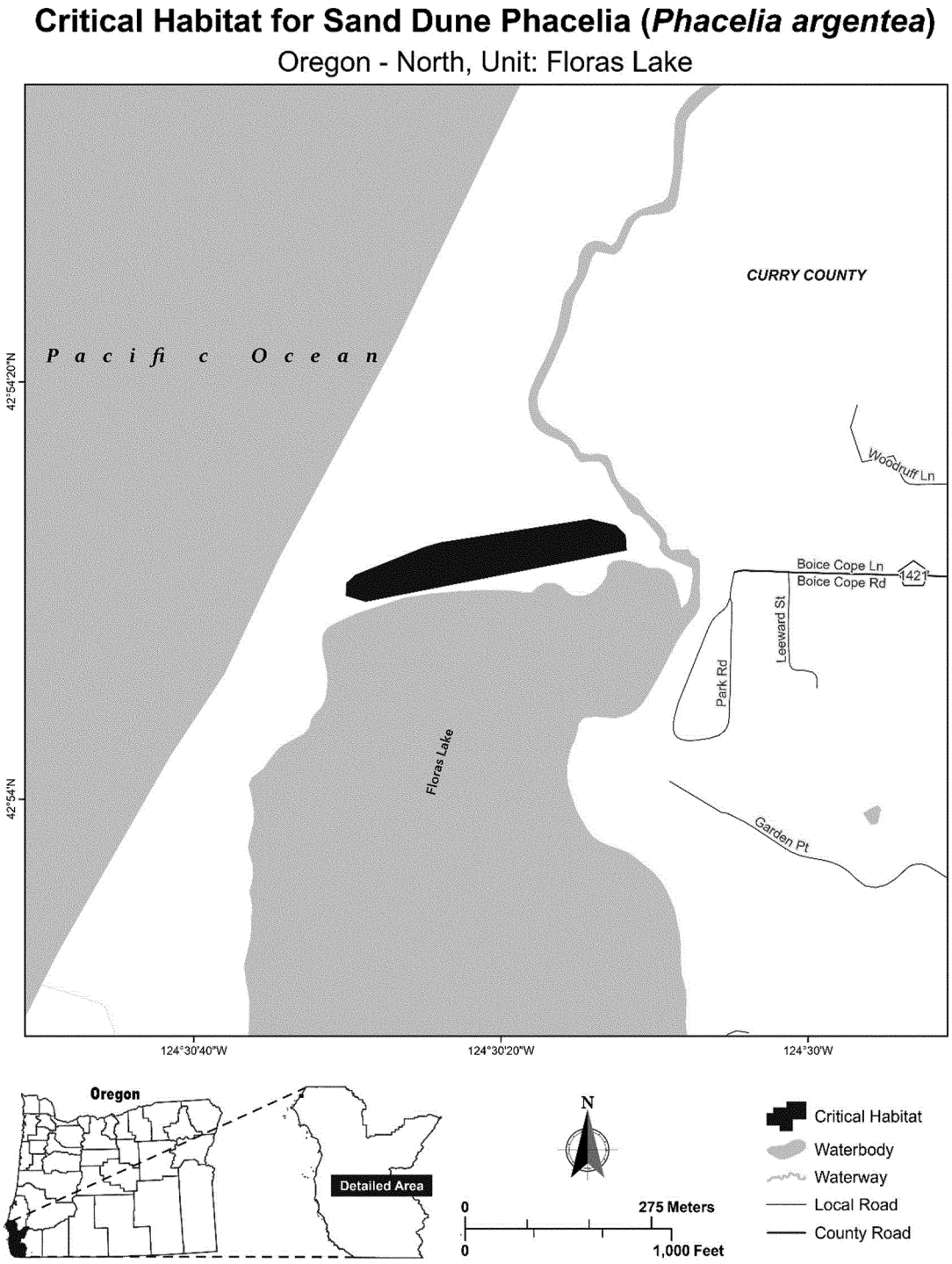


(9) Unit 4: Floras Lake, Curry County, Oregon.

(i) Unit 4 consists of 5.8 ac (2.3 ha) in Curry County, Oregon, and is composed of land in Federal ownership.

(ii) Map of Unit 4 follows:

Figure 4 to *Phacelia argentea* (sand dune phacelia) paragraph (9)(ii)

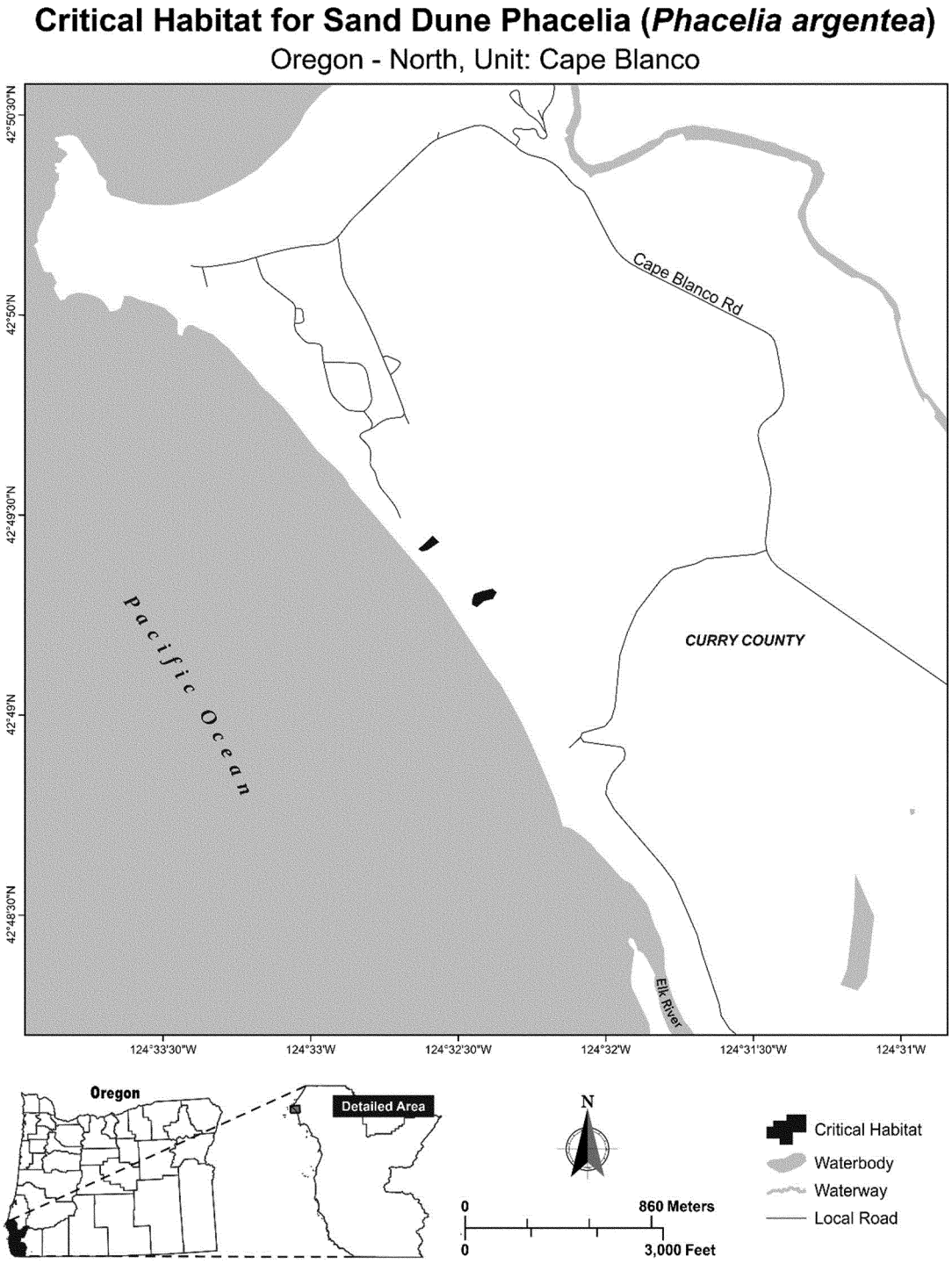


(10) Unit 5: Cape Blanco, Curry County, Oregon.

(i) Unit 5 consists of 2 ac (0.8 ha) in Curry County, Oregon, and is composed of land in State ownership.

(ii) Map of Unit 5 follows:

Figure 5 to *Phacelia argentea* (sand dune phacelia) paragraph (10)(ii)

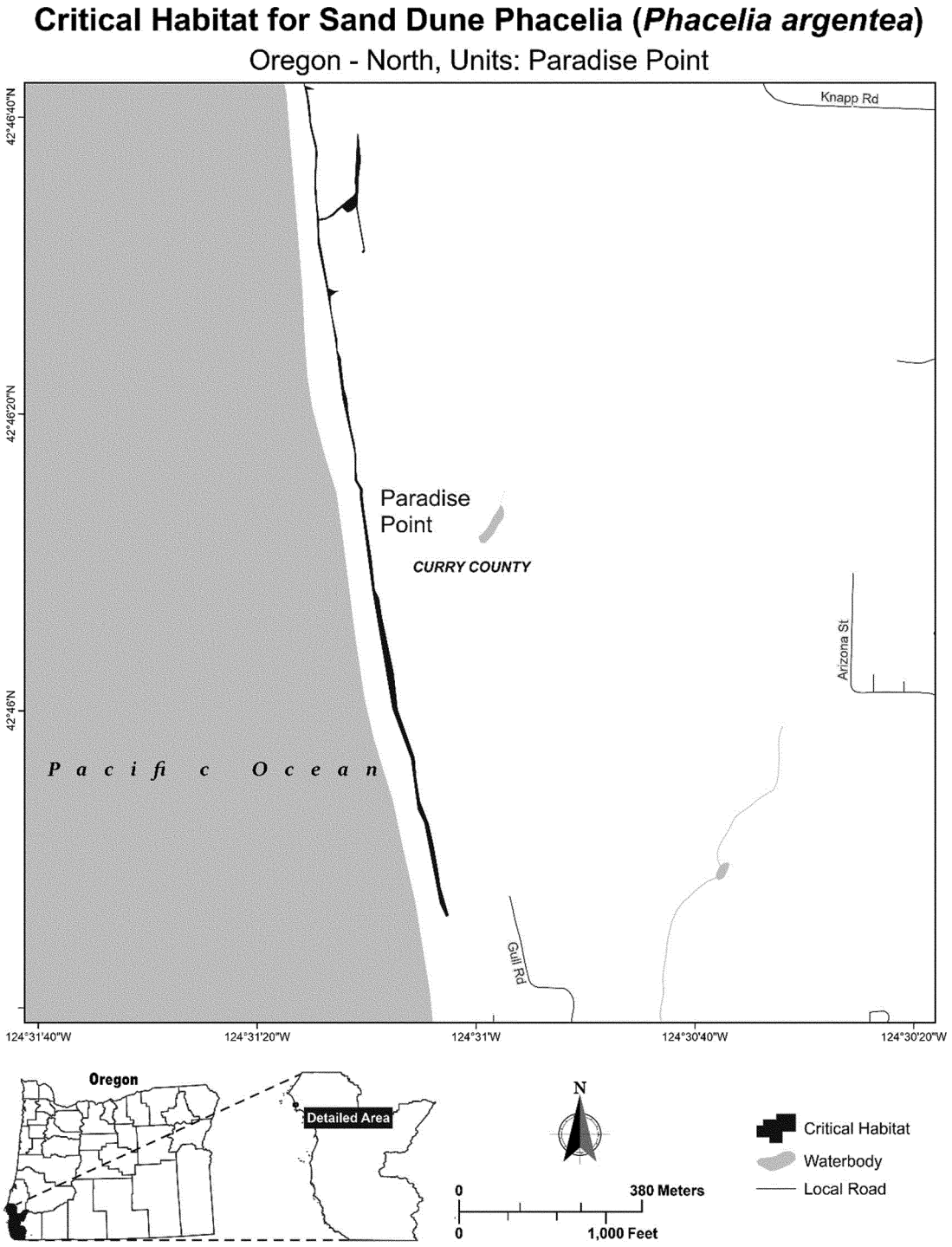


(11) Unit 6: Paradise Point, Curry County, Oregon.

(i) Unit 6 consists of 3.7 ac (1.5 ha) in Curry County, Oregon, and is composed of land in private ownership.

(ii) Map of Unit 6 follows:

Figure 6 to *Phacelia argentea* (sand dune phacelia) paragraph (11)(ii)

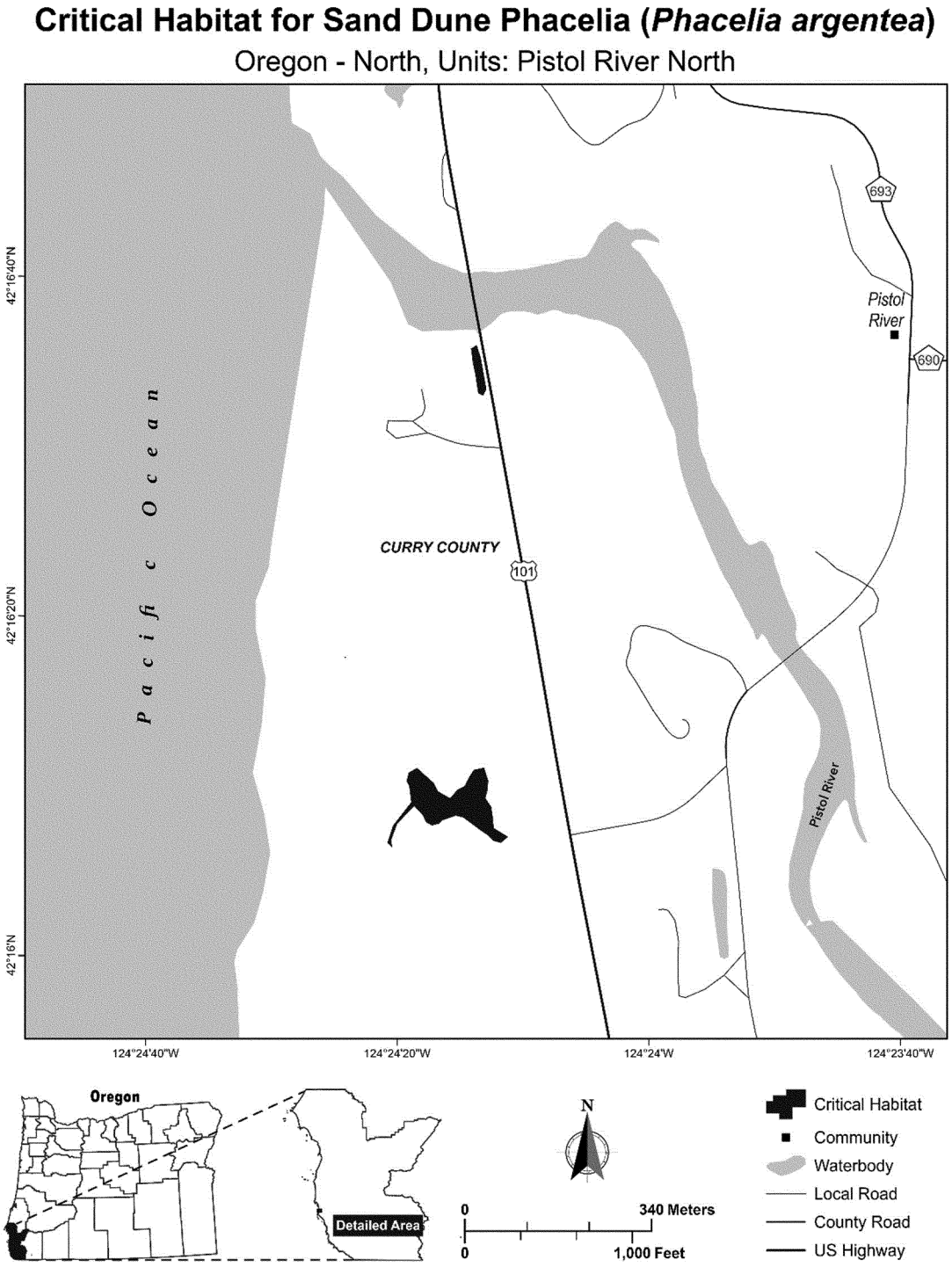


(12) Unit 7: Pistol River North, Curry County, Oregon.

(i) Unit 7 consists of 3.2 ac (1.3 ha) in Curry County, Oregon, and is composed of land in State ownership.

(ii) Map of Unit 7 follows:

Figure 7 to *Phacelia argentea* (sand dune phacelia) paragraph (12)(ii)

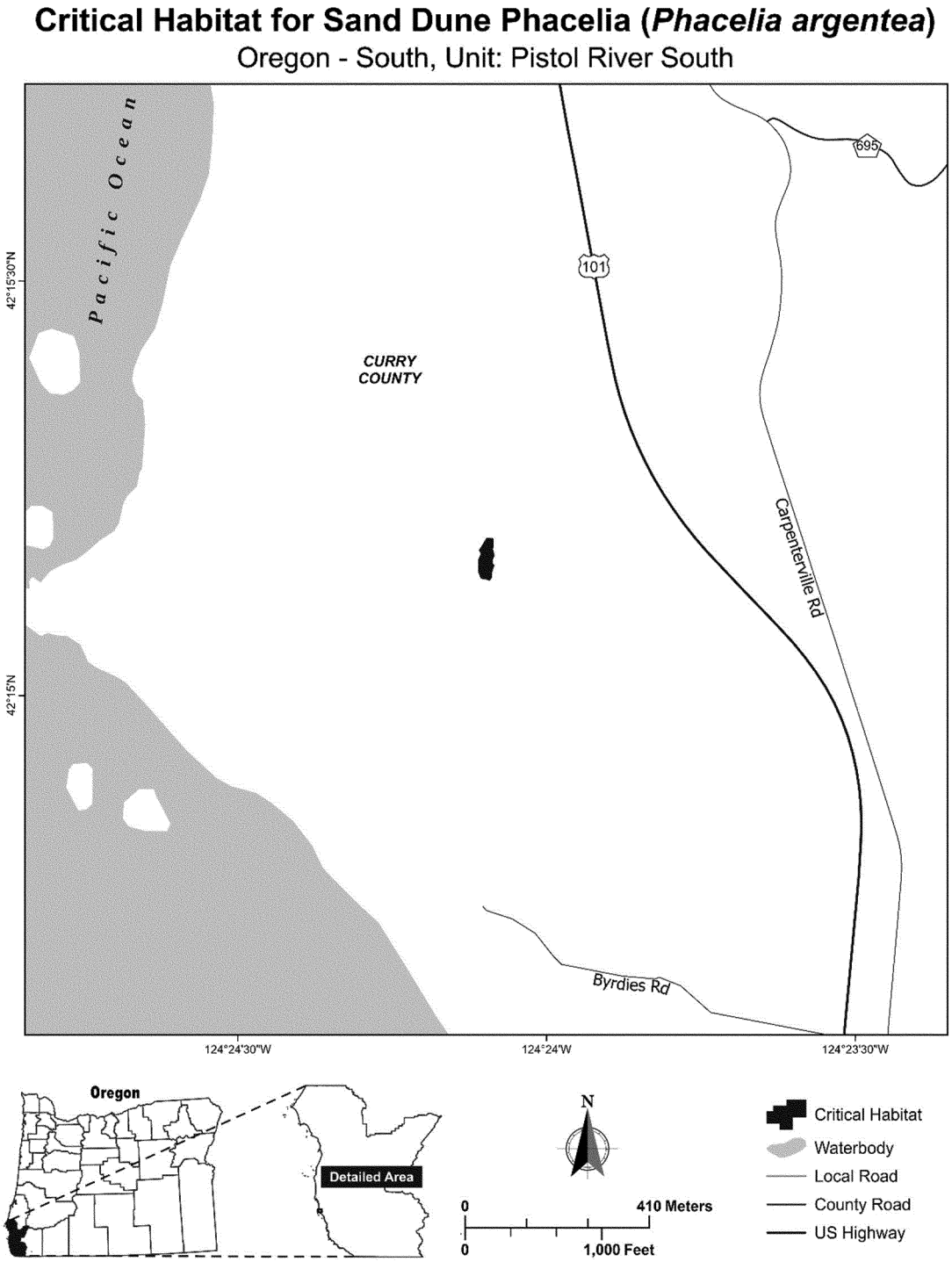


(13) Unit 8: Pistol River South, Curry County, Oregon.

(i) Unit 8 consists of 0.7 ac (0.3 ha) in Curry County, Oregon, and is composed of land in State ownership.

(ii) Map of Unit 8 follows:

Figure 8 to *Phacelia argentea* (sand dune phacelia) paragraph (13)(ii)



(14) Unit 9: Lone Ranch, Curry County, Oregon.

(i) Unit 9 consists of 6.5 ac (2.6 ha) in Curry County, Oregon, and is composed of land in State ownership.

(ii) Map of Unit 9 follows:

Figure 9 to *Phacelia argentea* (sand dune phacelia) paragraph (14)(ii)

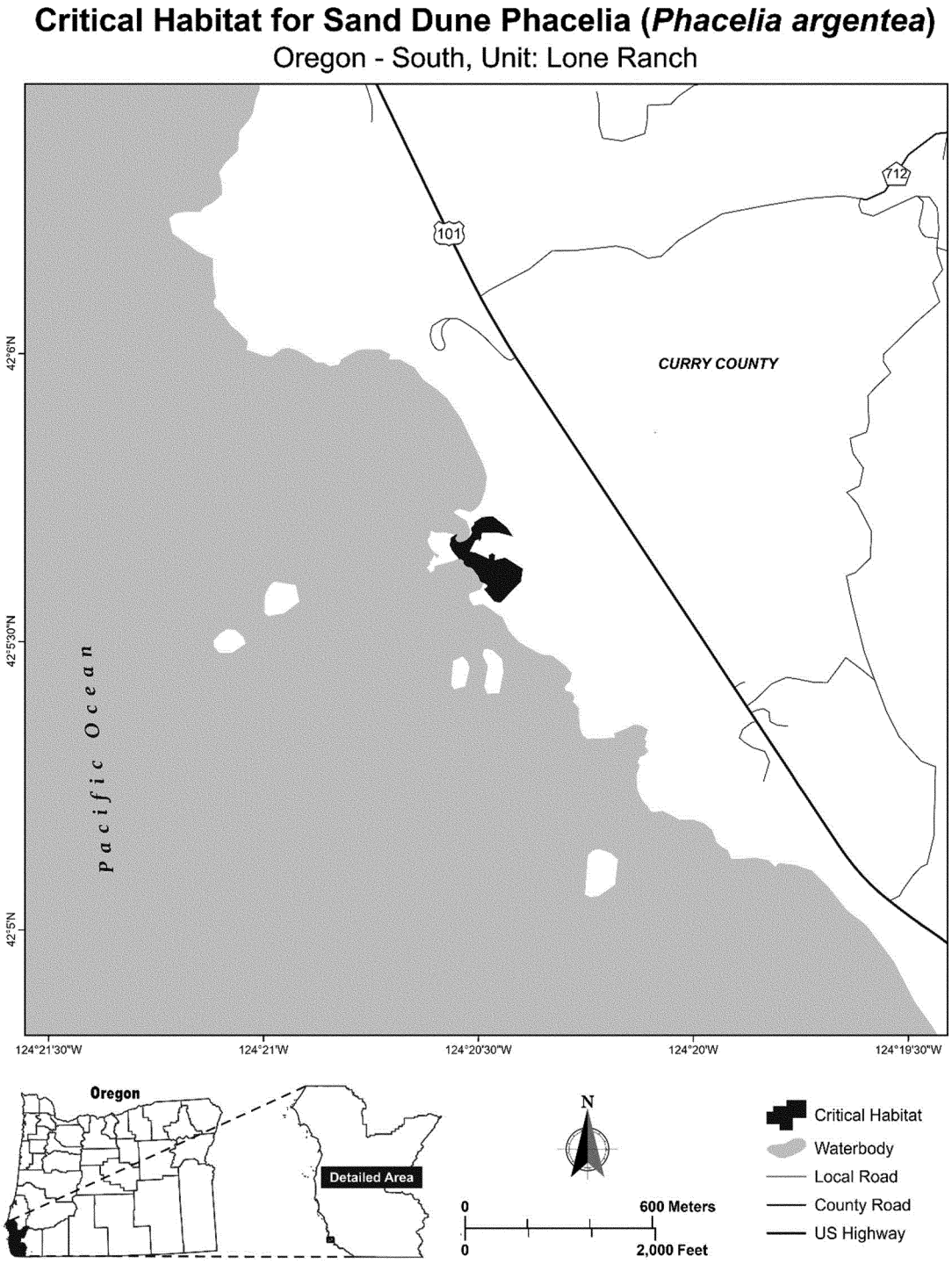
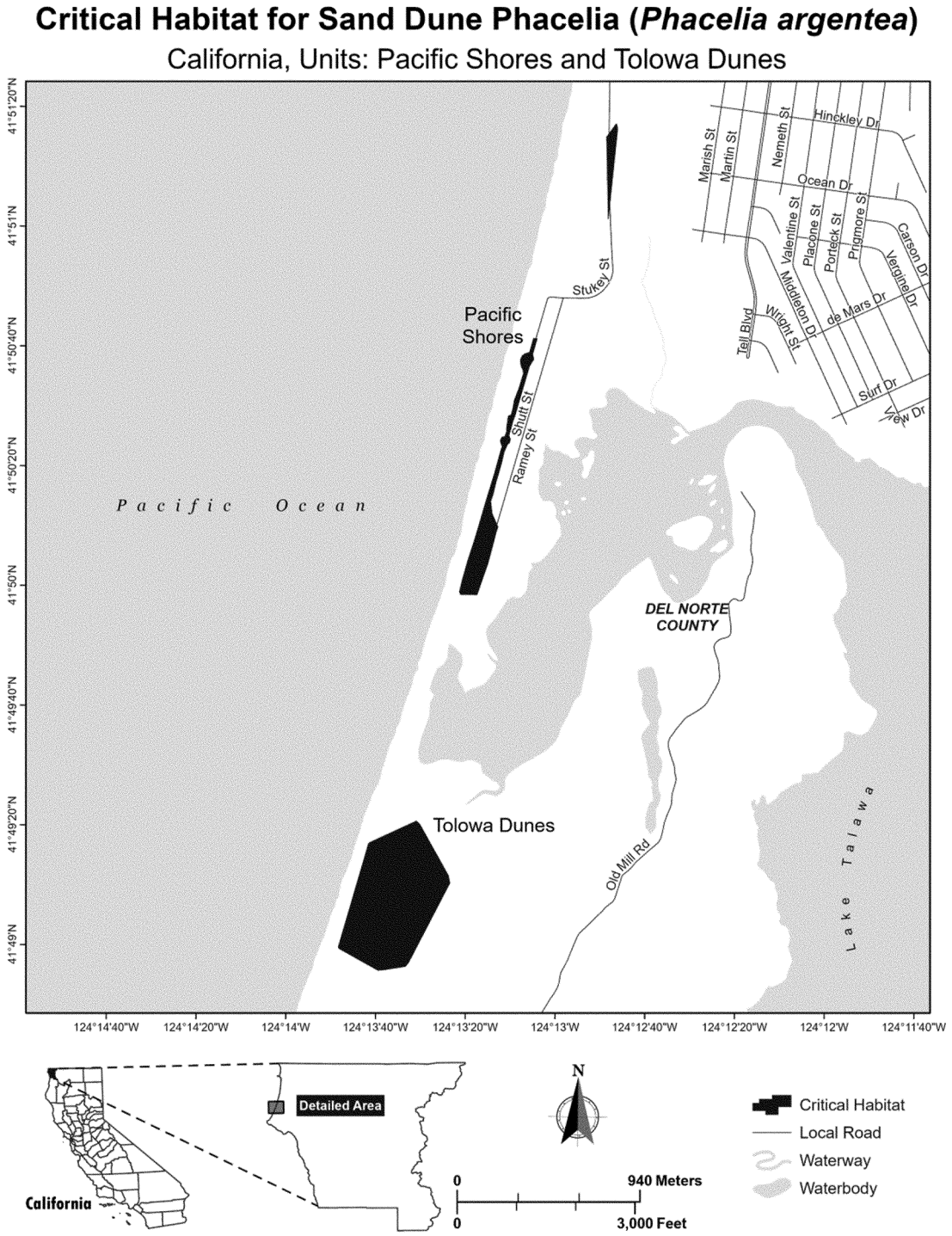


Figure 10 to *Phacelia argentea* (sand dune phacelia) paragraph (15)(ii)

(15) Unit 10: Pacific Shores, Del Norte County, California.

(i) Unit 10 consists of 21 ac (8.5 ha) in Del Norte County, California, and is composed of land in State (13.2 ac (5.3 ha)) and private (7.8 ac (3.2 ha)) ownership.

(ii) Map of Units 10 and 11 follows:



(16) Unit 11: Tolowa Dunes, Del Norte County, California.

(i) Unit 11 consists of 69.6 ac (28.2 ha) in Del Norte County, California, and is composed of land in State ownership.

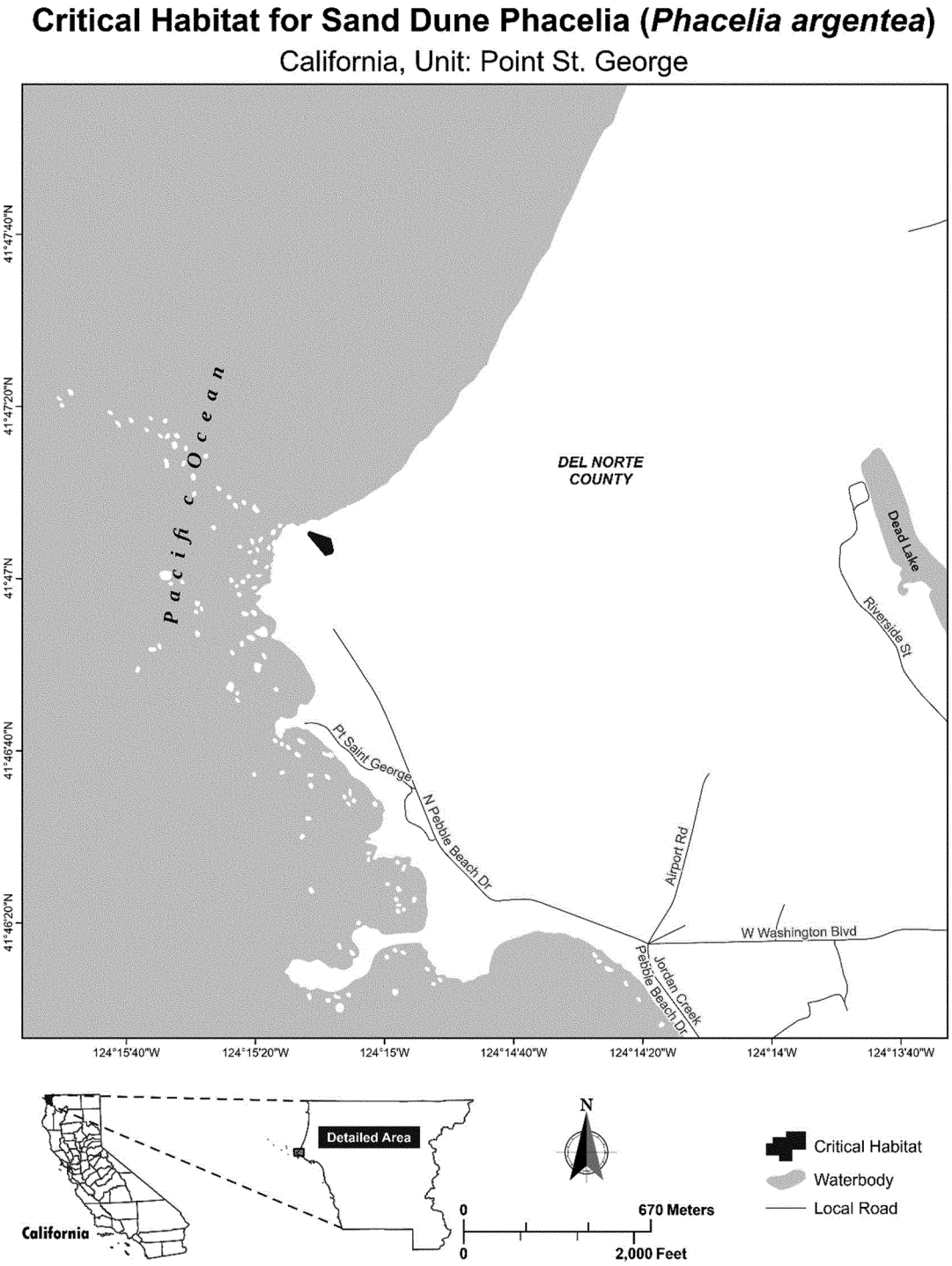
(ii) Map of Unit 11 is provided at paragraph (15)(ii) of this entry.

(17) Unit 12: Point Saint George, Del Norte County, California.

(i) Unit 12 consists of 1.1 ac (0.4 ha) in Del Norte County, California, and is composed of land in county (1 ac (0.4 ha)) and private (0.1 ac (0.04 ha)) ownership.

(ii) Map of Unit 12 follows:

Figure 11 to *Phacelia argentea* (sand dune phacelia) paragraph (17)(ii)

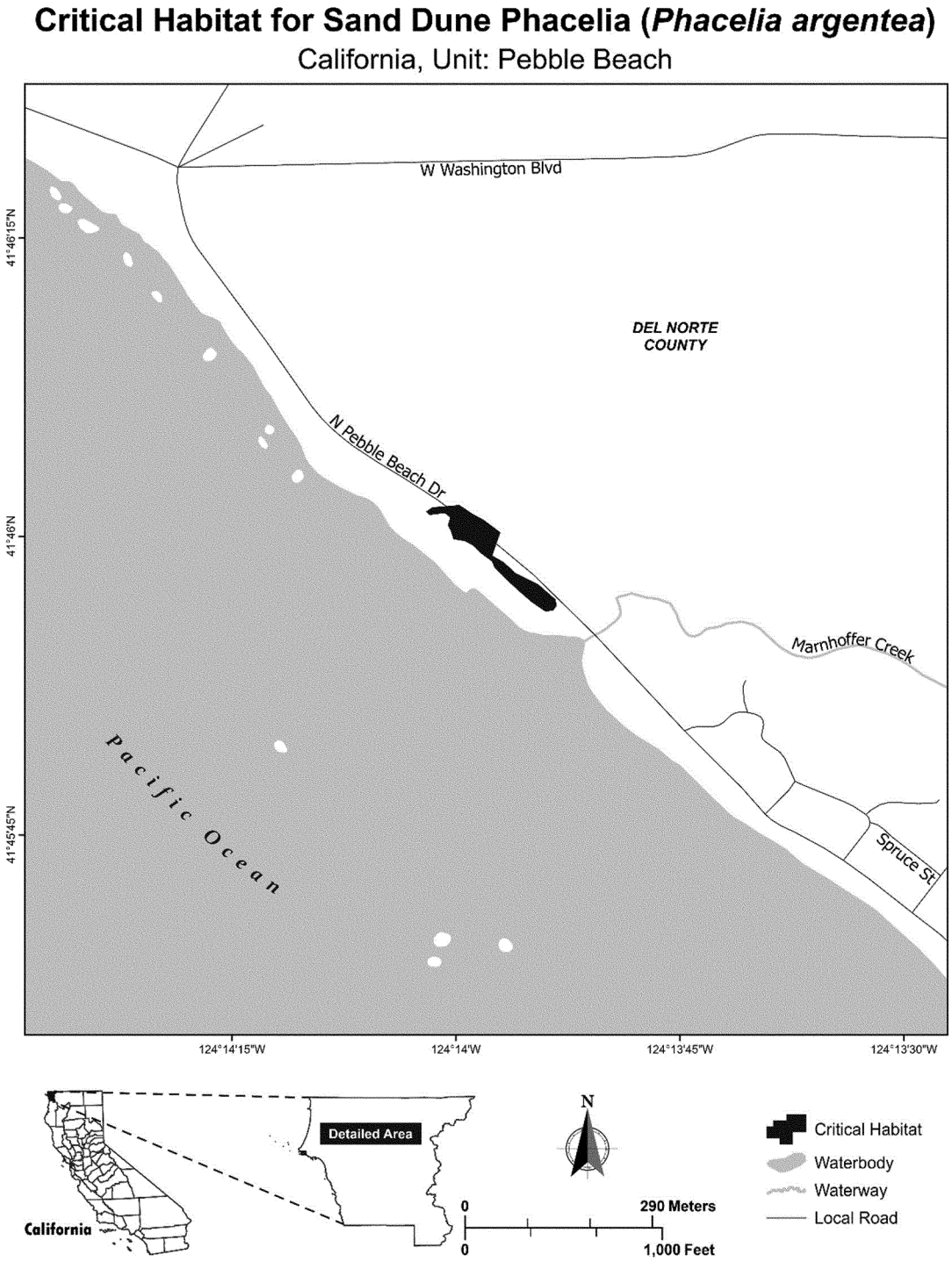


(18) Unit 13: Pebble Beach, Del Norte County, California.

(i) Unit 13 consists of 1.6 ac (0.6 ha) in Del Norte County, California, and is under county ownership.

(ii) Map of Unit 13 follows:

Figure 12 to *Phacelia argentea* (sand dune phacelia) paragraph (18)(ii)



* * * * *

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–17669 Filed 8–21–23; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Salamander Mussel and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2023–0058; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BG38

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Salamander Mussel and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the salamander mussel (*Simpsonaias ambigua*), a freshwater mussel species from the United States (Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin) and Canada (Ontario), as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the salamander mussel. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the salamander mussel as an endangered species under the Act. We also propose to designate critical habitat for the salamander mussel under the Act. In total, approximately 2,012 river miles (3,238 kilometers) in Indiana, Kentucky, Michigan, Minnesota, New York, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin fall within the boundaries of the proposed critical habitat designation. We announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the salamander mussel. If we finalize this rule as proposed, it would extend the Act's protections to this species and its designated critical habitat.

DATES: We will accept comments received or postmarked on or before October 23, 2023. 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 a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 6, 2023.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2023–0058, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R3–ES–2023–0058, U.S. Fish and Wildlife Service, MS: PRB/3W, 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 *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available on the Service's website at *https://www.fws.gov/species/salamander-mussel-simpsonaias-ambigua,* at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2023–0058, or both. For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2023–0058 and on the Service's website at *https://www.fws.gov/species/salamander-mussel-simpsonaias-ambigua.*

FOR FURTHER INFORMATION CONTACT: Scott Hicks, Field Supervisor, U.S. Fish and Wildlife Service, Michigan Ecological Services Field Office, 2651 Coolidge Road, East Lansing, MI 48823; telephone 517–351–2555. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the salamander mussel meets the definition of an endangered species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the salamander mussel as an endangered species under the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because 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. We have determined that the salamander mussel is endangered due to the following threats: contaminants, hydrological alterations to stream habitat, land use changes, loss of connectivity among populations, and host species' vulnerabilities.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data

available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species and its host, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this species or its host;

(d) Historical and current population levels, and current and projected trends for this species or its host; and

(e) Past and ongoing conservation measures for the species, its habitat, or its host.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting 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.

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species.

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) Additional information concerning the historical and current status of this species or its host.

(4) Specific information on:

(a) The amount and distribution of salamander mussel habitat;

(b) Any additional areas occurring within the range of the species that should be included in the designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species;

(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) Whether occupied areas are adequate for the conservation of the species. This information will help us evaluate the potential to include areas not occupied at the time of listing in the critical habitat designation for the species. Please provide specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species. We also seek comments or information regarding whether areas not occupied at the time of listing qualify as habitat for the species.

(5) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(7) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(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. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(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.

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, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

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**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. 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 *https://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 *https://www.regulations.gov.*

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such

requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. 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** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

We identified the salamander mussel as a ''Category 2'' candidate in our May 22, 1984, Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21664). Category 2 candidates were defined as taxa 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. The salamander mussel remained a Category 2 candidate in subsequent candidate notices of review (CNORs) (54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of Category 2 species as candidates; therefore, the salamander mussel was no longer a candidate species.

On April 20, 2010, we received a petition from the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy, to list 404 aquatic, riparian, and wetland species, including the salamander mussel, from the southeastern United States as endangered or threatened species and to designate critical habitat concurrent with listing under the Act. On September 27, 2011, we published a partial 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information that indicated listing the salamander mussel may be warranted.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the salamander mussel. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the SSA report for the salamander mussel. We sent the SSA report to three independent peer reviewers, but we did not receive any responses.

I. Proposed Listing Determination

Background

The salamander mussel is a small, thin-shelled species of freshwater mussel currently found across 14 U.S. States (Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin) and one Canadian province (Ontario) (see figure 1, below). The salamander mussel inhabits rivers and streams with fairly swift velocities but prefers shelter habitat with space under slab rock/bedrock crevice-type structures that are dark, where they are in contact with a solid surface, and where there is stability from swift current.

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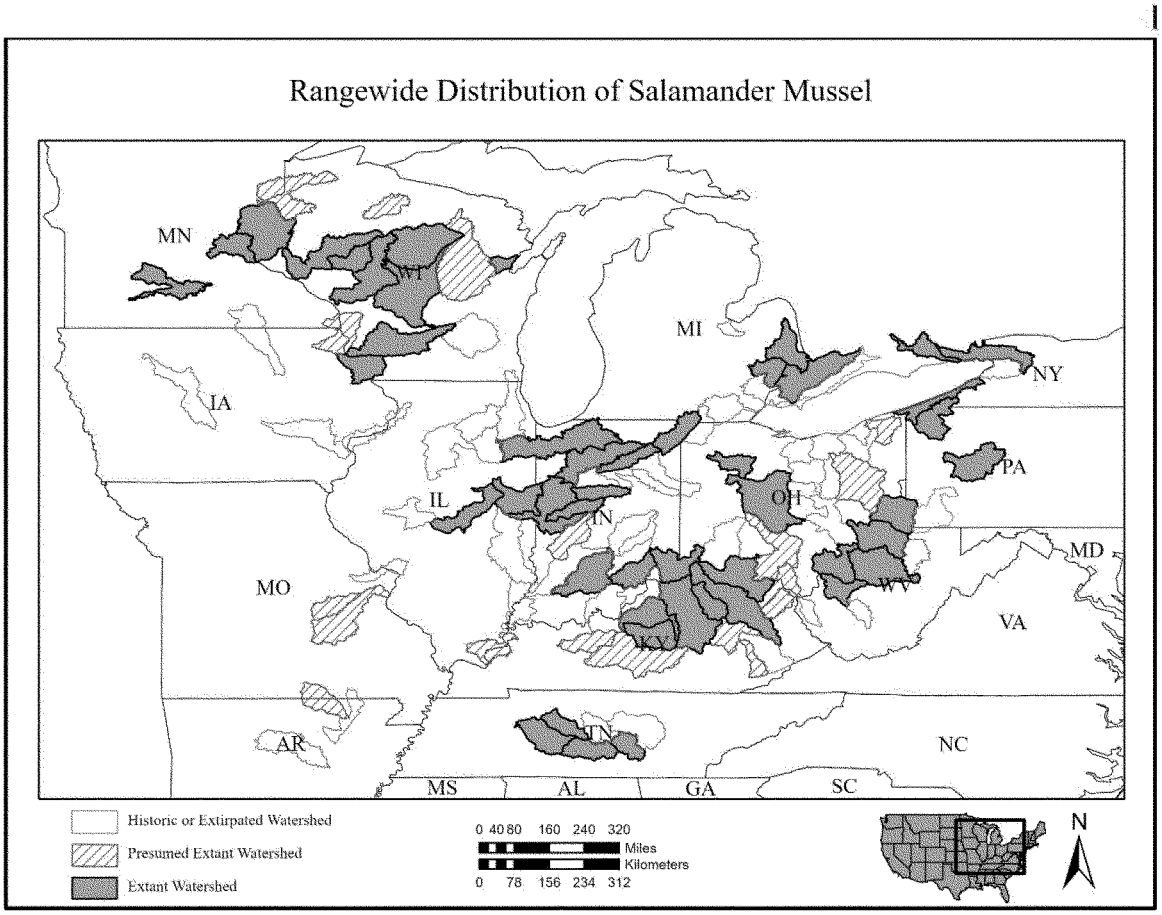

Figure 1. Distribution of all known populations of salamander mussel.

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Similar to other freshwater mussels, the salamander mussel has a unique life cycle that relies on a host for successful reproduction. However, the salamander mussel is the only freshwater mussel in North America to use a non-fish host. The mudpuppy (*Necturus maculosus*), the only host for the salamander mussel, is a fully aquatic salamander species that tends to be present within the same habitat preferred by the salamander mussel during the summer and fall when female mudpuppies are guarding their nests under large flat rocks. The salamander mussel's larvae (called glochidia) develop on the gills of the mudpuppy before falling off into the stream substrate.

Like other freshwater mussels, the salamander mussel feeds on particles, including phytoplankton, zooplankton, rotifers, protozoans, detritus, and dissolved organic matter, in sediments or suspended in the water column. The salamander mussel lives for approximately 10 years. The age of sexual maturity is not known.

A thorough review of the taxonomy, life history, and ecology of the salamander mussel is presented in detail in the SSA report (Service 2023, pp. 3–10).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following 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.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may

have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess salamander mussel viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at *https://www.regulations.gov* under Docket No. FWS–R3–ES–2023–0058 and at *https://www.fws.gov/species/salamander-mussel-simpsonaias-ambigua.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

We assessed the best available information to identify the physical and biological needs at the individual, population, and species levels for the salamander mussel. Full descriptions of all needs are available in chapter 2 of the SSA report (Service 2023, pp. 3–10). Based upon the best available scientific and commercial information, the resource needs for salamander mussel are characterized as:

- Shelter habitat with flat rocks and bedrock crevices free of excessive silt and fine sediments.
- A hydrologic flow regime (the severity, frequency, duration, and seasonality of discharge over time) that maintains the rock structures and aquatic habitat where the salamander mussel and mudpuppy are found. Adequate flows provide for the exchange of nutrients and sediment; ensure delivery of oxygen; reduce contaminants and fine sediments from interstitial spaces; deliver food to filter-feeding mussels; and enable newly transformed salamander mussel juveniles and young mudpuppies to disperse, settle, and become established. Stream velocity is not static over time, and variations may be attributed to seasonal changes (with higher flows in winter/spring and lower flows in summer/fall), extreme weather events (*e.g.,* drought or floods), or

anthropogenic influence (*e.g.,* flow regulation via impoundments).

- Water and sediment quality, such as (but not limited to) dissolved oxygen above 5 milligrams per liter (mg/L); water temperatures generally below 86 degrees Fahrenheit (°F) (30 degrees Celsius (°C)); concentrations of ammonia, metals, and other pollutants below acute toxicity levels; and an absence of excessive total suspended solids.
- Habitat connectivity (that is, a lack of barriers for passage of mudpuppy hosts and dispersal of mussels).
- The presence and abundance of the mudpuppy host, necessary for recruitment of the salamander mussel.
- Appropriate food sources (phytoplankton, zooplankton, rotifers, protozoans, detritus, and dissolved organic matter) in adequate supply.

Threats Analysis

We identified contaminants, hydrological regime, landscape alteration, lack of connectivity, invasive species, and host vulnerability as the primary threats to evaluate for the salamander mussel (Service 2023, pp. 11–17). We also evaluated sedimentation, water temperature, drought, dissolved oxygen, mussel disease, and resource extraction. These threats are summarized below. More detailed information on these threats can be found in appendix B of the SSA report (Service 2023, pp. 81–103).

Contaminants

Freshwater mussels are among the most sensitive freshwater species to metals, ammonia, and ion constituents, including copper, sulfate, alachlor, nickel, chloride, sulfate, zinc, and potassium (Wang et al. 2017, pp. 786–796). In particular, freshwater mussels are very sensitive to ammonia (Augspurger et al. 2003, pp. 2569–2575). Ammonia is widespread within the aquatic environment; typical sources include agricultural wastes (animal feedlots and nitrogenous fertilizers), municipal wastewater treatment plants, and industrial waste, as well as precipitation and natural processes, such as decomposition of organic nitrogen (Augspurger et al. 2003, p. 2569; Goudreau et al. 1993, p. 212).

Sources of contaminants can include point (for example, wastewater treatment and industrial effluents, targeted lampricide treatment for management of invasive sea lamprey) and non-point (for example, runoff comprised of fertilizer, pesticide, road salts, grease, and oil) sources resulting from urbanization, agriculture, toxic spills, aquatic invasive species treatments, and resource extraction and mining (Gillis 2012, pp. 348–356; Gillis et al. 2014, pp. 134–143; Bringolf et al. 2007, pp. 2086–2093; Wang et al. 2017, pp. 786–796; Augspurger et al. 2003, pp. 2569–2575).

All stages of freshwater mussels are directly exposed to contaminants when present in the system. Contaminants have the potential to affect several reproductive early life-history processes, including sperm viability, female fertility or brooding capabilities, and luring or glochidia release behavior (Cope et al. 2008, pp. 451–462). Free glochidia are exposed through surface water (Cope et al. 2008, p. 453). Exposure during encystment may influence the ability of glochidia to successfully transform into juveniles (Cope et al. 2008, pp. 457–458). Adults, however, can be exposed over years through surface water, pore water, sediment, and diet (Cope et al. 2008, pp. 452–453).

Sedimentation

Sediment is composed of both organic (biological material) and inorganic (sand, silt, clay) particulate matter formed through various processes including weathering, wind/wave/ice action, and tectonic uplift. Anthropogenic sources of sediment include agriculture (Peacock et al. 2005, entire), logging (Beschta 1978, entire), mining (Seakem Group et al. 1992, p. 17), urbanization (Guy and Ferguson 1963, entire), and hydrological alteration (Hastie et al. 2001, entire). While all streams carry sediment, alterations in landscape may negatively impact aquatic ecosystems if sediment loads are excessive enough to alter channel formation and/or stream productivity, in turn degrading freshwater biota (USEPA 2007, pp. 2–21; Gammon 1970, entire; Junoy and Viéitez 1990, entire).

Mussel declines have been partially attributed to sedimentation caused by anthropogenic activities (for example, decrease in vegetative and canopy cover and increase in urban and agricultural land) (Peacock et al. 2005, entire; Guy and Ferguson 1963, entire). Increased sedimentation impacts both water quality and quantity, which can have direct and indirect impacts on the survival, reproduction, and growth of freshwater mussel populations (Brim Box and Mossa 1999, entire; Goldsmith et al. 2021, entire; Tuttle-Raycraft and Ackerman 2019, p. 2532; Tokumon et al. 2015, pp. 201–203).

Water Temperature and Drought

Alteration to the natural thermal regime of mussels is one of the greatest threats freshwater ecosystems face today (Caissie 2006, p. 1389). Increased water temperature negatively affects mussel physiological processes (for example, catabolization of protein reserves, fluidity of the cellular membrane, and organ function), disrupting energy balance, growth, and reproduction (Ganser et al. 2015, p. 1706).

Dissolved Oxygen

Low dissolved oxygen is a threat to freshwater mussels and is particularly an issue in interstitial waters (waters between sand particles, sediment, and gravel) (Sparks & Strayer 1998, p. 129). Low dissolved oxygen can be caused by excess sedimentation, nutrient loading, organic inputs, changes in flow, and higher temperatures (Sparks & Strayer 1998, p. 129). Alterations to flow directly affect the concentration of dissolved oxygen within a river system (Ganser et al. 2015, p. 17). Adults and juveniles that are buried in the sediment are particularly vulnerable to low dissolved oxygen (Sparks & Strayer 1998, p. 129).

Hydrological Regime

Freshwater mussels need flowing water in order to survive. Changes to a river's hydrology and ecological processes can increase or decrease water depths, decrease habitat heterogeneity, decrease substrate stability, block host passage, and isolate mussel populations from hosts, resulting in a reduction or elimination of suitable mussel habitat and interfering with the mussel's reproductive process.

Historical land use change and associated water resource development have altered established patterns of hydrologic variation and associated dynamics of large river systems, resulting in long-term chronic stresses felt decades after their initiation (Zeiringer et al. 2018, p. 70; Pyron et al. 2020, pp. 2, 6). Typical anthropogenic alterations to the naturally occurring hydrology of rivers and streams include construction of dams, water diversions, levees, and other such structures for channelization. Dams directly affect mussels through alterations in flow and habitat (Poff et al. 1997, pp. 772–774). This topic is explored more under ''Connectivity,'' below.

Connectivity

Artificial barriers within streams and rivers (for example, dams, road crossings, water control structures, etc.) pose a great number of threats to freshwater mussels and are considered one of the primary reasons for their decline (Haag 2012, pp. 328–330; Downing et al. 2010, pp. 155–160;

Vaughn and Taylor 1999, p. 915). Artificial barriers affect freshwater mussels through direct effects (such as water temperature and flow changes and habitat alteration) and indirect effects (such as changes to food base and host availability). Hydroelectric dams and similar water control barriers can create additional stressors by fluctuating flows to abnormal levels on a daily basis or at inappropriate times of year (Poff et al. 1997, pp. 772–774). Abnormally high stream flow can displace juvenile mussels and make it difficult for them to attach to the substrate (Holland-Bartels 1990, pp. 331–332; Layzer & Madison 1995, p. 335). Altered flow can destabilize the substrate, which is a critical requirement for mussel bed stability (Di Maio and Corkum 1995, p. 663). Barriers can also exacerbate the effects of drought, resulting in the stranding of mussels and drying of mussel beds (Fisher and LaVoy 1972, pp. 1473–1476).

Invasive Species

Invasion of aquatic habitats within the United States by invasive species is one of the leading threats that freshwater ecosystems face, with about 42 percent of endangered and threatened species reported to be significantly affected (NCANSMPC 2015, pp. 8–9; Dueñas et al. 2018, p. 3171). When introduced, nonnative species may outcompete (for example, crowd out or replace) native organisms, in turn negatively altering food web and ecosystem dynamics and ultimately severely damaging ecological health (Davis et al. 2000, p. 227). Invasive species can impact native species in a multitude of ways including: (1) native species may become a source of food for invasive species; (2) invasive species may cause or carry diseases; (3) invasive species may prevent native species from reproducing and/or kill the young of native species; and (4) invasive species may outcompete native species for resources (for example, food, space) (Sodhi et al. 2010, p. 318). The invasion of freshwater habitats within the United States has resulted in an imminent threat to mussel fauna within affected regions and is thought to have contributed to the decline of mussel species (Ricciardi et al. 1998, p. 615).

While invasive species do pose a risk to the salamander mussel, given its unique anatomy, habitat it occupies, and its use of a non-fish host, we did not find a plausible situation in which invasive species alone would pose a risk that would affect salamander mussels at the population level. See the SSA report (Service 2023, p. 24, appendices B and C) for more information on each identified invasive species and the risk posed to the salamander mussel.

Host Species Vulnerability

Mudpuppies are susceptible to many of the same threats that affect mussels, including contaminants, habitat degradation and fragmentation, lack of water quality and quantity, known disease issues or die-offs, and potential overharvest and collection. These threats negatively impact the abundance, distribution, and survival of mudpuppies. The conservation status of the mudpuppy varies across the 14 U.S. States where the mudpuppy's range overlaps with the salamander mussel's range. Therefore, it is difficult to determine what effect these activities are having at the population level for the mudpuppy. Regardless, the magnitude of these factors has the potential to have a significant localized impact on the abundance and distribution of mudpuppies, thereby directly impacting the health and status of the salamander mussel.

Mussel Disease

Enigmatic declines and large-scale die-offs of mussel assemblages within otherwise healthy streams across large geographic regions have emerged as a very concerning risk factor (Haag and Williams 2014, pp. 45–60; Haag 2019, pp. 43–60; Waller and Cope 2019, pp. 26–42). Little is known about mussel health, including the role of microbiota and pathogens in mussel health, which makes it very difficult to understand how these factors may be impacting freshwater mussel populations. We are not aware of any diseases that are causing die-offs or declines of salamander mussel populations.

Resource Extraction

We identified the effects of coal mining and oil and gas exploration and extraction as potential catastrophic events that could negatively affect a large portion of the species' range at any given point in time.

Coal mining has the potential to result in accidental spills and contaminant runoff. Acid mine and saline drainage (AMD) is a major threat to aquatic ecosystems although the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) has played a significant role in reducing AMD during mining operations. Catastrophic events, such as black water release events and fly-ash spills, have occurred in some river systems (for example, upper Tennessee River), resulting in the extirpation of mussel populations within the watershed (Ahlstedt et al. 2016, p. 8). Impacts from coal mining may result in direct mortality due to acute toxicity of introduced contaminants and may reduce growth and reproduction, leading to population-level changes in the form of local extirpations or significant population declines.

Oil and gas exploration and extraction can result in accidental spills, discharges, and increased sedimentation. Discharge of untreated or poorly treated brine wastewater and inadvertent release during drilling of frack fluids high in chlorides and other chemicals can result in conditions that are acutely toxic to mussels (Patnode et al. 2015, p. 62). Excess sedimentation results when there is bank slippage and mudslides during pipeline construction, open trenching operations, construction of access roads, and construction of well pads (Ellis 1936, p. 29; Anderson & Kreeger 2010, p. 2). Excessive suspended sediments and contaminants resulting from inadvertent releases or runoff can be acutely toxic, result in sublethal effects (such as impaired feeding processes), and degrade and destroy suitable habitat for mussels.

Cumulative and Synergistic Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Current Condition

Survey data were provided by State agencies and researchers across the range of the salamander mussel. The occurrence data provided varied across States, depending on level of survey effort (Service 2023, p. 21).

We delineated populations based on the hydrologic unit code (HUC) (Seaber et al. 1987, entire; U.S. Geological Survey 2018, entire) at the fourth of six levels (that is, the HUC–8 watershed). We defined a population as extant if it contains live, fresh dead, or weathered individuals observed in surveys from 2000 to the present (Service 2023, p. 20). We classified weathered dead collections as an indicator of extant

populations because the salamander mussel is a thin-shelled species and weathered dead shells are not expected to persist in a system for an extended time. We defined a population as presumed extant if it contained live, fresh dead, or weathered individuals observed in surveys from 1970 to 1999 (Service 2023, p. 20). We note that for some of these records a single observation of an individual in any condition can be considered an extant or presumed extant population depending on the observation year (Service 2023, p. 20).

Current conditions are described using categories that estimate the overall condition (resiliency) of the salamander mussel populations. We assessed demographic population condition for the small number of populations for which we have demographic data (Service 2023, pp. 22–23). We categorized the demographic condition of each population as high, moderate, low, or functionally extirpated based on demographic criteria. Functionally extirpated populations were defined as populations that are still extant but have fewer than 10 live individuals observed within the last 20 years. For most populations, we have data only from incidental observations that would not allow us to evaluate population health. We categorized these populations as unknown demographic condition.

To calibrate the meanings of the demographic condition categories in terms of a population's ability to withstand demographic stochastic events, we assigned an estimate of the probability of persistence over 20 years for each category (Service 2023, pp. 22–23). Similarly, we also assigned a probability of persistence over 20 years to each of the three risk categories, described below. This allowed us to project a population's condition in 20 years, based on its current demographic population condition and risk category.

We also evaluated the six primary risk factors affecting the salamander mussel (contaminants, hydrological regime, landscape, connectivity, invasive species, and host species vulnerability) to assist in evaluating the current condition of each extant population. We assigned these risk factors to three categories of high, moderate, and low risk (Service 2023, p. 23). In addition, we assigned the potential catastrophic events (described above under Resource Extraction) as low if no known activities were present in the HUC8 or high if activities were known to be present in the HUC8.

Historically, the species occurred in 110 populations. Of those, 66 populations are considered extant or presumed extant. Of these 66 populations, 48 (73 percent) are in unknown demographic condition. Of the 18 populations for which we have demographic information, 9 are considered functionally extirpated, 6 are in low condition, and 3 are in moderate or high condition. In addition, more than 80 percent of the 66 populations are at high risk from one or more of the primary risk factors, and approximately 14 percent of the populations are at moderate risk. None of the populations across the range are experiencing low risk. We did not have information to complete the risk factor analysis for three populations that cross the border with Canada.

To evaluate the species' genetic and ecological diversity (representation) in the absence of species-specific genetic information, we considered the extent and variability of environmental conditions within the species' geographic range. Based on the best available data, we identified five representation units at the HUC–2 watershed level: Upper Mississippi, Ohio, Tennessee, Great Lakes, and Arkansas-White-Red basins. The species currently ranges across all five representation units, but the Ohio, Upper Mississippi, and Great Lakes basins make up the core area for the salamander mussel.

The number of populations in the Ohio and Upper Mississippi basins has declined by almost 40 percent, while the number of Great Lakes basin populations has declined by 45 percent. The Ohio River basin has 35 extant or presumed extant populations; of these, 27 are at high risk from one or more of the primary risk factors, including contaminants (26 populations) and landscape alterations (7 populations). The Upper Mississippi basin has 17 extant or presumed extant populations, all of which are at high risk from contaminants. Nine are also at high risk from host vulnerability, and five are at high risk from lack of connectivity. The Great Lakes basin has eight extant or presumed extant populations with risk analyses completed. Seven populations are at high risk from contaminants, four are at high risk from landscape alterations, and four are at high risk from host vulnerability. We did not have information to complete the analyses for three extant populations that cross the border with Canada. The Arkansas-White-Red basin historically had only three populations, one of which is presumed extant and is at high risk from lack of connectivity. Salamander mussels have not been observed in the Arkansas-White-Red basin in the last two decades. Both of the known populations in the Tennessee basin are extant, one of which has had salamander mussels introduced in the last two decades. Both populations are at high risk from lack of connectivity and host vulnerability, and one is also at high risk from contaminants.

We evaluated the effect of the risk factors on each population, given its current condition. Of the 18 populations for which we have demographic condition, we were able to evaluate 16 of those. (We could not evaluate risk condition for the two populations with demographic data that are within Canada.) Of those 16 populations, 11 (approximately 70 percent) would be extirpated within 20 years due to current risks, 3 would be functionally extirpated (approximately 18 percent), and 2 would be in low condition (approximately 12 percent). Of the 48 populations with unknown demographic condition, 43 are experiencing high risk. At best, these populations would be in low condition in 20 years if they all were in high demographic condition currently, which is unlikely. If we assume these unknown populations follow the pattern of the populations for which we have data, 9 (18 percent) would be functionally extirpated and 34 (70 percent) would be extirpated.

With few populations that are all at high risk, the Great Lakes, Tennessee, and Arkansas-White-Red representation units are all at risk of extirpation. Although the Upper Mississippi representation unit has 17 populations, all of them are at high risk, putting the unit at risk of extirpation. The Ohio basin is the only representation unit with populations experiencing moderate risk.

In addition, 98.5 percent of the 66 extant and presumed extant populations are at high risk of a potential catastrophic event from oil and gas or coal activities. Further, 23 extant and presumed extant populations are known from a single record or couple of records of occupied river extent, making these populations more susceptible to extirpation from catastrophic events.

Future Conditions

As part of the SSA, we also developed two future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the salamander mussel. Our scenarios project an upper and lower bound to plausible changes to contaminant levels, landscape cover, hydrological regime, connectivity, invasive species, and host species vulnerability. Because we determined that the salamander mussel is currently

in danger of extinction (see Determination of Salamander Mussel's Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2023, pp. 44–51, 145–187) for the full analysis of future scenarios.

Conservation Efforts and Regulatory Mechanisms

Captive propagation is an important tool that is being used to augment and reintroduce salamander mussel populations in Pennsylvania, West Virginia, Wisconsin, and Kentucky. Two of the Service's National Fish Hatcheries (Genoa and White Sulfur Springs) are actively propagating salamander mussel as well as other mussel species for conservation and recovery. In addition, several State wildlife agencies have developed mollusk conservation propagation programs, including the Kentucky Department of Fish and Wildlife Resources that established the Center for Mollusk Conservation in 2002 and have been propagating salamander mussel and other mollusks to aid conservation. These conservation propagation efforts have been critical in contributing significant conservation benefits to imperiled salamander mussel populations as well as enhancing our understanding of salamander mussel and mudpuppy reproduction and life history. These programs will continue to be an important conservation tool into the future for salamander mussel and mudpuppy conservation.

Efforts to construct artificial mudpuppy habitats have been undertaken in several waterbodies, including in the Allegheny River in Pennsylvania (Welte 2020, entire); in the Detroit and St. Clair rivers, Lake St. Clair, and Lake Erie in Michigan (Stapleton et al. 2018, entire); and at Guttenberg, Iowa (Hanson 2021, pers. comm.). Mudpuppies have been observed using the constructed habitat within the first 6 months of installation (Hanson 2021, pers. comm.). In Pennsylvania, one live salamander mussel was observed under an artificial structure. No mudpuppies were observed, but silt may have obscured escaping mudpuppies during monitoring (Welte 2020, entire). In Michigan, mudpuppies were observed at two recent restoration sites where mudpuppies had not previously been detected, indicating that efforts to create mudpuppy artificial habitat have been successful (Stapleton et al. 2018, entire).

The salamander mussel is listed as endangered under State laws in Illinois, Michigan, Minnesota, and Pennsylvania and as threatened under State laws in Ohio and Wisconsin. The salamander mussel is also listed as endangered in Canada under the Federal Species at Risk Act. In addition, the mudpuppy is listed as threatened under State laws in Illinois and Iowa.

Section 404 of the Clean Water Act (CWA) prohibits the discharge of dredged or fill material in jurisdictional waters of the United States unless permitted by the U.S. Army Corps of Engineers (USACE) or unless the discharge is exempt from regulation as designated in section 404(f). Section 402 of the CWA regulates activities affecting water quality. Under the National Pollutant Discharge Elimination System (NPDES), discharge of pollutants into navigable waters requires a permit from the U.S. Environmental Protection Agency (USEPA) or a State-authorized program.

The USEPA also oversees the CWA triennial review (Section 303(c)(1)), water quality standards (section 303(c)(3)), impaired waters (section 303(d)), and the NPDES programs (section 402). The USEPA's responsibility under the triennial review is to encourage the States to hold public hearings for the purpose of reviewing applicable water quality standards, and, as appropriate, modifying or adopting the State water quality standards (*i.e.,* water body uses, numeric criteria, narrative criteria, and anti-degradation policy). The USEPA's responsibility under the water quality standards program is to determine if any water quality standards submitted by the State as a new or revised standard meets the requirements of the CWA.

Freshwater mussels are among the most sensitive freshwater species to metals, ammonia, and ion constituents, including copper, sulfate, alachlor, nickel, chloride, sulfate, zinc, and potassium (Wang et al. 2017, pp. 786–796). The USEPA has water quality criteria for six of the 10 chemicals tested in Wang et al. (2017, pp. 186–796). If the minimum data requirement for deriving water quality criteria required the inclusion of freshwater mussels, then water quality criteria would capture the high sensitivity of freshwater mussels to many chemicals and different exposure pathways (Wang et al. 2017, p. 795).

Determination of Salamander Mussel's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following 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.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined that the salamander mussel has experienced a 40 percent reduction in the number of populations from historical conditions. Historically, the species occurred within 110 populations and currently occurs in 66 populations.

Of the 18 populations for which we have demographic information, 9 are considered functionally extirpated, 6 are in low condition, 2 are in moderate condition, and 1 is in high condition. Of these 18 populations, 11 (approximately 70 percent) would be extirpated within 20 years due to current risks, 3 would be functionally extirpated (approximately 18 percent), and 2 would be in low condition (approximately 12 percent). (We could not evaluate risk condition for the two populations with demographic data that are within Canada.) Of the 48 populations with unknown demographic condition, 43 are experiencing high risk. At best, these populations would be in low condition in 20 years if they all were in high demographic condition currently, which is unlikely. In addition, 23 of these populations are known from a single record or couple of records and may be at higher risk than presumed. Based on survey data, it is unlikely that meaningful numbers of individuals or populations have not been identified. Further, more than 80 percent of all populations are at high risk from contaminants, hydrological alteration, land use changes, loss of connectivity (Factor A), or host species' vulnerabilities (Factor E). These current and ongoing threats put the majority of the remaining populations at risk of reduced resiliency and potential extirpation, and the existing regulatory

mechanisms (Factor D) are not adequately reducing the impact of these threats on the species. Although all five representation units are still extant, the populations are concentrated in three units (Ohio, Upper Mississippi, and Great Lakes), and of these, the Ohio basin is the only representation unit with populations at moderate risk. With few populations that are all at high risk, three of the representation units are at risk of extirpation. Redundancy is reduced from historical conditions, and a high percentage (98.5 percent) of the remaining populations are at high risk of experiencing a potential catastrophic event. The biological status of the salamander mussel is exacerbated by having only one host, which also has habitat limitations and is vulnerable to risk factors.

Overall, most of the remaining populations are subject to high risk from current and ongoing threats, including contaminants, landscape alterations, lack of connectivity, and host vulnerability; and are likely unable to withstand potential catastrophic events from accidental spills, discharges, and increased sedimentation related to oil and gas exploration and extraction; and are projected to be in low condition or functionally extirpated within 20 years due to these current and ongoing threats. Thus, after assessing the best available information, we determine that the salamander mussel is in danger of extinction throughout all of its range.

Our analysis of the species' current condition and ongoing threats of contaminants, landscape alterations, lack of connectivity, and host vulnerability, as well as the conservation efforts and regulatory mechanisms discussed above, shows that the salamander mussel is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting the species. We find that a threatened species status is not appropriate for the salamander mussel because the threats that the species is experiencing are already occurring across the species' range. Therefore, the species is currently in danger of extinction throughout its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the salamander mussel is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the salamander mussel warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), which vacated the provision of 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 37578; July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the salamander mussel meets the Act's definition of an endangered species. Therefore, we propose to list the salamander mussel as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of 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, including the Service, 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. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. 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.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''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. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Michigan 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 States of Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, New York, Ohio,

Pennsylvania, Tennessee, West Virginia, and Wisconsin would be eligible for Federal funds to implement management actions that promote the protection or recovery of the salamander mussel. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the salamander mussel is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any 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 critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2).

Examples of discretionary actions for the salamander mussel that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by U.S. Fish and Wildlife Service, U.S. Forest Service, National Park Service, U.S. Army Corps of Engineers, and Federal Energy Regulatory Commission, and as well as 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, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following: (1) import endangered wildlife to, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) endangered wildlife within the United States or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued: for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is the policy of the Services, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. 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 the species proposed for listing.

As discussed above, certain activities that are prohibited under section 9 may be permitted under section 10 of the Act. In addition, to the extent currently known, the following activities would not be considered likely to result in violation of section 9 of the Act:

(1) Normal agricultural and silvicultural practices that utilize best management practices to minimize runoff and erosion;

(2) Normal livestock grazing and other standard ranching activities within riparian zones that do not destroy or significantly degrade salamander mussel habitat;

(3) Routine implementation and maintenance of agricultural conservation practices specifically designed to minimize erosion of cropland (*e.g.,* terraces, dikes, grassed waterways, and conservation tillage);

(4) Existing discharges into waters supporting the salamander mussel, provided these activities are carried out in accordance with existing regulations and permit requirements (*e.g.,* activities subject to sections 402, 404, and 405 of the Clean Water Act);

(5) Improvements to existing irrigation, livestock, and domestic well structures, such as renovations, repairs, or replacement; and

(6) Normal residential landscaping activities.

This list is intended to be illustrative and not exhaustive; additional activities that would not be considered likely to result in violation of section 9 of the Act may be identified during coordination with the local field office, and in some instances (*e.g.,* with new information), the Service may conclude that one or more activities identified here would be considered likely to result in violation of section 9.

To the extent currently known, the following is a list of examples of activities that would be considered likely to result in violation of section 9 of the Act in addition to what is already clear from the descriptions of the prohibitions found at 50 CFR 17.21:

(1) Modification of the river channel or water flow of any stream that supports salamander mussel;

(2) Unauthorized discharges (including violation of discharge permits), spills, or dumping of chemicals, fill material, or other pollutants (*e.g.,* sewage, oil and gasoline, heavy metals) into any waters or their adjoining riparian areas that support or sustain salamander mussel;

(3) Livestock grazing that results in direct or indirect destruction of stream habitat that supports salamander mussel;

(4) Applications of pesticides, herbicides, fungicides, and other chemicals, including fertilizers, in violation of label restrictions;

(5) Withdrawal of surface or ground waters to the point at which baseflows in water courses occupied by the salamander mussel diminish and habitat becomes unsuitable for the species;

(6) Unauthorized collecting of mudpuppies in waters occupied by the salamander mussel; and

(7) Introduction of nonnative species of salamanders that may be vectors of diseases that affect mudpuppies in waters occupied by the salamander mussel.

This list is intended to be illustrative and not exhaustive; additional activities that would be considered likely to result in violation of section 9 of the Act may be identified during coordination with the local field office, and in some instances (*e.g.,* with new or site-specific information), the Service may conclude that one or more activities identified here would not be considered likely to result in violation of section 9. Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Michigan Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. 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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

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 also 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. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must 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 data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

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.

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 from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the 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 those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, 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. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

As described above under Summary of Biological Status and Threats, the salamander mussel occurs in rivers and streams with flat rocks or bedrock crevices. Once released from their mudpuppy host, salamander mussels are benthic (bottom-dwelling) organisms closely associated with appropriate habitat patches within a river or stream. Among mussel species, salamander mussel is a highly mobile and active mussel species with the capability to move to more suitable habitat; however, interaction among individuals in different river reaches is strongly influenced by the presence of barriers, habitat fragmentation, and the distance between occupied river or stream reaches.

The primary habitat elements that influence resiliency of the salamander mussel include substrate/shelter habitat, water quantity/flow, water quality, habitat connectivity, and the presence of the mudpuppy host to ensure recruitment. These features are also described above as species needs under Summary of Biological Status and Threats, and a full description is available in the SSA report. The individuals' needs are summarized below in table 1.

TABLE 1—REQUIREMENTS FOR LIFE STAGES OF THE SALAMANDER MUSSEL

Life stage	Resources needed to complete life stage	Source
Fertilized eggs —late spring to summer	• Clear, flowing water • Sexually mature males in proximity to sexually mature females • Appropriate spawning temperatures.	Berg et al. 2008, p. 397; Haag 2012, pp. 38–39.

TABLE 1—REQUIREMENTS FOR LIFE STAGES OF THE SALAMANDER MUSSEL—Continued

Life stage	Resources needed to complete life stage	Source
Glochidia —late summer released from female marsupial gills —develop on host fall to early spring	• Clear, flowing water • Presence of mudpuppy (host) for attachment. • Flow to ensure glochidia encounter host	Strayer 2008, p. 65; Haag 2012, pp. 41–42; Clarke 1985, pp. 60–68.
Juveniles —excystment (juveniles drop off from host)	• Clear, flowing water. • Host dispersal. • Appropriate interstitial chemistry: low salinity; high dissolved oxygen; absence of or non-toxic levels of contaminants, including ammonia, copper, chloride, and sulfate. • Flat rocks and bedrock that provide crevices for shelter.	Dimock and Wright 1993, pp. 188–190; Sparks and Strayer 1998, p. 132; Augspurger et al. 2003, p. 2574; Augspurger et al. 2007, p. 2025; Strayer and Malcom 2012, pp. 1787–1788.
Adults —greater than 0.8 in (20 mm) shell length	• Clear, flowing water • Flat rocks and bedrock that provide crevices for shelter. • Adequate food availability (phytoplankton and detritus). • High dissolved oxygen. • Appropriate water temperature.	Yeager et al. 1994, p. 221; Nichols and Garling 2000, p. 881; Chen et al. 2001, p. 214; Spooner and Vaughn 2008, p. 308.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the salamander mussel from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2023, pp. 3–10; available on *https://www.regulations.gov* under Docket No FWS–R3–ES–2023–0058). We have determined that the following physical or biological features are essential to the conservation of salamander mussel:

(1) Adequate flows, or a hydrologic flow regime (magnitude, timing, frequency, duration, rate of change, and overall seasonality of discharge over time), necessary to maintain benthic habitats where the salamander mussel and its host, the mudpuppy, are found and to maintain stream connectivity.

(2) Suitable substrates and connected instream habitats, characterized by geomorphologically stable stream channels and banks (*i.e.,* channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support the salamander mussel and mudpuppy (*e.g.,* large rock shelters, woody debris, and bedrock crevices within stable zones of swift current with low amounts of fine sediment silt).

(3) Water and sediment quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including (but not limited to)dissolved oxygen (generally above 2 to 3 parts per million (ppm)), salinity (generally below 2 to 4 ppm), and temperature (generally below 86 °F (°F) (30° Celsius (°C)). Additionally, concentrations of contaminants, including (but not limited to)ammonia,nitrate, copper, andchloride, are below acute toxicity levels for mussels.

(4) The presence and abundance ofthe mudpuppyhost.

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 features essential to the conservation of the salamander mussel may require special management considerations or protections to reduce the following threats: (1) Alteration of the natural flow regime (modifying the natural hydrograph and seasonal flows), including water withdrawals, resulting in flow reduction and available water quantity; (2) urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (pipelines, roads, bridges, utilities), and urban water uses (resource extraction activities, water supply reservoirs, wastewater treatment, etc.); (3) significant alteration of water quality and nutrient pollution from a variety of activities, such as industrial and municipal effluents, mining, and agricultural activities; (4) land use activities that remove large areas of forested wetlands and riparian systems; (5) dam construction and culvert and pipe installation that create barriers to movement for the salamander mussel or its mudpuppy host; and (6) other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Management activities that could ameliorate these threats include, but are not limited to: Use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; moderation of surface and ground water withdrawals to maintain natural flow regimes; improved stormwater management; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the occupied areas we are proposing to designate as critical habitat contain the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. Special management considerations or protection may be required of the Federal action agency to eliminate, or to reduce to negligible levels, the threats affecting the physical and biological features of each unit.

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 specific areas within the geographical

area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat and we have determined that occupied areas are sufficient to conserve the species.

Methodology Used for Selection of Proposed Units

First, we included all extant populations with records of live or fresh dead individuals. These populations could be used for recovery actions to re-establish populations within basins through propagation activities or augment other populations through direct translocations within their basins. We defined a population as extant if it contains individuals observed in surveys from 2000 to the present (Service 2023, p. 20). We did not include presumed extant populations (those with individuals observed in surveys from 1970 to 1999 (Service 2023, p. 20)) or extant populations represented only by weathered or sub-fossil shells due to the level of uncertainty regarding the biological status of those populations and their contribution to recovery of the species. Then, we evaluated the river systems in which the extant populations occur and consulted with local experts to identify those areas that provide suitable salamander mussel habitat.

Sources of data for this proposed critical habitat designation include information from State agencies throughout the species' range and numerous survey reports on streams throughout the species' range (Service 2023, entire). We have also reviewed available information that pertains to the habitat requirements of the species. Sources of information on habitat requirements include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2023, entire).

In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) We identified river and stream reaches with observations from 2000 to the present. We determined it is reasonable to find these areas occupied, given the incomplete survey data for the salamander mussel across its range. Available State heritage databases and information support the likelihood of the species' continued presence in these areas within this timeframe.

(2) We delineated specific habitat areas, based on Natural Heritage Element Occurrences, published reports, and unpublished survey data provided by States. These areas provide habitat for salamander mussel populations and are large enough to be self-sustaining over time, despite fluctuations in local conditions. The areas within the proposed units represent continuous river and stream reaches of free-flowing habitat patches capable of sustaining mudpuppy hosts and allowing for seasonal transport of glochidia, which are essential for reproduction and dispersal of salamander mussel.

We consider portions of the following rivers and streams to be occupied by the salamander mussel at the time of proposed listing, and appropriate for critical habitat designation: Allegheny River, Beech Fork River, Black River, Blanchard River, Big Pine Creek, Chippewa River, Clinton River, Conneaut Creek, Drennon Creek, Duck River, East Fork White River, Eau Claire River, Fish Creek (Indiana), Fish Creek (West Virginia), Fishing Creek, French Creek, Graham Creek, Harpeth River, Kinniconick Creek, Laughery Creek, Lemonweir River, Licking River, Little Kanawha River, Middle Fork Wildcat Creek, Middle Island Creek, Mill Creek, North Branch Pensaukee River, North Fork Licking River, Otter Creek, Rolling Fork River, South Fork Hughes River, South Fork Licking River, St. Croix River, Tippecanoe River, Tonawanda Creek, and Wisconsin River.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the salamander mussel. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species.

Thirty-seven units are proposed for designation based on one or more of the physical or biological features being present to support the salamander mussel's life-history processes. All units contain one or more of the physical or biological features necessary to support the salamander mussel's particular use of that habitat.

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 under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R3–ES–2023–0058 and on our internet site *https://www.fws.gov/species/salamander-mussel-simpsonaias-ambigua.*

Proposed Critical Habitat Designation

We are proposing approximately 2,012 river miles (3,238 kilometers (km)) in 37 units as critical habitat for the salamander mussel. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for salamander mussel. The 37 areas we propose as critical habitat are: (1) St. Croix River, (2) Chippewa River, (3) Eau Claire River, (4) Black River, (5) Wisconsin River North, (6) North Branch Pensaukee River, (7) Lemonweir River, (8) Wisconsin River South, (9) Big Pine Creek, (10) Middle Fork Wildcat Creek, (11) Tippecanoe River, (12) Fish Creek (Indiana), (13) Blanchard River, (14) Clinton River, (15) Mill Creek, (16) Tonawanda Creek, (17) Conneaut Creek, (18) French Creek, (19) Allegheny River, (20) Fish Creek (West Virginia), (21) Fishing Creek, (22) Middle Island Creek, (23) Little Kanawha River, (24) South Fork Hughes River, (25) Kinniconick Creek, (26) North Fork Licking River, (27) Licking River, (28) South Fork Licking River, (29) Drennon Creek, (30) Laughery Creek, (31) Otter Creek, (32) Graham Creek, (33) East Fork White River, (34) Beech Fork River, (35) Rolling Fork River, (36) Harpeth River, and (37) Duck River. Table 2 shows the proposed critical habitat units, the

approximate area of each unit, and the State(s) where each unit is located. All units are occupied by the species.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE SALAMANDER MUSSEL

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Adjacent riparian land ownership by type	Size of unit in river miles (kilometers)	State(s)
1. St. Croix River	Public (Federal, State)	28.85 (46.43)	MN, WI
	Private	24.08 (38.76)	
2. Chippewa River	Public (Federal, State, local)	34.04 (54.77)	WI
	Private	25.20 (40.56)	
3. Eau Claire River	Public (local)	4.23 (6.81)	WI
	Private	3.17 (5.10)	
4. Black River	Public (Federal, State, local)	35.71 (57.47)	WI
	Private	39.67 (63.84)	
5. Wisconsin River North	Public (State, local)	4.11 (6.62)	WI
	Private	17.08 (27.48)	
6. North Branch Pensaukee River	Public (State, local)	1.24 (2.00)	WI
	Private	18.69 (30.08)	
7. Lemonweir River	Public (local)	2.11 (3.40)	WI
	Private	35.39 (56.96)	
8. Wisconsin River South	Public (Federal, State, local)	102.78 (165.40)	WI
	Private	50.10 (80.63)	
9. Big Pine Creek	Public (State)	1.30 (2.09)	IN
	Private	49.93 (80.35)	
10. Middle Fork Wildcat Creek	Private	35.70 (57.46)	IN
11. Tippecanoe River	Public (State)	7.43 (11.95)	IN
	Private	116.83 (188.01)	
12. Fish Creek (IN)	Public (State)	1.02 (1.65)	IN, OH
	Private	36.34 (58.49)	
13. Blanchard River	Public (local)	0.94 (1.51)	OH
	Private	24.08 (38.75)	
14. Clinton River	Public (local)	0.28 (0.44)	MI
	Private	6.74 (10.85)	
15. Mill Creek	Public (State)	1.54 (2.47)	MI
	Private	22.11 (35.59)	
16. Tonawanda Creek	Public (State, local)	8.70 (14.00)	NY
	Private	93.91 (151.14)	
	Tribal	10.60 (17.06)	
17. Conneaut Creek	Public (State, local)	2.31 (3.72)	OH, PA
	Private	59.69 (96.06)	
18. French Creek	Public (Federal, State, local)	5.83 (9.39)	PA
	Private	68.54 (110.30)	
19. Allegheny River	Public (State, local)	4.60 (7.40)	PA
	Private	34.85 (56.08)	
20. Fish Creek (WV)	Private	26.58 (42.78)	WV
21. Fishing Creek	Public (local)	0.13 (0.21)	WV
	Private	23.19 (37.33)	
22. Middle Island Creek	Public (State)	0.15 (0.25)	WV
	Private	62.10 (99.94)	
23. Little Kanawha River	Private	49.82 (80.18)	WV
24. South Fork Hughes River	Private	57.44 (92.43)	WV
25. Kinniconick Creek	Private	51.01 (82.10)	KY
26. North Fork Licking River	Public (Federal)	13.13 (21.14)	KY
	Private	7.54 (12.13)	
27. Licking River	Public (Federal, State, local)	20.82 (33.51)	KY
	Private	158.74 (255.47)	
28. South Fork Licking River	Private	18.26 (29.39)	KY
29. Drennon Creek	Private	22.36 (35.99)	KY
30. Laughery Creek	Public (State)	3.01 (4.85)	IN
	Private	41.51 (66.80)	
31. Otter Creek	Private	17.96 (28.91)	IN
32. Graham Creek	Private	41.50 (66.79)	IN
33. East Fork White River	Public (Federal, State)	6.12 (9.85)	IN
	Private	72.45 (116.60)	
34. Beech Fork River	Public (State)	1.99 (3.21)	KY
	Private	48.40 (77.89)	
35. Rolling Fork River	Private	87.90 (141.47)	KY
36. Harpeth River	Public (Federal)	6.07 (9.77)	TN
	Private	37.25 (59.95)	
37. Duck River	Public (Federal)	0.52 (0.83)	TN
	Private	115.90 (186.53)	
Totals	Public	298.97 (481.14)	

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE SALAMANDER MUSSEL—Continued

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Adjacent riparian land ownership by type	Size of unit in river miles (kilometers)	State(s)
	Private	1,702.04 (2,739.17)	
	Tribal	10.60 (17.06)	
	Total	2,011.61 (3,237.37)	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for salamander mussel, below.

Unit 1: St. Croix River

Unit 1 consists of 52.93 miles (85.19 km) of St. Croix River in Polk, St. Croix, and Pierce Counties, Wisconsin, and Chisago and Washington Counties, Minnesota. This unit extends from the base of the dam at St. Croix Falls (Polk County, Wisconsin) and Taylors Falls (Chisago County, Minnesota) downstream to the confluences with the Mississippi River at Prescott (Pierce County, Wisconsin) and Point Douglas (Washington County, Minnesota). The unit includes the river channel up to the ordinary high water mark. Unit 1 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 54.5 percent (28.85 miles (46.43 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 45.5 percent (24.08 miles (38.76 km)) are in private ownership. Approximately 12.63 miles (20.32 km) of the lands in public ownership are Federal lands associated with the National Park Service's (NPS) Lower St. Croix National Scenic Riverway. Approximately 4.25 miles (6.84 km) of the lands in public ownership are Federal lands associated with the NPS's Lower St. Croix National Scenic Riverway on one side of the bank and State lands associated with the Wisconsin Department of Natural Resources' (WDNR) St. Croix Islands Wildlife Area on the other side. Approximately 5.0 miles (8.04 km) of the lands in public ownership are Federal lands associated with the NPS's Lower St. Croix National Scenic Riverway on one side of the bank and State lands associated with the Minnesota Department of Natural Resources' William O'Brien State Park on the other side. Approximately 5.2 miles (8.37 km) of the lands in public ownership are State lands associated with the WDNR's Kinnickinnic State Park and Interstate Park on one side of the bank and State lands associated with the Minnesota Department of Natural Resources' Interstate Park on the other side. Approximately 1.78 miles (2.86 km) of the lands in public ownership are State lands associated with the Minnesota Department of Natural Resources' Afton State Park. In addition to the Federal and State lands, general land use within St. Croix River Unit includes agriculture and urban areas, including the cities of St. Croix Falls, Osceola, Marine on St. Croix, Stillwater, Houlton, Bayport, Hudson, Lakeland, Lake St. Croix Beach, and Prescott. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of the salamander mussel may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; presence of invasive species; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover in the riparian buffer.

Unit 2: Chippewa River

Unit 2 consists of 59.24 miles (95.33 km) of Chippewa River in Buffalo, Dunn, Eau Claire, and Pepin Counties, Wisconsin. The unit extends from the mouth of the Eau Claire River at Eau Claire (Eau Claire County, Wisconsin) downstream to the confluence with the Mississippi River south of Trevino (Buffalo and Pepin Counties, Wisconsin). This unit includes the river channel up to the ordinary high water mark. Unit 2 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 57.5 percent (34.04 miles (54.77 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 42.5 percent (25.20 miles (40.56) km)) are in private ownership. Approximately 1.3 miles (2.09 km) of the lands in public ownership are city or county lands associated with city of Eau Claire's Owen Park and Jefferson County's Public Hunting Ground. Approximately 4.2 miles (6.76 km) of the lands in public ownership are Federal lands associated with the Bureau of Land Management's (BLM) stewardship of islands within the river channel. Approximately 1.6 miles (2.57 km) of the lands in public ownership are Federal lands associated with the Service's Upper Mississippi River National Wildlife and Fish Refuge on one side of the bank and State lands associated with the WDNR's Tiffany Wildlife Area on the opposite bank. Approximately 27 miles (43.45 km) of the lands in public ownership are State lands associated with the WDNR's Lower Chippewa River State Natural Area, Dunnville Wildlife Area, and Nine Mile Island State Natural Area. General land use includes agriculture and urban areas, including the cities of Eau Claire, Shawtown, and Durand. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; host vulnerability from the lack of regulation of collection of mudpuppies; lack of connectivity due to barriers; presence of invasive species; impacts to the hydrologic regime; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover in the riparian buffer.

Unit 3: Eau Claire River

Unit 3 consists of 7.40 miles (11.91 km) of Eau Claire River in Eau Claire County, Wisconsin. The unit extends from the confluence of the North Fork and South Fork Eau Claire River (Eau Claire County, Wisconsin) downstream to Lake Eau Claire (Eau Claire County, Wisconsin). This unit includes the river channel up to the ordinary high water mark. Unit 3 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 57.2 percent (4.23 miles (6.81 km)) of the riparian lands adjacent to, but not included in, this

unit are in public ownership, and 42.8 percent (3.17 miles (5.10 km)) are in private ownership. The lands in public ownership in this unit are associated with the Eau Claire County Forest. General land use includes agriculture and urban areas. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; host species vulnerability from the lack of regulation of collection of mudpuppies; lack of connectivity due to barriers; presence of invasive species; impacts to the hydrologic regime; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover in the riparian buffer.

Unit 4: Black River

Unit 4 consists of 75.38 miles (121.31 km) of Black River in Jackson, La Crosse, Monroe, and Trempealeau Counties, Wisconsin. This unit extends from the bottom of Lake Arbutus dam southeast of Hatfield (Jackson County, Wisconsin) downstream to the confluence with the Mississippi River west of Brice Prairie (La Crosse County, Wisconsin). This unit includes the river channel up to the ordinary high water mark. Unit 4 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 47.4 percent (35.71 miles (57.47 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 52.6 percent (39.67 miles (63.84 km)) are in private ownership. Approximately 0.15 mile (0.24 km) of the land in public ownership is county land associated with Jackson County Forest. Approximately 0.86 mile (1.38 km) of the land in public ownership is Federal land associated with the BLM's stewardship of islands within the river channel. Approximately 6.6 miles (10.62 km) of the lands in public ownership are Federal lands associated with the Service's Upper Mississippi River National Wildlife and Fish Refuge on one bank and State lands associated with the WDNR's Van Loon Wildlife Area on the opposite bank. Approximately 28 miles (45.06 km) of the lands in public ownership are State lands associated with the WDNR's North Bend Bottoms Wildlife Area, Statewide Habitat Areas, Half Moon Lake Fishery Area, and Black River State Forest. General land use within the unit includes agriculture and forest and the city of Black River Falls. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; host vulnerability from the lack of regulation of collection of mudpuppies; lack of connectivity due to barriers; presence of invasive species; impacts to the hydrologic regime; and habitat degradation and loss due to agriculture and the lack of canopy cover in the riparian buffer.

Unit 5: Wisconsin River North

Unit 5 consists of 21.19 miles (34.1 km) of Wisconsin River in Lincoln and Marathon Counties, Wisconsin. This unit extends from the base of the dam at Merrill (Marathon County, Wisconsin) downstream to the top of the dam at Wausau (Lincoln County, Wisconsin). The unit includes the river channel up to the ordinary high water mark. Unit 5 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 19.4 percent (4.11 miles (6.62 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 80.6 percent (17.08 miles (27.48 km)) are in private ownership. Approximately 3.78 miles (6.08 km) of the lands in public ownership are city or county lands associated with the city of Merrill's Riverside Park, Marathon County's Marathon County Forest, city of Wausau's Gilbert Park, Scholfield Park, Baker Stewart Island Park, Big Bull Falls Park, White Water Park, and Woodson Park. Approximately 0.34 mile (0.55 km) of the land in public ownership is State land associated with the WDNR's State-Owned Islands. General land use within the unit includes agriculture and urban areas, such as the cities of Merrill, Granite Heights, and Wausau. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; host species vulnerability from the lack of regulation of collection of mudpuppies; and lack of connectivity.

Unit 6: North Branch Pensaukee River

Unit 6 consists of 19.93 miles (32.08 km) of North Branch Pensaukee River in Shawano and Oconto Counties, Wisconsin. This unit extends from the Pensaukee Lakes at Cecil (Shawano County, Wisconsin) downstream to the confluence with the Pensaukee River at Abrams (Oconto County, Wisconsin). The unit includes the river channel up to the ordinary high water mark. Unit 6 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 6.2 percent (1.24 miles (2.0 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 93.8 percent (18.69 miles (30.08 km)) are in private ownership. Approximately 1.22 miles (1.96 km) of the lands in public ownership are county lands associated with the Oconto County Forest. Approximately 0.02 mile (0.03 km) of the land in public ownership is State land associated with the WDNR's Wiouwash State Trail. General land use within the unit includes agriculture, forest, and urban areas. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: host species vulnerability from the lack of regulation of collection of mudpuppies; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover in the riparian buffer; and presence of invasive species.

Unit 7: Lemonweir River

Unit 7 consists of 37.5 miles (60.36 km) of Lemonweir River in Juneau County, Wisconsin. This unit extends from approximately a quarter mile north of Kennedy County Park north of New Lisbon (Juneau County, Wisconsin) downstream to the confluence with the Wisconsin River northeast of Lyndon Station (Juneau County, Wisconsin). The unit includes the river channel up to the ordinary high water mark. Unit 7 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 5.6 percent (2.11 miles (3.4 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 94.4 percent (35.39 miles (56.96 km)) are in private ownership. The lands in public ownership are city or county lands associated with the Juneau County Forest owned by Juneau County, Riverside Park owned by the city of Mauston, and an unnamed natural area owned by the county. General land use within the unit includes agriculture and

urban areas such as the cities of New Lisbon and Mauston. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; host species vulnerability from the lack of regulation of collection of mudpuppies; lack of connectivity due to barriers; presence of invasive species; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover in the riparian buffer.

Unit 8: Wisconsin River South

Unit 8 consists of 152.88 miles (246.03 km) of Wisconsin River in Iowa, Grant, Dane, Crawford, Richland, Sauk, Columbia, Juneau, and Adams Counties, Wisconsin. This unit extends from the confluence with the Lemonweir River south of White Creek (Adams County, Wisconsin) downstream to the confluence with the Mississippi River south of Prairie du Chien (Crawford County, Wisconsin). The unit includes the river channel up to the ordinary high water mark. Unit 8 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 67.2 percent (102.78 miles (165.40 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 32.8 percent (50.10 miles (80.63 km)) are in private ownership. Approximately 0.09 mile (0.14 km) of the land in public ownership is city land associated with the Village of Lake Delton's Newport Park. Approximately 9 miles (14.48 km) of the lands in public ownership are Federal lands associated with the BLM's land stewardship of islands within the river channel and the Service's Upper Mississippi River National Wildlife and Fish Refuge. Approximately 93.7 miles (150.8 km) of the lands in public ownership are State lands associated with the WDNR's Pine Island Wildlife Area, Sauk Prairie Recreation Area, and Lower Wisconsin State Riverway. General land use within the unit includes agriculture and urban areas, including numerous cities and municipalities, as well as several county parks and forests. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; host species vulnerability from the lack of regulation of collection of mudpuppies; lack of connectivity due to barriers; presence of invasive species; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover in the riparian buffer.

Unit 9: Big Pine Creek

Unit 9 consists of 51.23 miles (82.44 km) of Big Pine Creek in White, Benton, and Warren Counties, Indiana. This unit extends from the headwaters of Big Pine Creek northeast of Round Grove (White County, Indiana) downstream to the confluence with the Wabash River at Attica (Fountain County, Indiana). The unit includes the river channel up to the ordinary high water mark. Unit 9 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 2.5 percent (1.3 miles (2.09 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 97.5 percent (49.93 miles (80.35 km)) are in private ownership. The lands in public ownership are State lands associated with the Indiana Department of Natural Resources' (IDNR) Pine Creek Bottoms Gamebird Habitat Area. General land use within the unit includes agriculture and urban areas, including the city of Rainsville and town of Pine Village. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; host species vulnerability from the lack of regulation of collection of mudpuppies; presence of invasive species; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 10: Middle Fork Wildcat Creek

Unit 10 consists of 35.7 miles (57.46 km) of Middle Fork Wildcat Creek in Carroll, Clinton, and Tippecanoe Counties, Indiana. This unit extends from the headwaters of Middle Fork Wildcat Creek northwest of Forest (Clinton County, Indiana) downstream to the confluence with South Fork Wildcat Creek northwest of Monitor (Tippecanoe County, Indiana). The unit includes the river channel up to the ordinary high water mark. Unit 10 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit includes agriculture and numerous cities and municipalities. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; host species vulnerability from lack of regulation of collection of mudpuppies; and impacts to the hydrologic regime.

Unit 11: Tippecanoe River

Unit 11 consists of 124.26 miles (199.96 km) of Tippecanoe River in Marshall, Fulton, Pulaski, Starke, Kosciusko, and White Counties, Indiana. This unit extends from below Oswego Lake at Oswego (Kosciusko County, Indiana) downstream to the top of Lake Shaffer west of Sitka (White County, Indiana). The unit includes the river channel up to the ordinary high water mark. Unit 11 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 6 percent (7.43 miles (11.95 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 94 percent (116.83 miles (188.01 km)) are in private ownership. The lands in public ownership are State lands associated with the IDNR's Tippecanoe River State Park and Menominee Public Fishing Area, Talma Public Access, and Old Tip Town Public Access Site. General land use within the unit includes agriculture and urban areas, including numerous cities and municipalities, as well as several county parks and natural areas. There is overlap of 28.14 miles (45.29 km) of this unit with designated critical habitat for the rabbitsfoot (*Quadrula cylindrica cylindrica*) (see 80 FR 24692, April 30, 2015, and 50 CFR 17.95(f)) and 74.38 miles (119.7 km) with designated critical habitat for the round hickorynut (*Obovaria subrotunda*) (see 88 FR 14794, March 9, 2023, and 50 CFR 17.95(f)).

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due

to contaminants; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; lack of connectivity due to barriers; presence of invasive species; host species vulnerability from the lack of regulation of collection of mudpuppies; and impacts to the hydrologic regime.

Unit 12: Fish Creek (IN)

Unit 12 consists of 37.36 miles (60.14 km) of Fish Creek in Williams County, Ohio, and DeKalb and Steuben Counties, Indiana. This unit extends from the headwaters of Fish Creek at Billingstown (Williams County, Ohio) downstream to the confluence with the St. Joseph River at Edgerton (Williams County, Ohio). The unit includes the river channel up to the ordinary high water mark. Unit 12 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 2.7 percent (1.02 miles (1.65 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 97.3 percent (36.34 miles (58.49 km)) are in private ownership. The land in public ownership is State land associated with the Ohio Department of Natural Resources' (ODNR) Fish Creek Wildlife Area. General land use within the unit is urban. There is overlap of 5.53 miles (8.9 km) of this unit with designated critical habitat for the rabbitsfoot (see 80 FR 24692, April 30, 2015, and 50 CFR 17.95(f)).

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; presence of invasive species; and habitat degradation and loss due to urbanization and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 13: Blanchard River

Unit 13 consists of 25.02 miles (40.26 km) of Blanchard River in Putnam and Hancock Counties, Ohio. This unit extends from the west side of Findley (Hancock County, Ohio) downstream to the confluence with Riley Creek east of Ottawa (Putnam County, Ohio). The unit includes the river channel up to the ordinary high water mark. Unit 13 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 3.75 percent (0.94 mile (1.51 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 96.25 percent (24.08 miles (38.75 km)) are in private ownership. The land in public ownership is city or county land associated with Hancock Park District's Indian Green Preserve. General land use within the unit includes agriculture, forest, and urban areas as well as several county parks and natural areas, a State-managed hatchery, and State-managed recreation and wildlife areas and nature preserves. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; presence of invasive species; and host species vulnerability from the lack of regulation of collection of mudpuppies.

Unit 14: Clinton River

Unit 14 consists of 7.02 miles (11.29 km) of Clinton River in Oakland County, Michigan. This unit extends from downstream of the fish hatchery at Waterford Township (Oakland County, Michigan) downstream to Cass Lake east of Four Towns (Oakland County, Michigan). The unit includes the river channel up to the ordinary high water mark. Unit 14 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 4 percent (0.28 mile (0.44 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 96 percent (6.74 miles (10.85 km)) are in private ownership. The land in public ownership is city or county land associated with Waterford Township's Clinton River Canoe Site. General land use within the unit includes agriculture, forest, and urban areas. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminant; habitat degradation and loss due to the amount of impervious surface, urbanization, and the lack of canopy cover and vegetative cover in the riparian buffer; host species vulnerability from the lack of regulation of collection of mudpuppies; lack of connectivity due to barriers; and presence of invasive species.

Unit 15: Mill Creek

Unit 15 consists of 23.65 miles (38.06 km) of Mill Creek in St. Clair County, Michigan. This unit extends from the confluence with Thompson Drain northwest of Brockway Township (St. Clair County, Michigan) downstream to the confluence with the Black River at Ruby (St. Clair County, Michigan). The unit includes the river channel up to the ordinary high water mark. Unit 15 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 6.5 percent (1.54 miles (2.47 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 93.5 percent (22.11 miles (35.59 km)) are in private ownership. The lands in public ownership are State lands associated with the Michigan Department of Natural Resources' (MDNR) Port Huron State Game Area. General land use within the unit includes agriculture and urban areas. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; habitat degradation and loss due to the amount of impervious surface, urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; presence of invasive species; and host species vulnerability from the lack of regulation of collection of mudpuppies.

Unit 16: Tonawanda Creek

Unit 16 consists of 113.21 miles (182.20 km) of Tonawanda Creek in Erie, Genesee, Niagara, and Wyoming Counties, New York. This unit extends from the headwaters of Tonawanda Creek at Java Center (Wyoming County, New York) downstream to the confluence with the Niagara River at Tonawanda (Erie County, New York). The unit includes the river channel up to the ordinary high water mark. Unit 16 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 7.7 percent (8.70 miles (14.00 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership; 82.9 percent (93.91 miles (151.14 km)) are in private ownership; and 9.4 percent (10.6

miles (17.06 km)) are on Tribal lands associated with the Tonawanda Reservation. Approximately 2.08 miles (3.35 km) of the lands in public ownership are city or county lands associated with the town of Sheldon's Vincent Almeter Memorial Park Lands, city of Attica's city lands, city of Batavia's local parks and Kiwanis mini park, and Erie County's Erie County Lands. Approximately 6.62 miles (10.65 km) of the lands in public ownership are State lands associated with New York's Erie Canal Waterway Trail. General land use within the unit includes urban areas. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity.

We have reason to consider excluding 10.6 miles (17.06 km) of proposed Unit 16 under section 4(b)(2) of the Act from the final critical habitat designation for the salamander mussel, based on other relevant impacts. This portion of the unit occurs within the Tonawanda Reservation.

Unit 17: Conneaut Creek

Unit 17 consists of 62 miles (99.78 km) of Conneaut Creek in Ashtabula County, Ohio, and Erie and Crawford Counties, Pennsylvania. This unit extends from the start of Conneaut Creek at Dicksonburg (Crawford County, Pennsylvania) downstream to the mouth with Lake Erie at Conneaut (Ashtabula County, Ohio). The unit includes the river channel up to the ordinary high water mark. Unit 17 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 3.7 percent (2.31 miles (3.72 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 96.3 percent (59.69 miles (96.06 km)) are in private ownership. Approximately 0.34 mile (0.55 km) of land in public ownership is city land associated with Conneaut Local Youth Organization Park. Approximately 1.97 miles (3.17 km) of the lands in public ownership are State lands associated with the ODNR's Conneaut Creek Scenic River. General land use within the unit includes agriculture, forest, and urban areas. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; host species vulnerability from the lack of regulation of collection of mudpuppies; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover in the riparian buffer; lack of connectivity due to barriers; and presence of invasive species.

Unit 18: French Creek

Unit 18 consists of 74.37 miles (119.69 km) of French Creek in Mercer, Erie, Crawford, and Venango Counties, Pennsylvania. This unit extends from downstream of Union City Dam northwest of Union City (Erie County, Pennsylvania) downstream to the confluence of the Allegheny River at Franklin (Venango County, Pennsylvania). The unit includes the river channel up to the ordinary high water mark. Unit 18 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 7.8 percent (5.83 miles (9.39km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 92.2 percent (68.54 miles (110.3 km)) are in private ownership. Approximately 1.1 miles (1.77 km) of the lands in public ownership are city or county lands associated with the Borough of Cambridge Springs' Cambridge Springs Recreation Area, the Township of Hayfield's Bertram Park, the Township of Vernon's Vernon Township Ball Fields and Vernon Township Recreation Association, and the city of Meadville's Kenneth A. Beers Jr. Bicenntenial Park. Approximately 1.1 miles (1.77 km) of the lands in public ownership are Federal lands associated with the Service's Erie National Wildlife Refuge. Approximately 3.6 miles (5.79 km) of the lands in public ownership are State lands associated with the Pennsylvania Game Commission's State Game Land #85 and State Game Land #277 and the Pennsylvania Fish and Boat Commission's Meadville Access and Shaw's Landing. General land use within the unit includes agriculture and urban areas. Unit 18 entirely overlaps with designated critical habitat for the rabbitsfoot (see 80 FR 24692, April 30, 2015, and 50 CFR 17.95(f)) and with designated critical habitat for the longsolid (*Fusconaia subrotunda*) (see 88 FR 14794, March 9, 2023, and 50 CFR 17.95(f)).

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; presence of invasive species; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity due to barriers.

Unit 19: Allegheny River

Unit 19 consists of 39.45 miles (63.48 km) of Allegheny River in Armstrong County, Pennsylvania. This unit extends from the Pennsylvania Route 68 bridge at East Brady (Armstrong County, Pennsylvania) downstream to the confluence of Kiskiminetas River northeast of Freeport (Armstrong County, Pennsylvania). The unit includes the river channel up to the ordinary high water mark. Unit 19 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 11.7 percent (4.6 miles (7.4 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 88.3 percent (34.85 miles (56.08 km)) are in private ownership. Approximately 1.86 miles (2.99 km) of the lands in public ownership are city or county lands associated with the Armstrong County's West Ford City Park and Riverfront Park. Approximately 2.74 miles (4.41 km) of the lands in public ownership are State lands associated with the Pennsylvania Game Commission's State Game Land #287 and State Game Land #105. General land use within the unit includes urban areas, such as the cities of East Brady and Kittanning. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; presence of invasive species; habitat degradation and loss due to urbanization and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity due to barriers.

Unit 20: Fish Creek (WV)

Unit 20 consists of 26.58 miles (42.78 km) of Fish Creek in Marshall County, West Virginia. This unit extends from the confluence of Pennsylvania Fork Fish Creek and West Virginia Fork Fish Creek at Kausooth (Marshall County, West Virginia) downstream to the confluence with the Ohio River southwest of Graysville (Marshall County, West Virginia). The unit

includes the river channel up to the ordinary high water mark. Unit 20 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The lands in this unit are in private ownership. General land use within the unit is urban, including numerous towns and municipalities. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; presence of invasive species; and habitat degradation and loss due to urbanization and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 21: Fishing Creek

Unit 21 consists of 23.32 miles (37.54 km) of Fishing Creek in Wetzel County, West Virginia. This unit extends from the confluence of the North Fork Fishing Creek and South Fork Fishing Creek at Pine Grove (Wetzel County, West Virginia) downstream to the confluence with the Ohio River at Brooklyn (Wetzel County, West Virginia). The unit includes the river channel up to the ordinary high water mark. Unit 21 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 0.5 percent (0.13 mile (0.21 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 99.5 percent (23.19 miles (37.33 km)) are in private ownership. The land in public ownership is land associated with the city of New Martinsville. General land use within the unit is urban, including numerous cities and municipalities. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; presence of invasive species; habitat degradation and loss due to urbanization and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity due to barriers.

Unit 22: Middle Island Creek

Unit 22 consists of 62.25 miles (100.19 km) of Middle Island Creek in Doddridge, Tyler, and Pleasants Counties, West Virginia. This unit extends from downstream of Keys Bend south of Camp (Doddridge County, West Virginia) downstream to the confluence with the Ohio River at Delong (Pleasants County, West Virginia). The unit includes the river channel up to the ordinary high water mark. Unit 22 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 0.24 percent (0.15 mile (0.25 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 99.76 percent (62.10 miles (99.94 km)) are in private ownership. The land in public ownership is State land associated with the West Virginia Division of Natural Resources' (WVDNR) Buffalo Run Wildlife Management Area. General land use within the unit is urban, including numerous cities and municipalities. Unit 22 entirely overlaps with designated critical habitat for the round hickorynut (see 88 FR 14794, March 9, 2023, and 50 CFR 17.95(f)).

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; presence of invasive species; habitat degradation and loss due to urbanization and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity due to barriers.

Unit 23: Little Kanawha River

Unit 23 consists of 49.82 miles (80.18 km) of Little Kanawha River in Wood and Wirt Counties, West Virginia. This unit extends from the confluence with the West Fork Little Kanawha River west of Creston (Wirt County, West Virginia) downstream to the confluence with the Ohio River at Parkersburg (Wood County, West Virginia). The unit includes the river channel up to the ordinary high water mark. Unit 23 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit is urban, including numerous cities and municipalities. Unit 23 entirely overlaps with designated critical habitat for the longsolid and round hickorynut (see 88 FR 14794, March 9, 2023, and 50 CFR 17.95(f)).

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; presence of invasive species; habitat degradation and loss due to urbanization and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity due to barriers.

Unit 24: South Fork Hughes River

Unit 24 consists of 57.44 miles (92.43 km) of South Fork Hughes River in Doddridge, Wirt, and Ritchie Counties, West Virginia. This unit extends from the headwaters of the South Fork Hughes River at Porto Rico (Doddridge County, West Virginia) downstream to the confluence with the Hughes River south of Cisco (Ritchie County, West Virginia). The unit includes the river channel up to the ordinary high water mark. Unit 24 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit is urban, including numerous cities and municipalities. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; presence of invasive species; habitat degradation and loss due to urbanization and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity due to barriers.

Unit 25: Kinniconick Creek

Unit 25 consists of 51.01 miles (82.10 km) of Kinniconick Creek in Lewis County, Kentucky. This unit extends from the headwaters of Kinniconick Creek southwest of Petersville (Lewis County, Kentucky) downstream to the confluence with the Ohio River at Rexton (Lewis County, Kentucky). The unit includes the river channel up to the ordinary high water mark. Unit 25 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit includes agriculture and urban areas, including the town of Garrison. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or

protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; host species vulnerability from the lack of regulation of collection of mudpuppies; presence of invasive species; impacts to the hydrologic regime; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 26: North Fork Licking River

Unit 26 consists of 20.67 miles (33.27 miles) of North Fork Licking River in Morgan and Rowan Counties, Kentucky. This unit extends from the headwaters of North Fork Licking River at Redwine (Morgan County, Kentucky) downstream to the confluence of the Licking River at Bangor (Rowan County, Kentucky). The unit includes the river channel up to the ordinary high water mark. Unit 26 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 63.5 percent (13.13 miles (21.14 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 36.5 percent (7.54 miles (12.13 km)) are in private ownership. The lands in public ownership are Federal lands associated with the USACE's Cave Run Recreation Area and U.S. Forest Service's (USFS) Daniel Boone National Forest. General land use within the unit includes agriculture, forest, and urban areas, including the cities of Wrigley, Leisure, Craney, and Paragon. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: water quality degradation due to contaminants; host species vulnerability from lack of regulation of collection of mudpuppies; presence of invasive species; impacts to the hydrologic regime; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity due to barriers.

Unit 27: Licking River

Unit 27 consists of 179.56 miles (288.98 km) of Licking River in Harrison, Robertson, Kenton, Bracken, Campbell, Rowan, Pendleton, Fleming, Bath, and Nicholas Counties, Kentucky. This unit extends from below the dam at Cave Rune Lake south of Farmers (Rowan County, Kentucky) downstream to the confluence with the Ohio River at Newport (Campbell County, Kentucky). The unit includes the river channel up to the ordinary high water mark. Unit 27 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 11.6 percent (20.82 miles (33.51 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 88.4 percent (158.74 miles (255.47 km)) are in private ownership. Approximately 3.58 miles (5.76 km) of the lands in public ownership are city or county lands associated with the city of Newport's General James Taylor Park; city of Covington's 19th St. Hollow Park, Meinken Park, and Eva G. Farris Complex; Kenton County's Locust Pike Park; Campbell County Conservation District's Hawthorne Crossing Conservation Area; and Kenton County Conservation District's Morning View Natural Area. Approximately 0.4 mile (0.64 km) of the land in public ownership is Federal land associated with the USACE's Cave Run Recreation Area. Approximately 0.5 mile (0.8 km) of the land in public ownership is Federal land associated with the USACE's Cave Run Recreation Area or USFS's Daniel Boone National Forest on one bank and State lands associated with the Kentucky Department of Fish and Wildlife Resources' (KDFWR) Minor Clark Fish Hatchery on the opposite bank. Approximately 16.36 miles (26.33 km) of the lands in public ownership are State lands associated with the Kentucky State Nature Preserves Commission's Quiet Trails State Nature Preserve, Kentucky Department of Parks' Blue Licks Battlefield State Recreational Park, and KDFWR's Clay Wildlife Management Area and Minor Clark Fish Hatchery. General land use within the unit includes agriculture, forest, and urban areas, including numerous cities and municipalities. Unit 27 entirely overlaps with designated critical habitat for the longsolid (see 88 FR 14794, March 9, 2023, and 50 CFR 17.95(f)).

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: water quality degradation due to contaminants; host species vulnerability from lack of regulation of collection of mudpuppies; presence of invasive species; changes in the hydrologic regime; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; and lack of connectivity due to barriers.

Unit 28: South Fork Licking River

Unit 28 consists of 18.26 miles (29.39 km) of South Fork Licking River in Pendleton and Harrison Counties, Kentucky. This unit extends from 1 mile upstream from the confluence with Crooked Creek north of Boyd (Harrison County, Kentucky) downstream to the confluence with the Licking River at Falmouth (Pendleton County, Kentucky). The unit includes the river channel up to the ordinary high water mark. Unit 28 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit is urban, including the cities of Falmouth and Morgan. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: water quality degradation due to contaminants; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; host species vulnerability from lack of regulation of collection of mudpuppies; changes in the hydrologic regime; and presence of invasive species.

Unit 29: Drennon Creek

Unit 29 consists of 22.36 miles (35.99 km) of Drennon Creek in Henry County, Kentucky. This unit extends from the headwaters of Drennon Creek south of Bethlehem (Henry County, Kentucky) downstream to the confluence with the Kentucky River southeast of Drennon Springs (Henry County, Kentucky). The unit includes the river channel up to the ordinary high water mark. Unit 29 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit is agriculture and urban areas, including the cities of Drennon Springs and Delville. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; host species vulnerability from the lack of regulation

of collection of mudpuppies; presence of invasive species; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 30: Laughery Creek

Unit 30 consists of 44.52 miles (71.65 km) of Laughery Creek in Ripley, Dearborn, and Ohio Counties, Indiana. This unit extends from below the dam at Versailles Lake at Versailles (Ripley County, Indiana) downstream to the confluence with the Ohio River at Buffalo (Ohio County, Indiana). The unit includes the river channel up to the ordinary high water mark. Unit 30 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 6.76 percent (3.01 miles (4.85 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 93.24 percent (41.51 miles (66.8 km) are in private ownership. The lands in public ownership are State lands associated with the IDNR's Versailles State Park. General land use within the unit is agriculture and urban areas, including the cities of Friendship and Versailles. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; lack of connectivity due to barriers; presence of invasive species; host species vulnerability from the lack of regulation of collection of mudpuppies; and impacts to the hydrologic regime.

Unit 31: Otter Creek

Unit 31 consists of 17.96 miles (28.91 km) of Otter Creek in Jennings and Ripley Counties, Indiana. This unit extends from the U.S. Highway 50 bridge west of Holton (Ripley County, Indiana) downstream to the confluence with the Vernon Fork Muscatatuck River at Vernon (Jennings County, Indiana). The unit includes the river channel up to the ordinary high water mark. Unit 31 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit includes agriculture and urban areas, including the city of Vernon. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; presence of invasive species; host species vulnerability from the lack of regulation of collection of mudpuppies; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 32: Graham Creek

Unit 32 consists of 41.5 miles (66.79 km) of Graham Creek in Jefferson, Jennings, and Ripley Counties, Indiana. This unit extends from west of South Old Michigan Road at New Marion (Ripley County, Indiana) downstream to the confluence with the Muscatatuck River north of Deputy (Jefferson County, Indiana). The unit includes the river channel up to the ordinary high water mark. Unit 32 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit includes agriculture and numerous municipalities. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; presence of invasive species; host species vulnerability from the lack of regulation of collection of mudpuppies; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 33: East Fork White River

Unit 33 consists of 78.57 miles (126.45 km) of East Fork White River in Dubois, Daviess, Pike, Martin, and Lawrence Counties, Indiana. This unit extends from below the Williams dam south of Williams (Lawrence County, Indiana) downstream to approximately 0.25 mile west of North State Road 57 at Rogers (Pike County, Indiana). This unit includes the river channel up to the ordinary high water mark. Unit 33 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 7.8 percent (6.12 miles (9.85 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 92.2 percent (72.45 miles (116.6 km)) are in private ownership. Approximately 0.12 mile (0.19 km) of the land in public ownership is Federal land associated with the USFS's Hoosier National Forest. Approximately 6 miles (9.66 km) of the lands in public ownership are State lands associated with the IDNR's Williams Dam Public Fishing Area, Hindostan Falls Public Fishing Area, Glendale Fish and Wildlife Area, Henshaw Bend Nature Preserve, and Bluffs on Beaver Pond. General land use within the unit includes forest, agriculture, dams, and urban areas, including the city of Shoals. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: water quality degradation due to contaminants; host species vulnerability from lack of regulation of collection of mudpuppies; presence of invasive species; changes in the hydrologic regime; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 34: Beech Fork River

Unit 34 consists of 50.39 miles (81.10 km) of Beech Fork River in Washington and Nelson Counties, Kentucky. This unit extends from the confluence of Beech Fork and Chaplin River north of Mooresville (Washington County, Kentucky) extending downstream to the confluence of Beech Fork River and the Rolling Fork River northeast of Elizabethtown (Hardin County, Kentucky). This unit includes the river channel up to the ordinary high water mark. Unit 34 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 3.9 percent (1.99 miles (3.21 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 96.1 percent (48.40 miles (77.89 km)) are in private ownership. The lands in public ownership are State lands associated with the KDFWR's John C. Williams Wildlife Management Area. General land use within the unit includes agriculture and numerous cities and

municipalities. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; host species vulnerability from the lack of regulation of collection of mudpuppies; presence of invasive species; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 35: Rolling Fork River

Unit 35 consists of 87.9 miles (141.47 km) of Rolling Fork River in LaRue, Hardin, Marion, and Nelson Counties, Kentucky. This unit extends from the confluence of the North Rolling Fork River and Big South Fork River west of Bradfordsville (Marion County, Kentucky) downstream to the confluence with Beech Fork River east of Younger Creek (Hardin County, Kentucky). The unit includes the river channel up to the ordinary high water mark. Unit 35 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

The riparian lands adjacent to, but not included in, this unit are in private ownership. General land use within the unit includes agriculture and numerous cities and municipalities. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; host species vulnerability from the lack of regulation of collection of mudpuppies; presence of invasive species; and habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer.

Unit 36: Harpeth River

Unit 36 consists of 43.32 miles (69.72 km) of Harpeth River in Cheatham and Dickson Counties, Tennessee. This unit extends from the confluence of the South Harpeth River southeast of Kingston Springs (Cheatham County, Tennessee) downstream to the confluence with the Cumberland River northeast of Bellsburg (Dickson County, Tennessee). The unit includes the river channel up to the ordinary high water mark. Unit 36 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 14 percent (6.07 miles (9.77 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 86 percent (37.25 miles (59.95 km)) are in private ownership. The lands in public ownership are Federal lands associated with the USACE's Cheatham Lake Reservoir. General land use within the unit includes agriculture and urban areas, including the town of Kingston Springs. This unit does not overlap with any designated critical habitat for other listed species.

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: degradation of water quality due to contaminants; lack of connectivity due to barriers; presence of invasive species; host species vulnerability from the lack of regulation of collection of mudpuppies; habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; and impacts to the hydrological regime.

Unit 37: Duck River

Unit 37 consists of 116.42 miles (187.36 km) of Duck River in Hickman, Humphreys, Perry, and Maury Counties, Tennessee. This unit extends from the confluence of the Little Bigby Creek northwest of Columbia (Maury County, Tennessee) downstream to the confluence of the Duck River and the Tennessee River, which creates a backwater effect at Elysian Grove (Humphreys County, Tennessee). The unit includes the river channel up to the ordinary high water mark. Unit 37 is occupied by the species and contains one or more of the physical or biological features essential to the species' conservation.

Approximately 0.4 percent (0.52 mile (0.83 km)) of the riparian lands adjacent to, but not included in, this unit are in public ownership, and 99.6 percent (115.9 miles (186.53 km)) are in private ownership. The land in public ownership is Federal land associated with the NPS's Natchez Trace Parkway. General land use within the unit includes agriculture and numerous cities and municipalities. Unit 37 entirely overlaps with designated critical habitat for rabbitsfoot (see 80 FR 24692, April 30, 2015, and 50 CFR 17.95(f)).

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: habitat degradation and loss due to urbanization, agriculture, and the lack of canopy cover and vegetative cover in the riparian buffer; lack of connectivity due to barriers; host species vulnerability from the lack of regulation of collection of mudpuppies; degradation of water quality due to contaminants; presence of invasive species; and impacts to the hydrologic regime.

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 authorize, fund, 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.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

Compliance with the requirements of section 7(a)(2) is documented 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 Service 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 set forth requirements for Federal agencies to reinitiate consultation if any of the following four conditions occur: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. The reinitiation requirement applies only to actions that remain subject to some discretionary Federal involvement or control. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (*e.g.,* land management plans issued by the Bureau of Land Management in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed 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 violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would:

(a) Alter the geomorphology of the salamander mussel's stream and river habitats;

(b) Significantly alter the existing flow regime where this species occurs;

(c) Significantly alter water chemistry or water quality; or

(d) Significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth; and

(2) Major habitat alterations that impact mudpuppy persistence.

Such activities could include, but are not limited to:

(1) Instream excavation or dredging, impoundment, channelization, clearing riparian vegetation, and discharge of fill materials;

(2) Impoundment, urban development, water diversion, water withdrawal, water draw-down, and hydropower generation;

(3) Hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source); and

(4) Construction projects, sand and gravel mining, oil and gas development, coal mining, livestock grazing, timber harvest, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

These activities could eliminate or reduce the habitat quantity or quality necessary for growth and reproduction of the salamander mussel or its mudpuppy host.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (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. No DoD lands with a completed INRMP are 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 designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (2016 Policy; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

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). Therefore, the baseline 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 a discretionary 4(b)(2) exclusion analysis.

Executive Orders (E.O.s) 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 affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a ''significant regulatory action'' and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of $200 million or more in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the salamander mussel is likely to exceed the economically significant threshold.

For this particular 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 salamander mussel (Industrial Economics, Inc. 2022, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already 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. 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. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the salamander mussel; our DEA is summarized in the narrative below.

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 salamander mussel, first we identified, in the IEM dated September 27, 2022, probable incremental economic impacts associated with the following categories of activities: (1) instream excavation or dredging; (2) impoundment; (3) channelization; (4) sand and gravel mining; (5) clearing riparian vegetation; (6) discharge of fill materials; (7) urban development; (8) water diversion; (9) water withdrawal; (10) water draw-down; (11) hydropower generation; (12) hydropower discharges; (13) release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source); (14) construction projects; (15) oil and gas development; (16) coal mining; (17) livestock grazing; (18) timber harvest; and (19) other watershed and floodplain disturbances that release sediments or nutrients into the water.

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the salamander mussel is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would 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 salamander mussel's critical habitat. Because the designation of critical habitat for the salamander mussel is being 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 likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species itself. 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 salamander mussel includes 37 units, totaling approximately 2,012 river miles (3,238 km), all of which are occupied by the species. Ownership of riparian lands adjacent to the proposed units includes 1,702.04 miles (2,739.17 km; 84.61 percent) in private ownership, 298.97 miles (481.14 km; 14.86 percent) in public (Federal, State, or local) ownership, and 10.60 miles (17.06 km; 0.53 percent) in Tribal ownership.

Total incremental costs of critical habitat designation for the salamander mussel are not expected to exceed $120,000 (2022 dollars) per year. The costs are reflective of: (1) All proposed units are considered occupied by the salamander mussel, (2) all projects with a Federal nexus would be subject to section 7 consultation regardless of the designation of critical habitat due to the presence of the listed species, (3) critical habitat designation is not likely to change the Service's recommendations for project modifications as part of future consultations considering the salamander mussel, and (4) the salamander mussel receives additional baseline protection from co-occurring listed species and a species with overlapping critical habitat and similar resource needs. Because consultation would be required as a result of the listing of the salamander mussel and is already required in some of these areas as a result of the presence of other listed species and critical habitats, the economic costs of the critical habitat designation would likely be primarily limited to additional administrative efforts to consider adverse modification for this species in section 7 consultations.

Based on the consultation history regarding historical projects and the forecast of future activity in the proposed critical habitat units, the number of future consultations, including technical assistance efforts, is likely to be no more than 94 per year across all 37 units. This figure accounts for potential increases in highway and infrastructure projects. The geographic distribution of future section 7 consultations and associated costs are likely to be most heavily concentrated in West Virginia, Pennsylvania, and Kentucky. However, even assuming consultation activity increases substantially, incremental administrative costs are still likely to remain well under $200 million per year.

We are soliciting data and comments from the public on the DEA discussed above. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) of the Act, our implementing regulations at 50 CFR 424.19, and the 2016 Policy. 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.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the salamander mussel are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of 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 discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

In the case of the salamander mussel, the benefits of critical habitat include public awareness of the presence of the salamander mussel and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the salamander mussel due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

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 of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Tribal Lands

Several Executive Orders, Secretary's Orders, and policies concern working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretary's Order that applies to both the Service and the National Marine Fisheries Service (NMFS)—Secretary's Order 3206, *American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206)—is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, the appendix to S.O. 3206 explicitly recognizes the right of Tribes to participate fully in any listing process that may affect Tribal rights or Tribal trust resources; this includes the designation of critical habitat. Section 3(B)(4) of the appendix requires the Service to consult with affected Tribes ''when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights.'' That provision also instructs the Service to avoid including Tribal lands within a critical habitat designation unless the area is essential to conserve a listed species, and it requires the Service to ''evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.''

Our implementing regulations at 50 CFR 424.19 and the 2016 Policy are consistent with S.O. 3206. When we undertake a discretionary exclusion analysis under section 4(b)(2) of the Act, in accordance with S.O. 3206, we consult with any Tribe whose Tribal trust resources, Tribally-owned fee lands, or Tribal rights may be affected by including any particular areas in the designation. We evaluate the extent to which the conservation needs of the species can be achieved by limiting the designation to other areas and give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not override the Act's statutory requirement of designation of critical habitat. As stated above, we must consult with any Tribe when a designation of critical habitat may affect Tribal lands or resources. The Act requires us to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management considerations or protection and unoccupied areas that are essential to the conservation of a species), without regard to land ownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretary's statutory authority under the Act or other statutes.

The proposed critical habitat designation includes the following Tribal lands or resources:

Tonawanda Reservation

A portion of proposed Unit 16 (Tonawanda Creek) occurs within the Tonawanda Reservation. The Tonawanda Seneca Nation has a conservation department that was established in 1977 by the Seneca Nation of Indians Council resolution. The department is responsible for the enforcement of Seneca Nation of Indian laws, ordinances, and codes that address sand and gravel mining; solid waste management; hunting and fishing; and conservation activities.

Summary of Exclusions Considered Under 4(b)(2) of the Act

We have reason to consider excluding 10.6 miles (17.06 km) of proposed Unit 16 (Tonawanda Creek) under section 4(b)(2) of the Act from the final critical habitat designation for the salamander mussel, based on other relevant impacts. We specifically solicit comments on the inclusion or exclusion of this area. We also solicit comments on whether there are potential economic, national security, or other relevant impacts from designating any other particular areas as critical habitat. As part of developing the final designation of critical habitat, we will evaluate the information we receive regarding potential impacts from designating the areas described above or any other particular areas, and we may conduct a discretionary exclusion analysis to determine whether to exclude those areas under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after

evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

We are required by E.O.s 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 **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.

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

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 whether 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.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies 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 would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, 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 made final, 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. Facilities that provide energy supply, distribution, or use occur within some units of the proposed critical habitat designations (for example, dams, pipelines) and may potentially be affected. We determined that consultations, technical assistance, and requests for species lists may be necessary in some instances. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use because all projects with a Federal nexus would be subject to section 7 consultation regardless of the designation of critical habitat due to the presence of the listed species and the critical habitat designation is not likely

to change the Service's recommendations for project modifications as part of future consultations considering the salamander mussel. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

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

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

(1) This proposed 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 are not likely to 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 it will not produce a Federal mandate of $200 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. Therefore, a small government agency plan is not required.

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 salamander mussel 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 for the proposed designation of critical habitat for the salamander mussel, and it concludes that, if adopted, this designation of critical habitat 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 requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. 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 proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed 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 for 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 State and local governments in long-range planning because they 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) of the Act 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 would 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, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed 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 information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are 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.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

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 (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 federally recognized Tribes on a government-to-government basis. In accordance with Secretary's 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 reached out to the Tonawanda Seneca Nation regarding the portion of proposed critical habitat Unit 16 (Tonawanda Creek) that flows through the Tonawanda Reservation, and we will continue to work with Tribal entities during the development of a final rule for the designation of critical habitat for the salamander mussel.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Michigan Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Michigan Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

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 § 17.11, amend paragraph (h) by adding an entry for ''Mussel, salamander'' to the List of Endangered and Threatened Wildlife in alphabetical order under CLAMS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
CLAMS				
*	*	*	*	*
Mussel, salamander	*Simpsonaias ambigua* ..	Wherever found	E	[FEDERAL REGISTER citation when published as a final rule]; 50 CFR 17.95(f).[CH]
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (f) by adding an entry for ''Salamander Mussel (*Simpsonaias ambigua*)'' following the entry for ''Longsolid (*Fusconaia subrotunda*)'', to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Salamander Mussel (*Simpsonaias ambigua*)

(1) Critical habitat units are depicted for Benton, Carroll, Clinton, Daviess, Dearborn, DeKalb, Dubois, Fulton, Jefferson, Jennings, Kosciusko, Lawrence, Marshall, Martin, Ohio, Pike, Pulaski, Ripley, Starke, Steuben, Tippecanoe, Warren, and White Counties, Indiana; Bath, Bracken, Campbell, Fleming, Hardin, Harrison, Henry, Kenton, LaRue, Lewis, Marion, Morgan, Nelson, Nicholas, Pendleton, Robertson, Rowan, and Washington Counties, Kentucky; Oakland and St. Clair Counties, Michigan; Chisago and Washington Counties, Minnesota; Erie, Genesee, Niagara, and Wyoming Counties, New York; Ashtabula, Hancock, Putnam, and Williams Counties, Ohio; Armstrong, Crawford,

Erie, Mercer, and Venango Counties, Pennsylvania; Cheatham, Dickson, Hickman, Humphreys, Maury, and Perry Counties, Tennessee; Doddridge, Marshall, Pleasants, Ritchie, Tyler, Wetzel, Wirt, and Wood Counties, West Virginia; and Adams, Buffalo, Columbia, Crawford, Dane, Dunn, Eau Claire, Grant, Iowa, Jackson, Juneau, La Crosse, Lincoln, Marathon, Monroe, Oconto, Pepin, Pierce, Polk, Richland, Sauk, Shawano, St. Croix, and Trempealeau Counties, Wisconsin, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the salamander mussel consist of the following components:

(i) Adequate flows, or a hydrologic flow regime (magnitude, timing, frequency, duration, rate of change, and overall seasonality of discharge over time), necessary to maintain benthic habitats where the salamander mussel and its host, the mudpuppy, are found and to maintain stream connectivity.

(ii) Suitable substrates and connected instream habitats, characterized by geomorphologically stable stream channels and banks (*i.e.,* channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) with habitats that support the salamander mussel and mudpuppy (*e.g.,* large rock shelters, woody debris, and bedrock crevices within stable zones of swift current with low amounts of fine sediment silt).

(iii) Water and sediment quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including (but not limited to) dissolved oxygen (generally above 2 to 3 parts per million (ppm)), salinity (generally below 2 to 4 ppm), and temperature (generally below 86 °F) (30 °C)). Additionally, concentrations of contaminants, including (but not limited to) ammonia, nitrate, copper, and chloride, are below acute toxicity levels for mussels.

(iv) The presence and abundance of the mudpuppy host.

(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 the effective date of final rule.

(4) Data layers defining map units were created using the 1984 World Geodetic System ellipsoid, and 1983 North American datum, and geographic coordinate system. The National Hydrography Dataset was used to create the critical habitat units. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/species/salamander-mussel-simpsonaias-ambigua,* at *https://www.regulations.gov* at Docket No. FWS–R3–ES–2023–0058, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (5)

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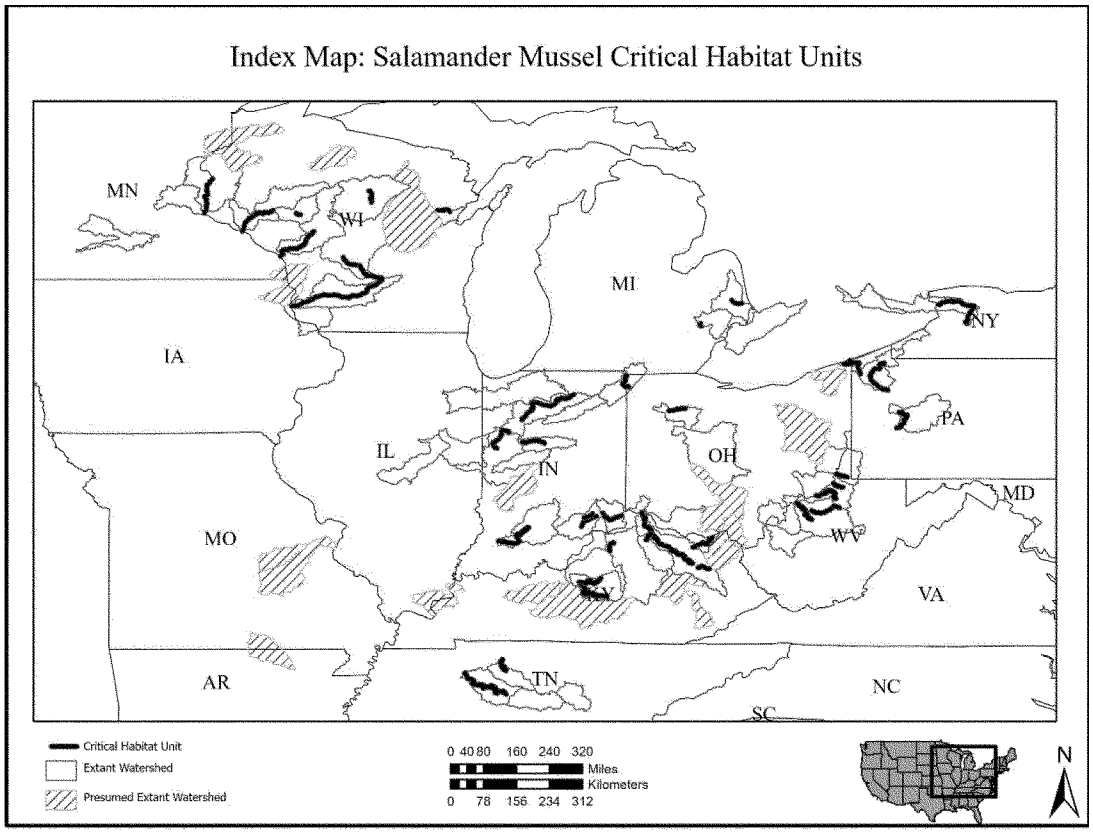


(6) Unit 1: St. Croix River; Polk, St. Croix, and Pierce Counties, Wisconsin, and Chisago and Washington Counties, Minnesota.

(i) Unit 1 consists of 52.93 miles (85.19 kilometers (km)) of St. Croix

River from the base of the dam at St. Croix Falls (Polk County, Wisconsin) and Taylors Falls (Chisago County, Minnesota) downstream to the confluences with the Mississippi River at Prescott (Pierce County, Wisconsin) and Point Douglas (Washington County, Minnesota). The unit includes the river channel up to the ordinary high water mark. Approximately 28.85 miles (46.43 km) of the riparian lands adjacent to this unit are in public ownership, and 24.08 miles (38.76 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 12.63 miles (20.32 km) are Federal lands associated with the National Park Service's (NPS) Lower St. Croix National Scenic Riverway;

(B) Approximately 4.25 miles (6.84 km) are Federal lands associated with the NPS's Lower St. Croix National Scenic Riverway on one side of the bank and State lands associated with the Wisconsin Department of Natural Resources' (WDNR) St. Croix Islands Wildlife Area on the other side;

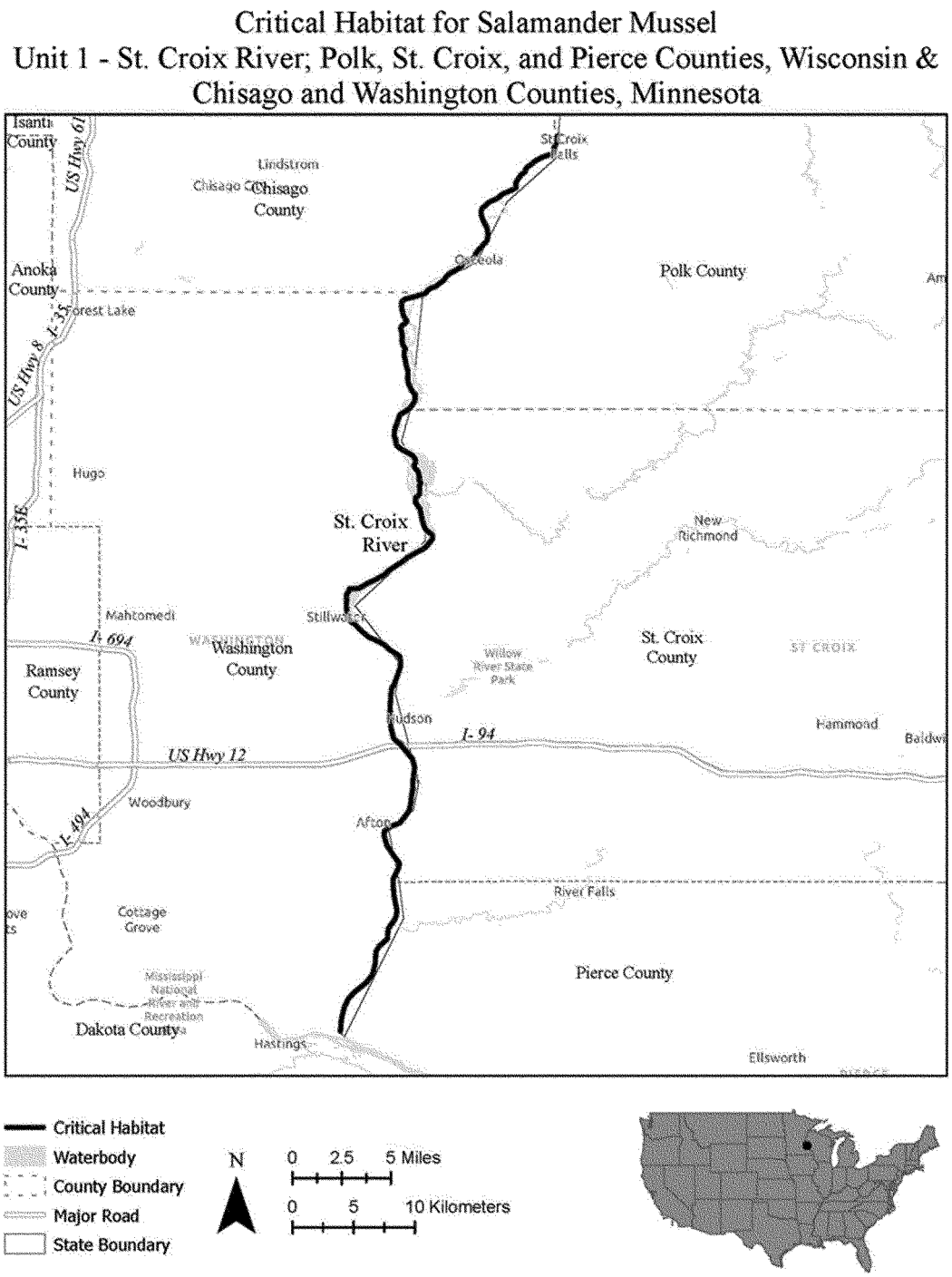
(C) Approximately 5.0 miles (8.04 km) are Federal lands associated with the NPS's Lower St. Croix National Scenic Riverway on one side of the bank and State lands associated with the Minnesota Department of Natural Resources' William O'Brien State Park on the other side;

(D) Approximately 5.2 miles (8.37 km) are State lands associated with the WDNR's Kinnickinnic State Park and Interstate Park on one side of the bank and State lands associated with the Minnesota Department of Natural Resources' Interstate Park on the other side; and

(E) Approximately 1.78 miles (2.86 km) are State lands associated with the Minnesota Department of Natural Resources' Afton State Park.

(ii) Map of Unit 1 follows:

Figure 2 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (6)(ii)



(7) Unit 2: Chippewa River; Buffalo, Dunn, Eau Claire, and Pepin Counties, Wisconsin.

(i) Unit 2 consists of 59.24 miles (95.33 km) of Chippewa River from the mouth of the Eau Claire River at Eau Claire (Eau Claire County, Wisconsin) downstream to the confluence with the Mississippi River south of Trevino (Buffalo and Pepin Counties, Wisconsin). This unit includes the river channel up to the ordinary high water mark. Approximately 34.04 miles (54.77 km) of the riparian lands adjacent to this unit are in public ownership, and 25.2 miles (40.56 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 1.3 miles (2.09 km) are lands associated with the city of Eau Claire's Owen Park and Jefferson County's Public Hunting Ground;

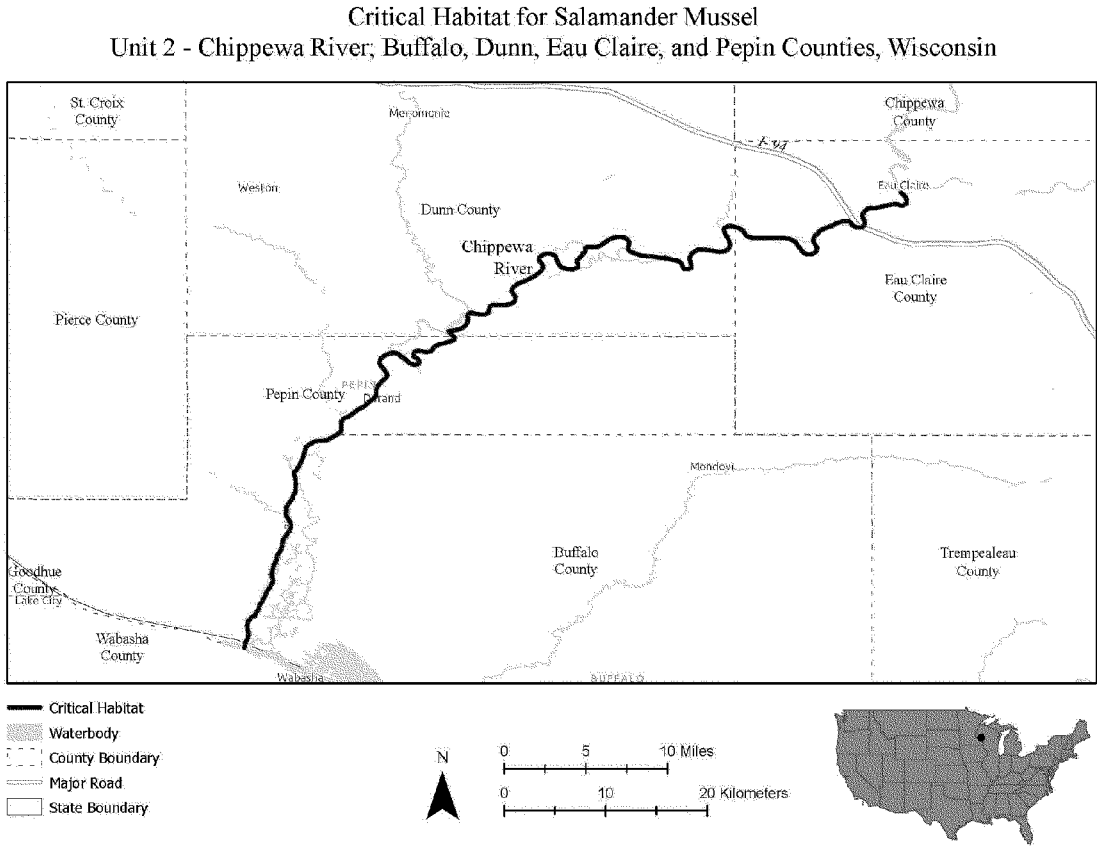
(B) Approximately 4.2 miles (6.76 km) are Federal lands associated with the Bureau of Land Management's (BLM) stewardship of islands within the river channel;

(C) Approximately 1.6 miles (2.57 km) are Federal lands associated with the Service's Upper Mississippi River National Wildlife and Fish Refuge on one bank and State lands associated with the WDNR's Tiffany Wildlife Area on the opposite bank; and

(D) Approximately 27 miles (43.45 km) are State lands associated with the WDNR's Lower Chippewa River State Natural Area, Dunnville Wildlife Area, and Nine Mile Island State Natural Area.

(ii) Map of Unit 2 follows:

Figure 3 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (7)(ii)

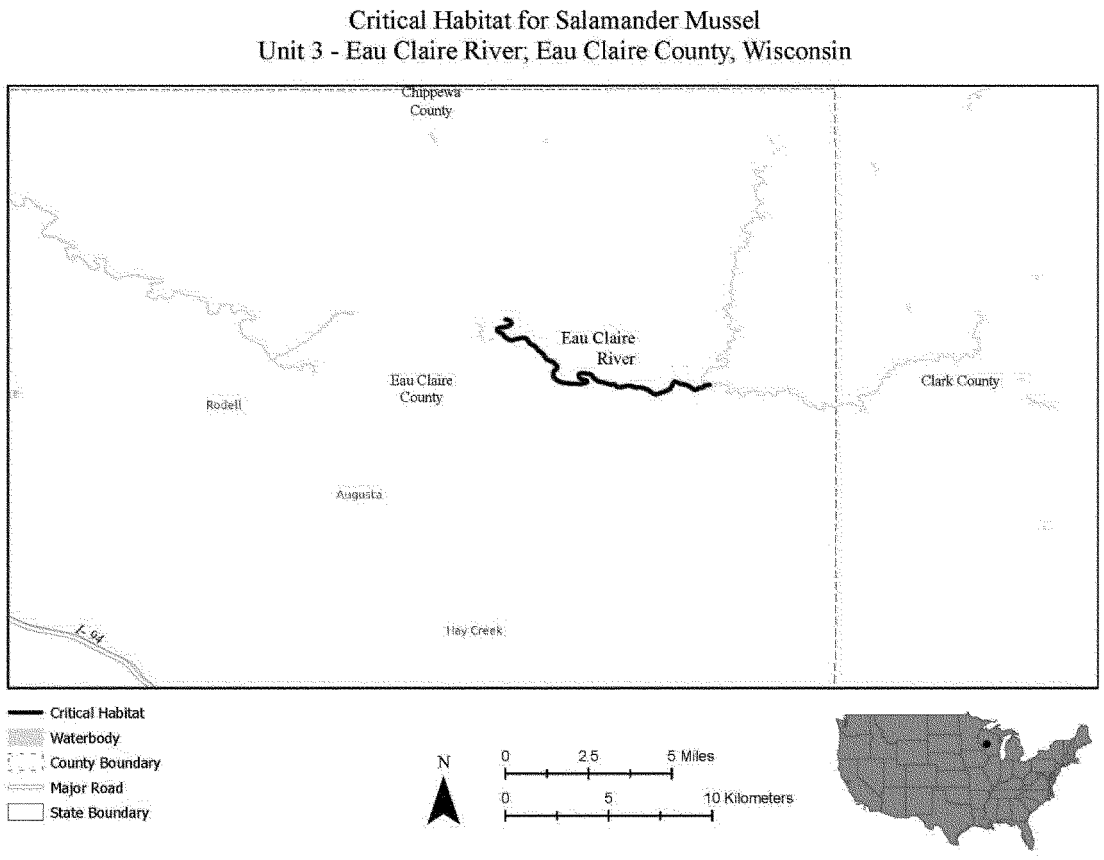


(8) Unit 3: Eau Claire River; Eau Claire County, Wisconsin.

(i) Unit 3 consists of 7.40 miles (11.91 km) of Eau Claire River from the confluence of the North Fork and South Fork Eau Claire River (Eau Claire County, Wisconsin) downstream to Lake Eau Claire (Eau Claire County, Wisconsin). This unit includes the river channel up to the ordinary high water mark. Approximately 4.23 miles (6.81 km) of the riparian lands adjacent to this unit are in public ownership, and 3.17 miles (5.1 km) are in private ownership. The land in public ownership in this unit is associated with the Eau Claire County Forest.

(ii) Map of Unit 3 follows:

Figure 4 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (8)(ii)



(9) Unit 4: Black River; Jackson, La Crosse, Monroe, and Trempealeau Counties, Wisconsin.

(i) Unit 4 consists of 75.38 miles (121.31 km) of Black River from the bottom of Lake Arbutus dam southeast of Hatfield (Jackson County, Wisconsin) downstream to the confluence with the Mississippi River west of Brice Prairie (La Crosse County, Wisconsin). This unit includes the river channel up to the ordinary high water mark. Approximately 35.71 miles (57.47 km) of the riparian lands adjacent to this unit are in public ownership, and 39.67 miles (63.84 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 0.15 mile (0.24 km) is land associated with Jackson County Forest;

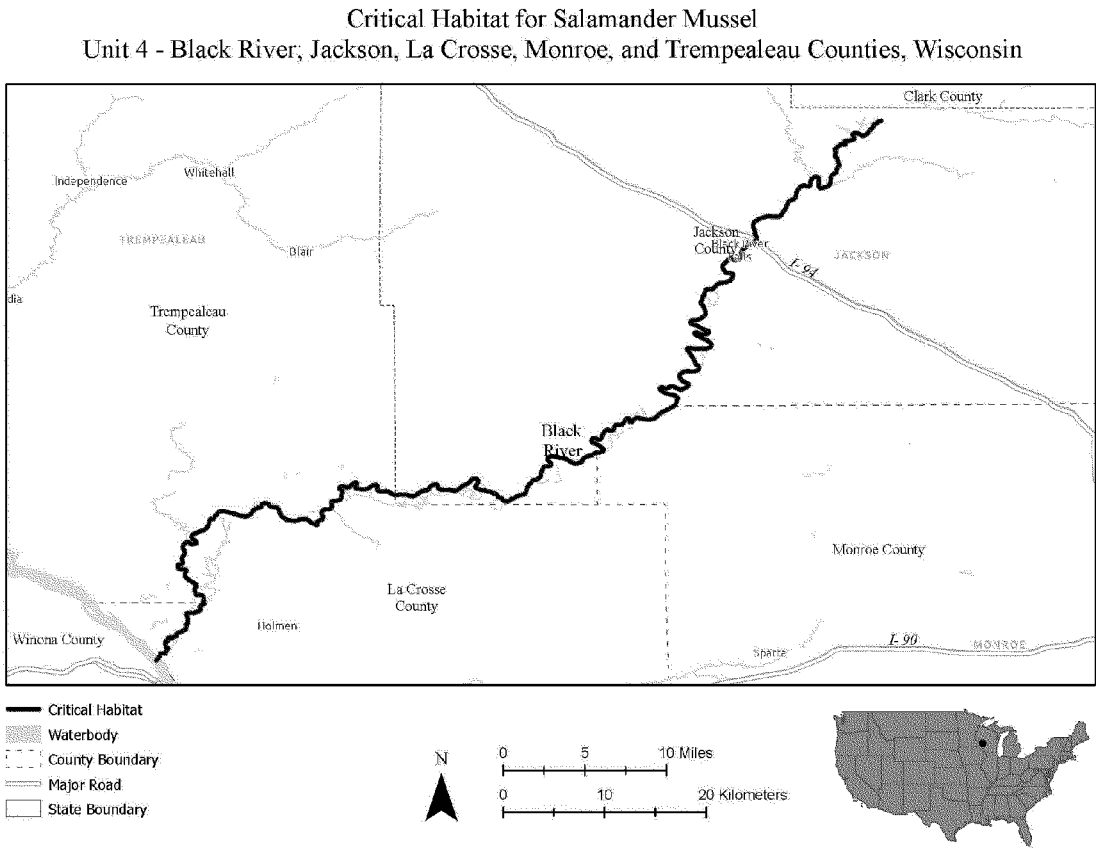
(B) Approximately 0.86 mile (1.38 km) is Federal land associated with the BLM's stewardship of islands within the river channel;

(C) Approximately 6.6 miles (10.62 km) are Federal lands associated with the Service's Upper Mississippi River National Wildlife and Fish Refuge on one bank and State lands associated with the WDNR's Van Loon Wildlife Area on the opposite bank; and

(D) Approximately 28 miles (45.06 km) are State lands associated with the WDNR's North Bend Bottoms Wildlife Area, Statewide Habitat Areas, Half Moon Lake Fishery Area, and Black River State Forest.

(ii) Map of Unit 4 follows:

Figure 5 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (9)(ii)



(10) Unit 5: Wisconsin River North; Lincoln and Marathon Counties, Wisconsin.

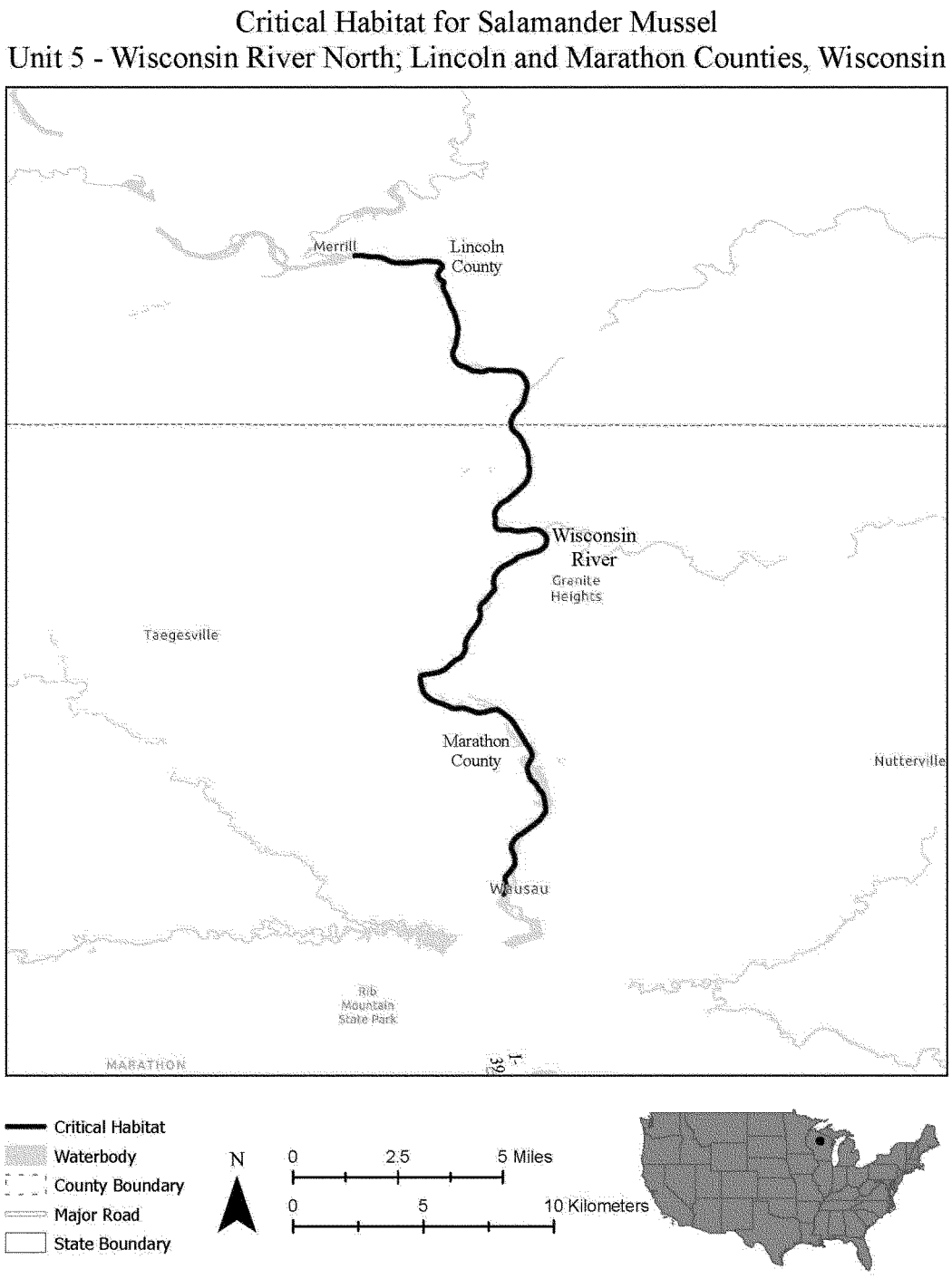
(i) Unit 5 consists of 21.19 miles (34.1 km) of Wisconsin River from the base of the dam at Merrill (Marathon County, Wisconsin) downstream to the top of the dam at Wausau (Lincoln County, Wisconsin). The unit includes the river channel up to the ordinary high water mark. Approximately 4.11 miles (6.62 km) of the riparian lands adjacent to this unit are in public ownership, and 17.08 miles (27.48 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 3.78 miles (6.08 km) are city or county lands associated with the city of Merrill's Riverside Park, Marathon County's Marathon County Forest, city of Wausau's Gilbert Park, Scholfield Park, Baker Stewart Island Park, Big Bull Falls Park, White Water Park, and Woodson Park; and

(B) Approximately 0.34 mile (0.55 km) is State land associated with the WDNR's State-Owned Islands.

(ii) Map of Unit 5 follows:

Figure 6 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (10)(ii)



(11) Unit 6: North Branch Pensaukee River; Shawano and Oconto Counties, Wisconsin.

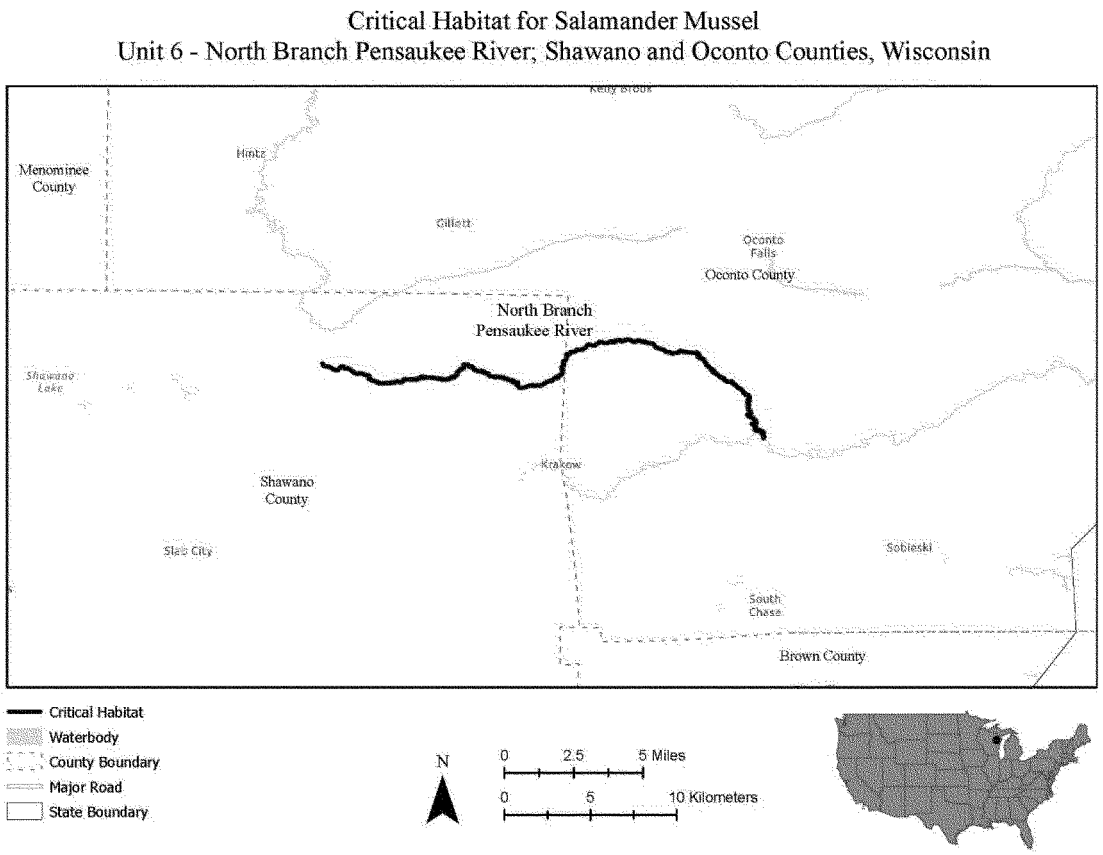
(i) Unit 6 consists of 19.93 miles (32.08 km) of North Branch Pensaukee River from the Pensaukee Lakes at Cecil (Shawano County, Wisconsin) downstream to the confluence with the Pensaukee River at Abrams (Oconto County, Wisconsin). The unit includes the river channel up to the ordinary high water mark. Approximately 1.24 miles (2.0 km) of the riparian lands adjacent to this unit are in public ownership, and 18.69 miles (30.08 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 1.22 miles (1.96 km) are county lands associated with the Oconto County Forest; and

(B) Approximately 0.02 mile (0.03 km) is State land associated with the WDNR's Wiouwash State Trail.

(ii) Map of Unit 6 follows:

Figure 7 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (11)(ii)



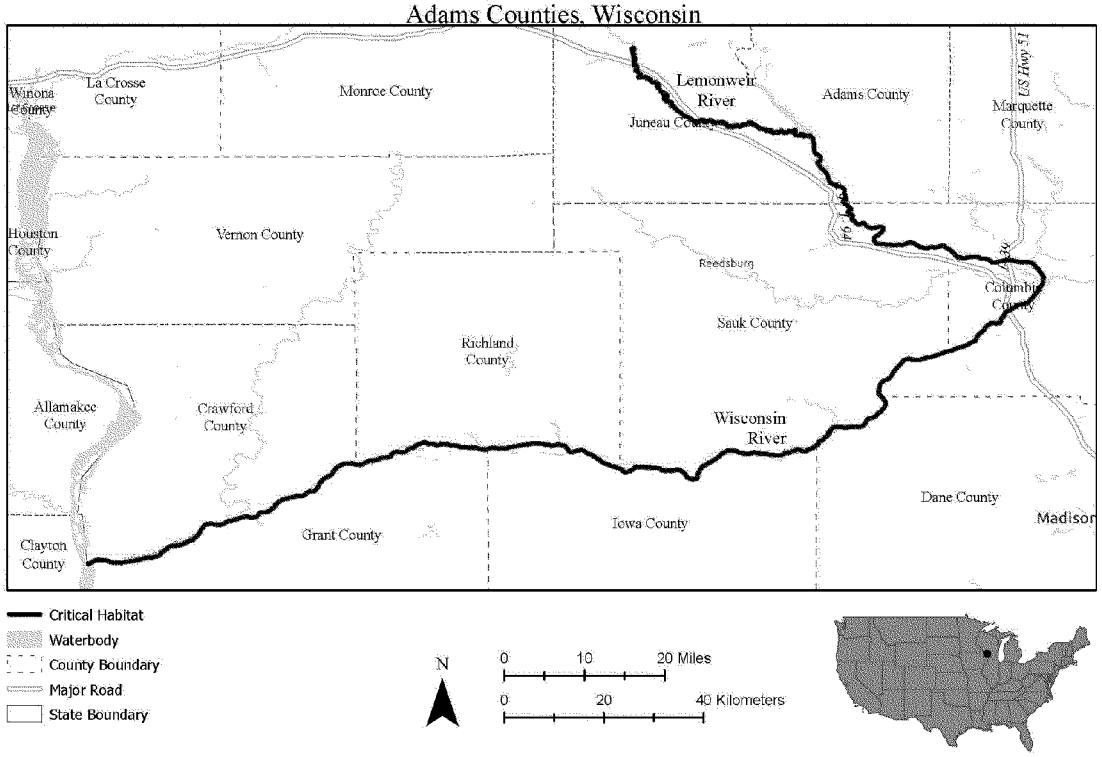
(12) Unit 7: Lemonweir River; Juneau County, Wisconsin.

(i) Unit 7 consists of 37.5 miles (60.36 km) of Lemonweir River from approximately 0.25-mile north of Kennedy County Park north of New Lisbon (Juneau County, Wisconsin) downstream to the confluence with the Wisconsin River northeast of Lyndon Station (Juneau County, Wisconsin). The unit includes the river channel up to the ordinary high water mark. Approximately 2.11 miles (3.4 km) of the riparian lands adjacent to this unit are in public ownership, and 35.39 miles (56.96 km) are in private ownership. The lands in public ownership are city or county lands associated with the Juneau County Forest owned by Juneau County, Riverside Park owned by the city of Mauston, and an unnamed natural area owned by the county.

(ii) Map of Units 7 and 8 follows:

Figure 8 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (12)(ii)

Critical Habitat for Salamander Mussel
Unit 7 - Lemonweir River; Juneau County, Wisconsin
Unit 8 - Wisconsin River South; Iowa, Grant, Dane, Crawford, Richland, Sauk, Columbia, Juneau, and Adams Counties, Wisconsin



(13) Unit 8: Wisconsin River South; Iowa, Grant, Dane, Crawford, Richland, Sauk, Columbia, Juneau, and Adams Counties, Wisconsin.

(i) Unit 8 consists of 152.88 miles (246.03 km) of Wisconsin River from the confluence with the Lemonweir River south of White Creek (Adams County, Wisconsin) downstream to the confluence with the Mississippi River south of Prairie du Chien (Crawford County, Wisconsin). The unit includes the river channel up to the ordinary high water mark. Approximately 102.78 miles (165.40 km) of the riparian lands adjacent to this unit are in public ownership, and 50.10 miles (80.63 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 0.09 mile (0.14 km) is city land associated with the Village of Lake Delton's Newport Park;

(B) Approximately 9 miles (14.48 km) are Federal lands associated with the BLM's land stewardship of islands within the river channel and the Service's Upper Mississippi River National Wildlife and Fish Refuge; and

(C) Approximately 93.7 miles (150.8 km) are State lands associated with the WDNR's Pine Island Wildlife Area, Sauk Prairie Recreation Area, and Lower Wisconsin State Riverway.

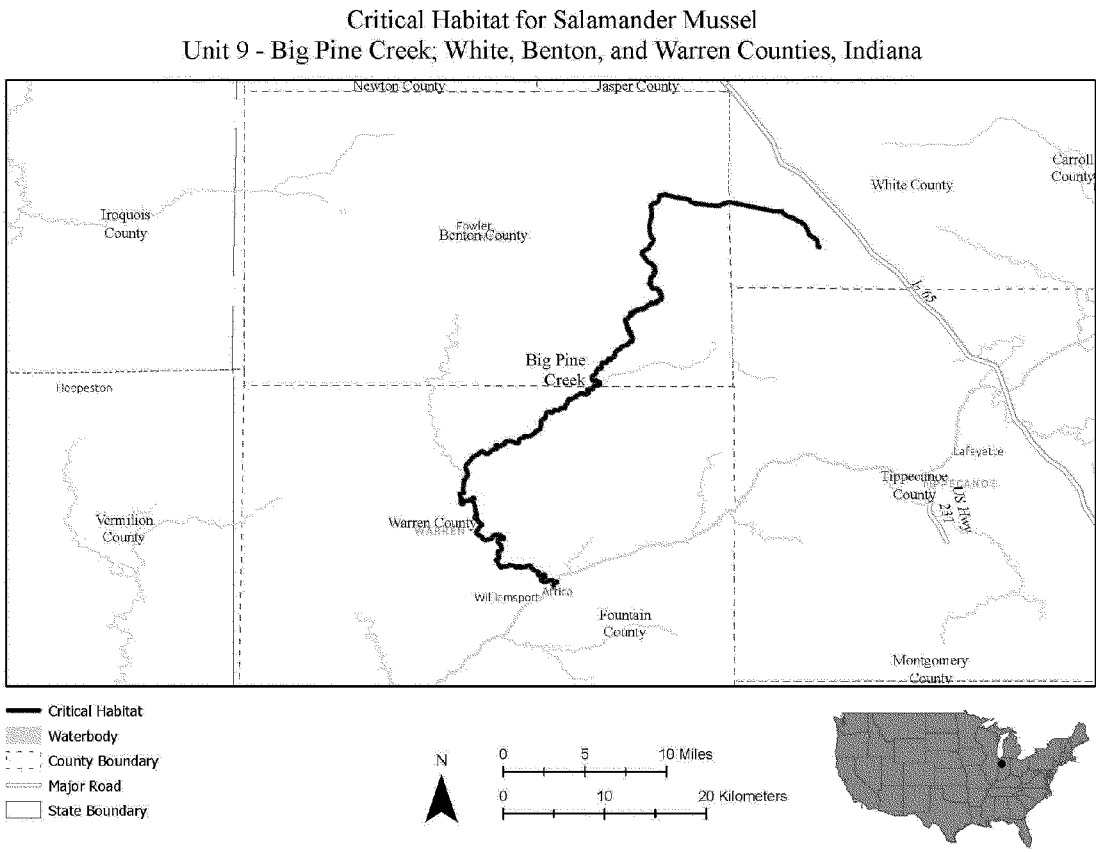
(ii) Map of Unit 8 is provided at paragraph (12)(ii) of this entry.

(14) Unit 9: Big Pine Creek; White, Benton, and Warren Counties, Indiana.

(i) Unit 9 consists of 51.23 miles (82.44 km) of Big Pine Creek from the headwaters of Big Pine Creek northeast of Round Grove (White County, Indiana) downstream to the confluence with the Wabash River at Attica (Fountain County, Indiana). The unit includes the river channel up to the ordinary high water mark. Approximately 1.3 miles (2.09 km) of the riparian lands adjacent to this unit are in public ownership, and 49.93 miles (80.35 km) are in private ownership. The lands in public ownership are State lands associated with the Indiana Department of Natural Resources' (IDNR) Pine Creek Bottoms Gamebird Habitat Area.

(ii) Map of Unit 9 follows:

Figure 9 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (14)(ii)

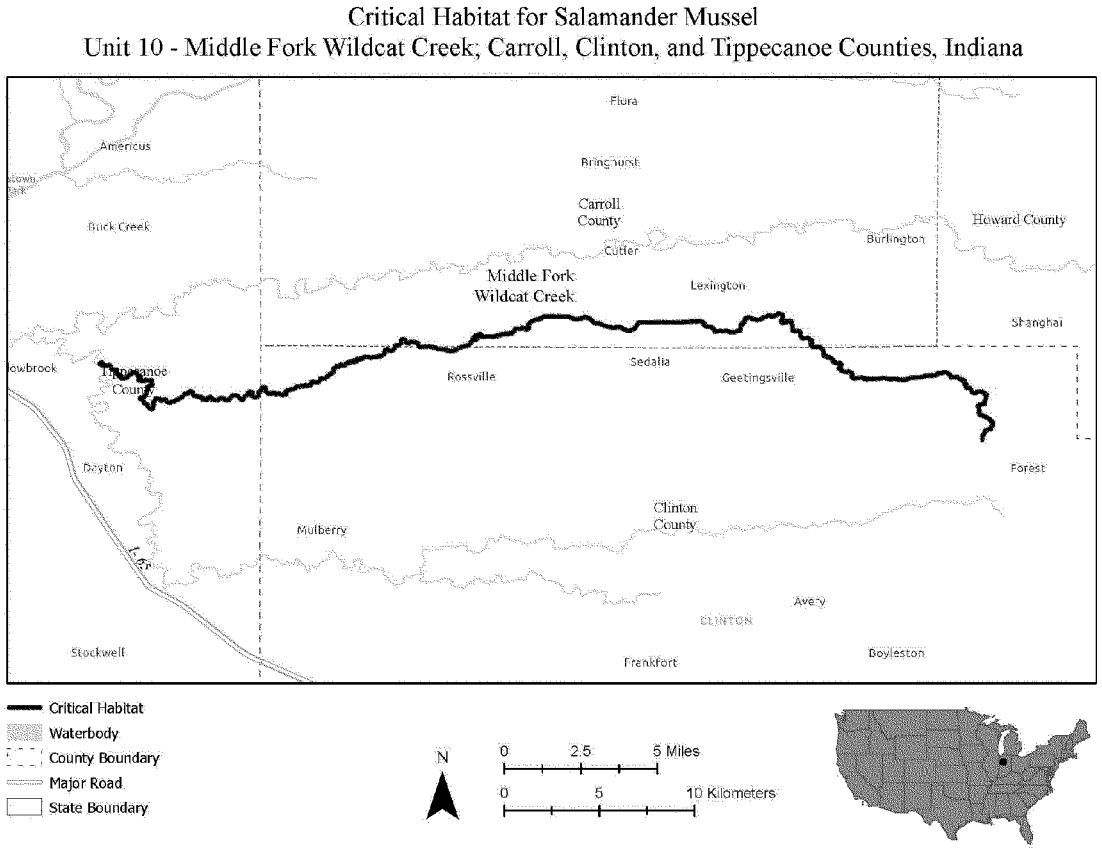


(15) Unit 10: Middle Fork Wildcat Creek; Carroll, Clinton, and Tippecanoe Counties, Indiana.

(i) Unit 10 consists of 35.7 miles (57.46 km) of Middle Fork Wildcat Creek from the headwaters of Middle Fork Wildcat Creek northwest of Forest (Clinton County, Indiana) downstream to the confluence with South Fork Wildcat Creek northwest of Monitor (Tippecanoe County, Indiana). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

(ii) Map of Unit 10 follows:

Figure 10 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (15)(ii)

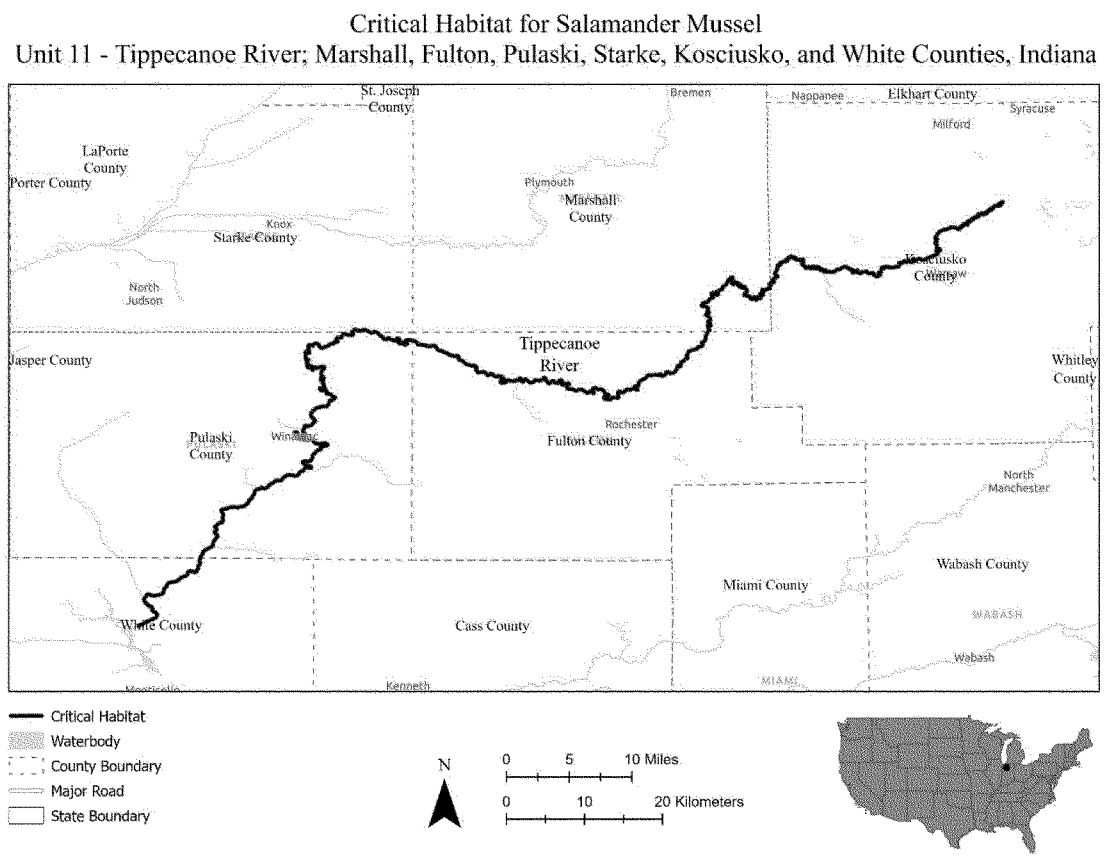


(16) Unit 11: Tippecanoe River; Marshall, Fulton, Pulaski, Starke, Kosciusko, and White Counties, Indiana.

(i) Unit 11 consists of 124.26 miles (199.96 km) of Tippecanoe River from below Oswego Lake at Oswego (Kosciusko County, Indiana) downstream to the top of Lake Shaffer west of Sitka (White County, Indiana). The unit includes the river channel up to the ordinary high water mark. Approximately 7.43 miles (11.95 km) of the riparian lands adjacent to this unit are in public ownership, and 116.83 miles (188.01 km) are in private ownership. The lands in public ownership are State lands associated with the IDNR's Tippecanoe River State Park and Menominee Public Fishing Area, Talma Public Access, and Old Tip Town Public Access Site.

(ii) Map of Unit 11 follows:

Figure 11 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (16)(ii)

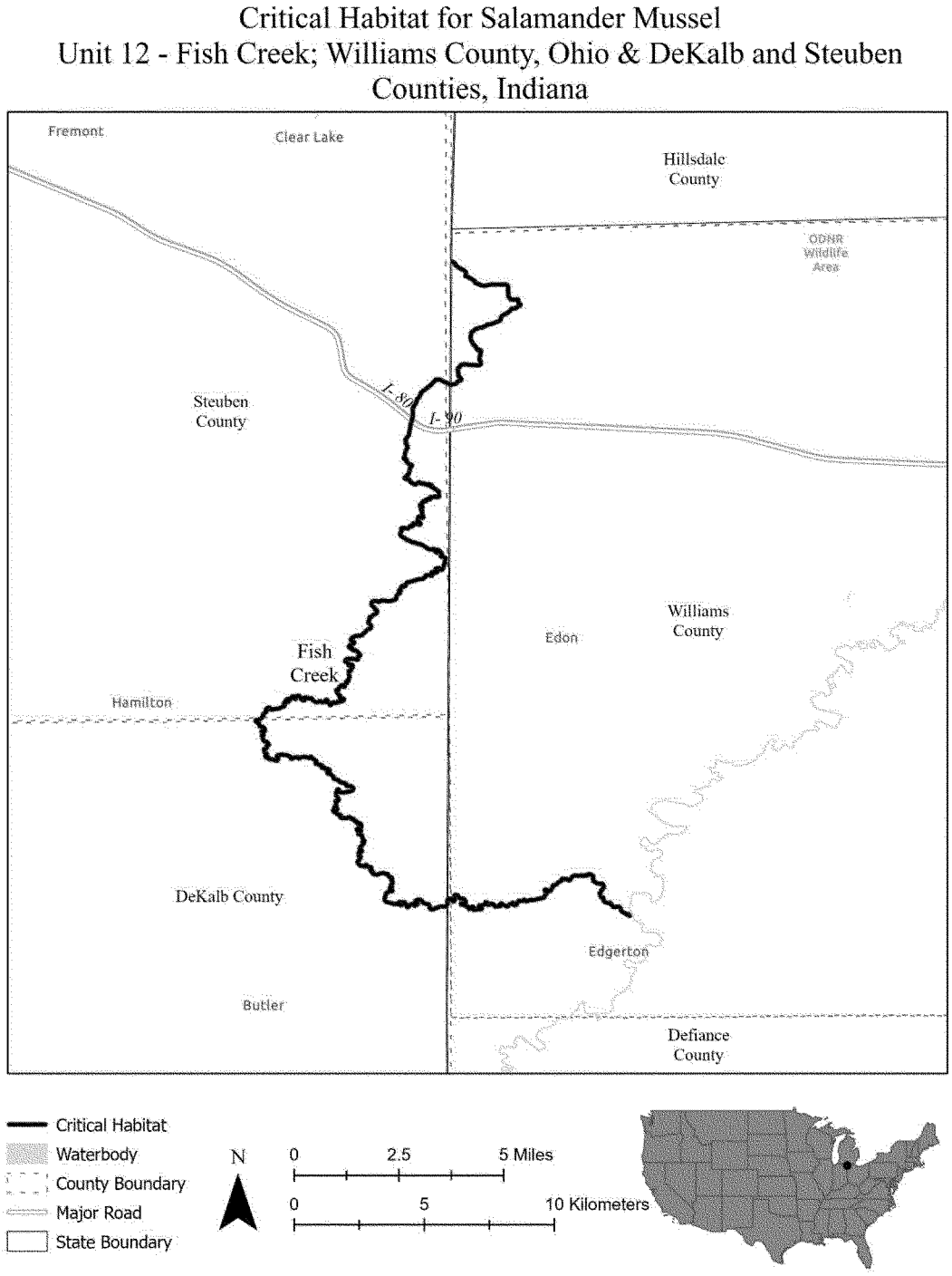


(17) Unit 12: Fish Creek (IN); Williams County, Ohio, and DeKalb and Steuben Counties, Indiana.

(i) Unit 12 consists of 37.36 miles (60.14 km) of Fish Creek from the headwaters of Fish Creek at Billingstown (Williams County, Ohio) downstream to the confluence with the St. Joseph River at Edgerton (Williams County, Ohio). The unit includes the river channel up to the ordinary high water mark. Approximately 1.02 miles (1.65 km) of the riparian lands adjacent to this unit are in public ownership, and 36.34 miles (58.49 km) are in private ownership. The land in public ownership is State land associated with the Ohio Department of Natural Resources' (ODNR) Fish Creek Wildlife Area.

(ii) Map of Unit 12 follows:

Figure 12 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (17)(ii)

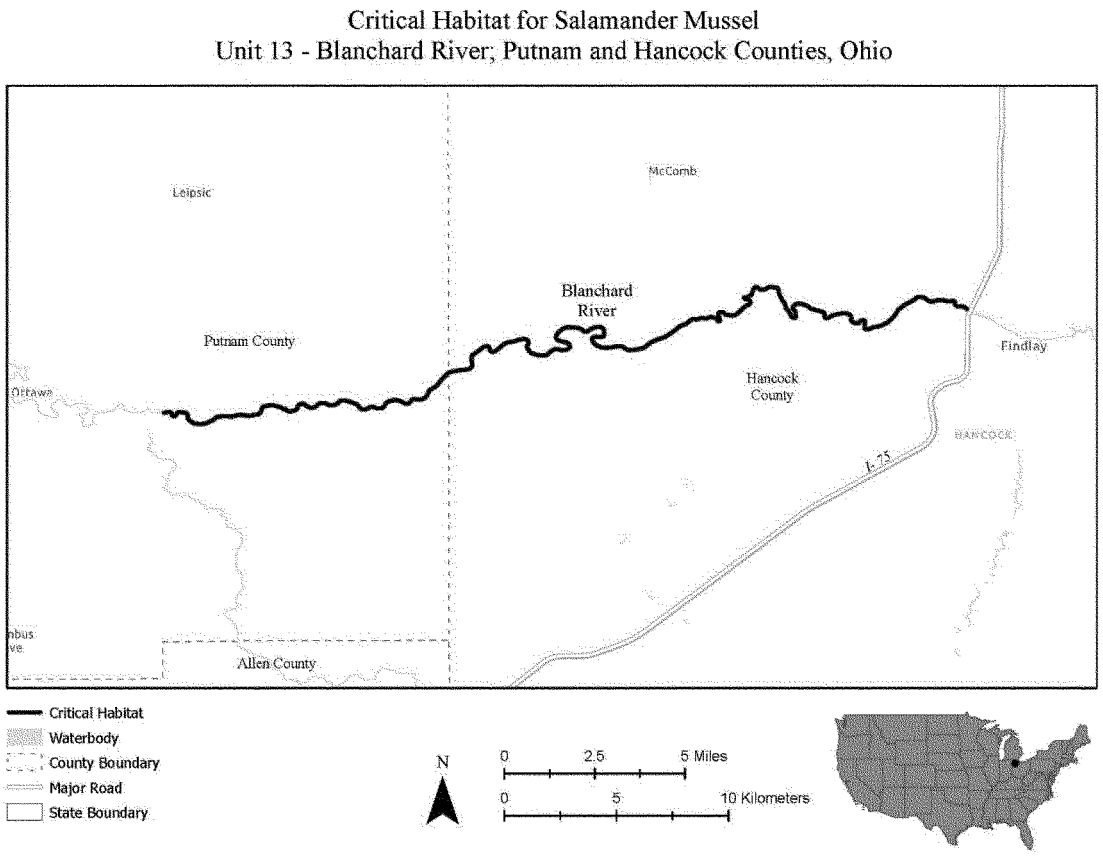


(18) Unit 13: Blanchard River; Putnam and Hancock Counties, Ohio.

(i) Unit 13 consists of 25.02 miles (40.26 km) of Blanchard River from the west side of Findley (Hancock County, Ohio) downstream to the confluence with Riley Creek east of Ottawa (Putnam County, Ohio). The unit includes the river channel up to the ordinary high water mark. Approximately 0.94 mile (1.51 km) of the riparian lands adjacent to this unit are in public ownership, and 24.08 miles (38.75 km) are in private ownership. The land in public ownership is city or county land associated with Hancock Park District's Indian Green Preserve.

(ii) Map of Unit 13 follows:

Figure 13 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (18)(ii)



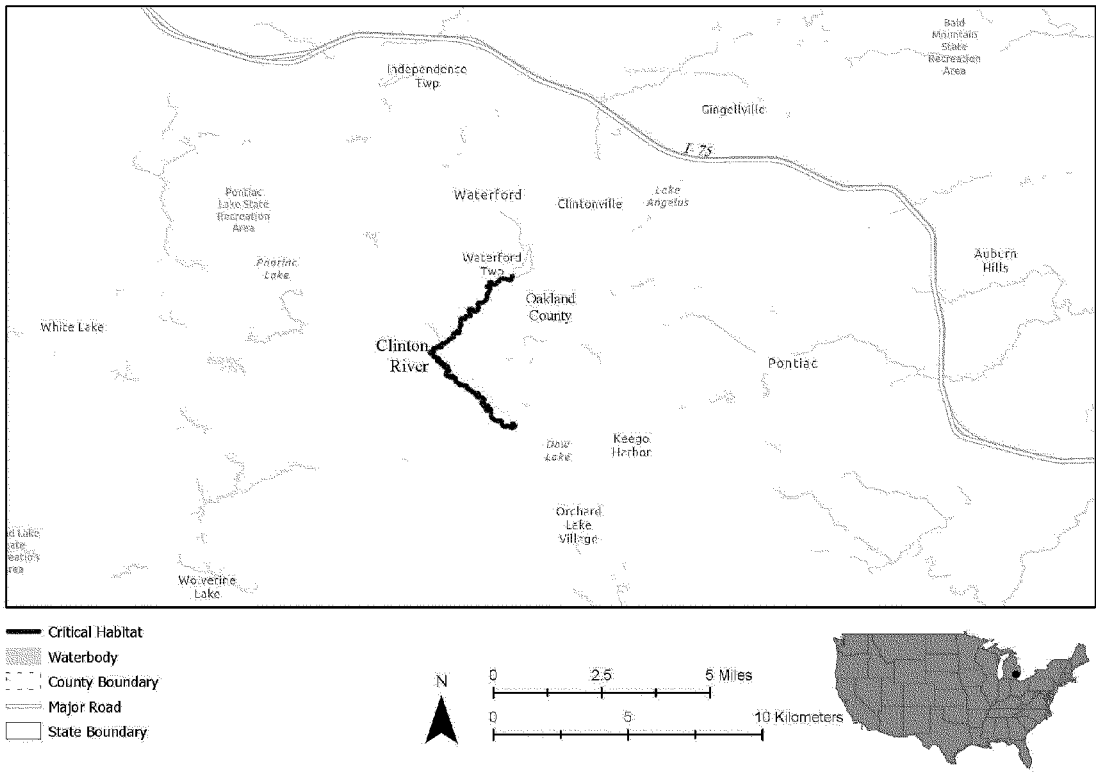
(19) Unit 14: Clinton River; Oakland County, Michigan.

(i) Unit 14 consists of 7.02 miles (11.29 km) of Clinton River from downstream of the fish hatchery at Waterford Township (Oakland County, Michigan) downstream to Cass Lake east of Four Towns (Oakland County, Michigan). The unit includes the river channel up to the ordinary high water mark. Approximately 0.28 mile (0.44 km) of the riparian lands adjacent to this unit are in public ownership, and 6.74 miles (10.85 km) are in private ownership. The land in public ownership is city or county land associated with Waterford Township's Clinton River Canoe Site.

(ii) Map of Unit 14 follows:

Figure 14 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (19)(ii)

Critical Habitat for Salamander Mussel
Unit 14 - Clinton River; Oakland County, Michigan



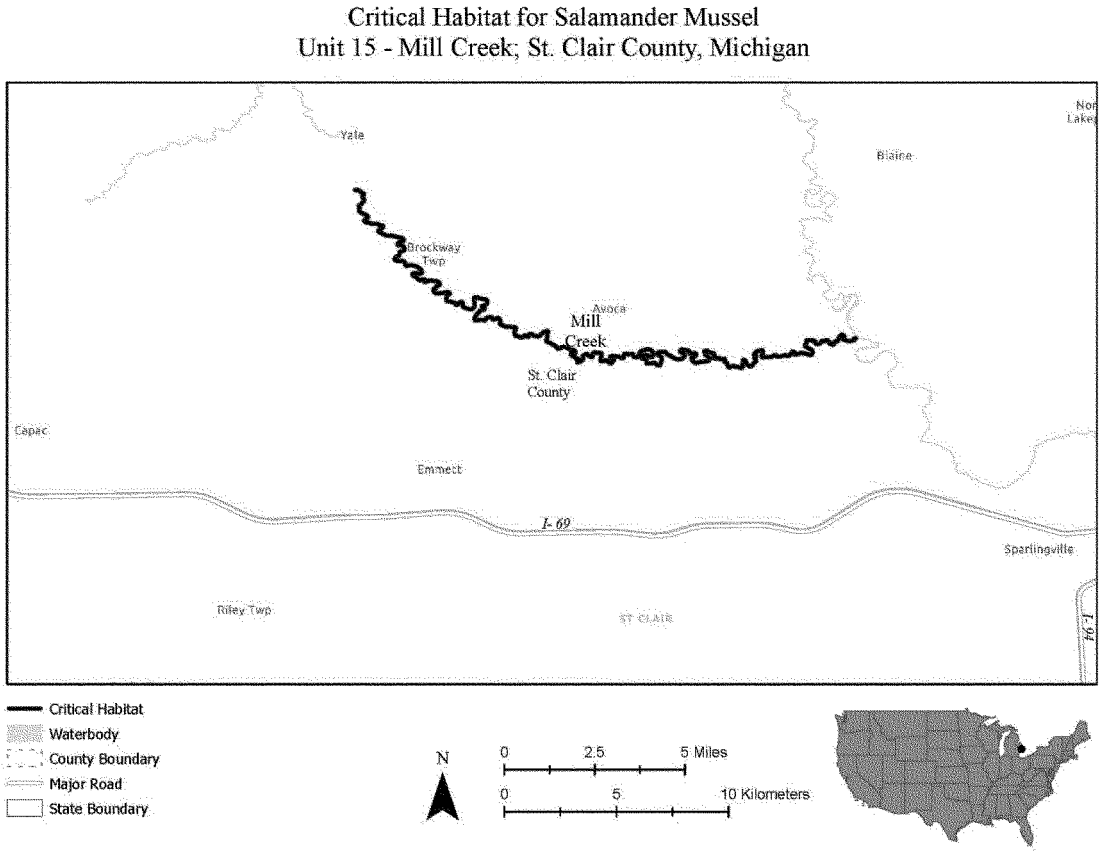
(20) Unit 15: Mill Creek; St. Clair County, Michigan.

(i) Unit 15 consists of 23.65 miles (38.06 km) of Mill Creek from the confluence with Thompson Drain northwest of Brockway Township (St. Clair County, Michigan) downstream to the confluence with the Black River at Ruby (St. Clair County, Michigan). The unit includes the river channel up to the ordinary high water mark. Approximately 1.54 miles (2.47 km) of the riparian lands adjacent to this unit are in public ownership, and 22.11 miles (35.59 km) are in private ownership. The lands in public ownership are State lands associated with the Michigan Department of Natural Resources' (MDNR) Port Huron State Game Area.

(ii) Map of Unit 15 follows:

Figure 15 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (20)(ii)

Figure 15 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (20)(ii)



(21) Unit 16: Tonawanda Creek; Erie, Genesee, Niagara, and Wyoming Counties, New York.

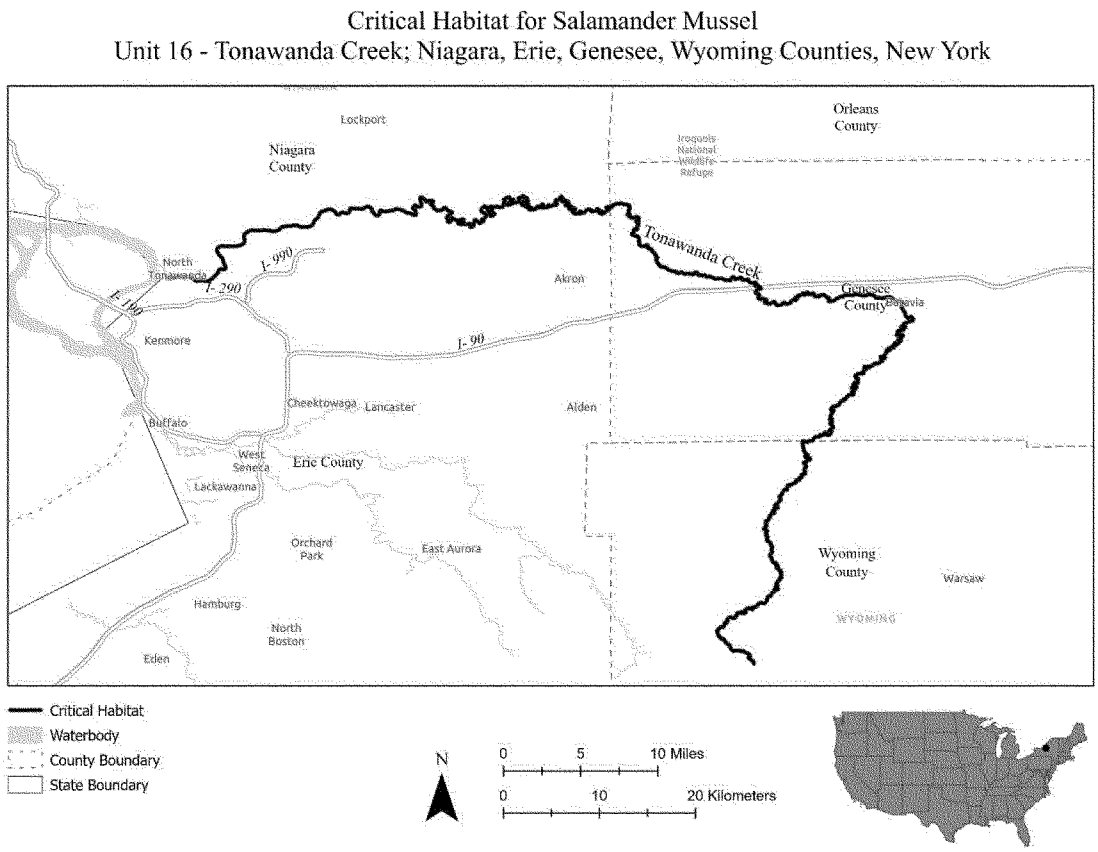
(i) Unit 16 consists of 113.21 miles (182.20 km) of Tonawanda Creek from the headwaters of Tonawanda Creek at Java Center (Wyoming County, New York) downstream to the confluence with the Niagara River at Tonawanda (Erie County, New York). The unit includes the river channel up to the ordinary high water mark. Approximately 8.70 miles (14.00 km) of the riparian lands adjacent to this unit are in public ownership, 93.91 miles (151.14 km) are in private ownership, and 10.6 miles (17.06 km) are Tribal lands. The Tribal lands in this unit are associated with the Tonawanda Reservation. Of the lands in public ownership:

(A) Approximately 2.08 miles (3.35 km) are city or county lands associated with the town of Sheldon's Vincent Almeter Memorial Park Lands, city of Attica's city lands, city of Batavia's local parks and Kiwanis mini park, and Erie County's Erie County Lands; and

(B) Approximately 6.62 miles (10.65 km) are State lands associated with New York's Erie Canal Waterway Trail.

(ii) Map of Unit 16 follows:

Figure 16 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (21)(ii)



(22) Unit 17: Conneaut Creek; Ashtabula County, Ohio, and Erie and Crawford Counties, Pennsylvania.

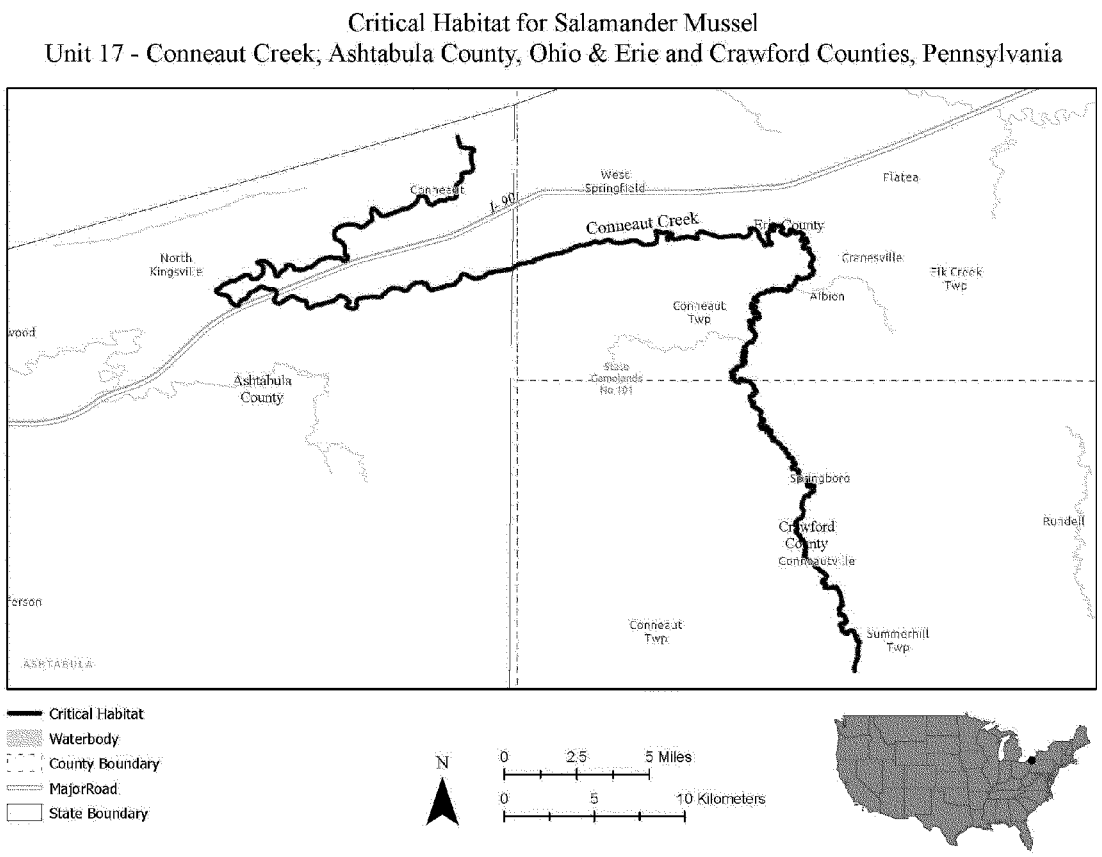
(i) Unit 17 consists of 62 miles (99.78 km) of Conneaut Creek from the start of Conneaut Creek at Dicksonburg (Crawford County, Pennsylvania) downstream to the mouth with Lake Erie at Conneaut (Ashtabula County, Ohio). The unit includes the river channel up to the ordinary high water mark. Approximately 2.31 miles (3.72 km) of the riparian lands adjacent to this unit are in public ownership, and 59.69 miles (96.06 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 0.34 mile (0.55 km) is city land associated with Conneaut Local Youth Organization Park; and

(B) Approximately 1.97 miles (3.17 km) are State lands associated with the ODNR's Conneaut Creek Scenic River.

(ii) Map of Unit 17 follows:

Figure 17 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (22)(ii)



(23) Unit 18: French Creek; Mercer, Erie, Crawford, and Venango Counties, Pennsylvania.

(i) Unit 18 consists of 74.37 miles (119.69 km) of French Creek from downstream of Union City Dam northwest of Union City (Erie County, Pennsylvania) downstream to the confluence of the Allegheny River at Franklin (Venango County, Pennsylvania). The unit includes the river channel up to the ordinary high water mark. Approximately 5.83 miles (9.39km) of the riparian lands adjacent to this unit are in public ownership, and 68.54 miles (110.3 km) are in private ownership. Of the lands in public ownership:

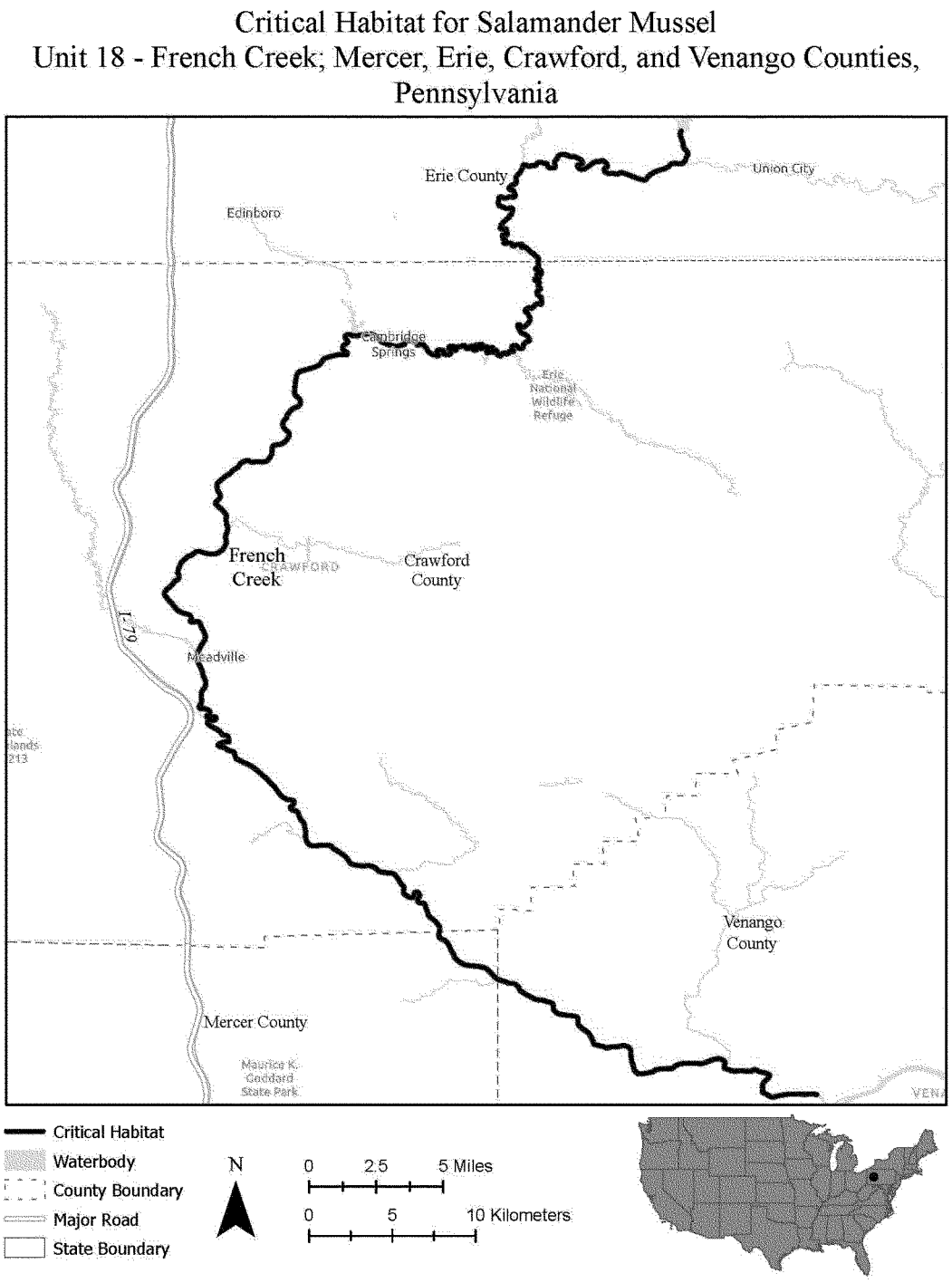
(A) Approximately 1.1 miles (1.77 km) are city or county lands associated with the Borough of Cambridge Springs' Cambridge Springs Recreation Area, the Township of Hayfield's Bertram Park, the Township of Vernon's Vernon Township Ball Fields and Vernon Township Recreation Association, and the city of Meadville's Kenneth A. Beers Jr. Bicenntenial Park;

(B) Approximately 1.1 miles (1.77 km) are Federal lands associated with the Service's Erie National Wildlife Refuge; and

(C) Approximately 3.6 miles (5.79 km) are State lands associated with the Pennsylvania Game Commission's State Game Land #85 and State Game Land #277 and the Pennsylvania Fish and Boat Commission's Meadville Access and Shaw's Landing.

(ii) Map of Unit 18 follows:

Figure 18 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (23)(ii)



(24) Unit 19: Allegheny River; Armstrong County, Pennsylvania.

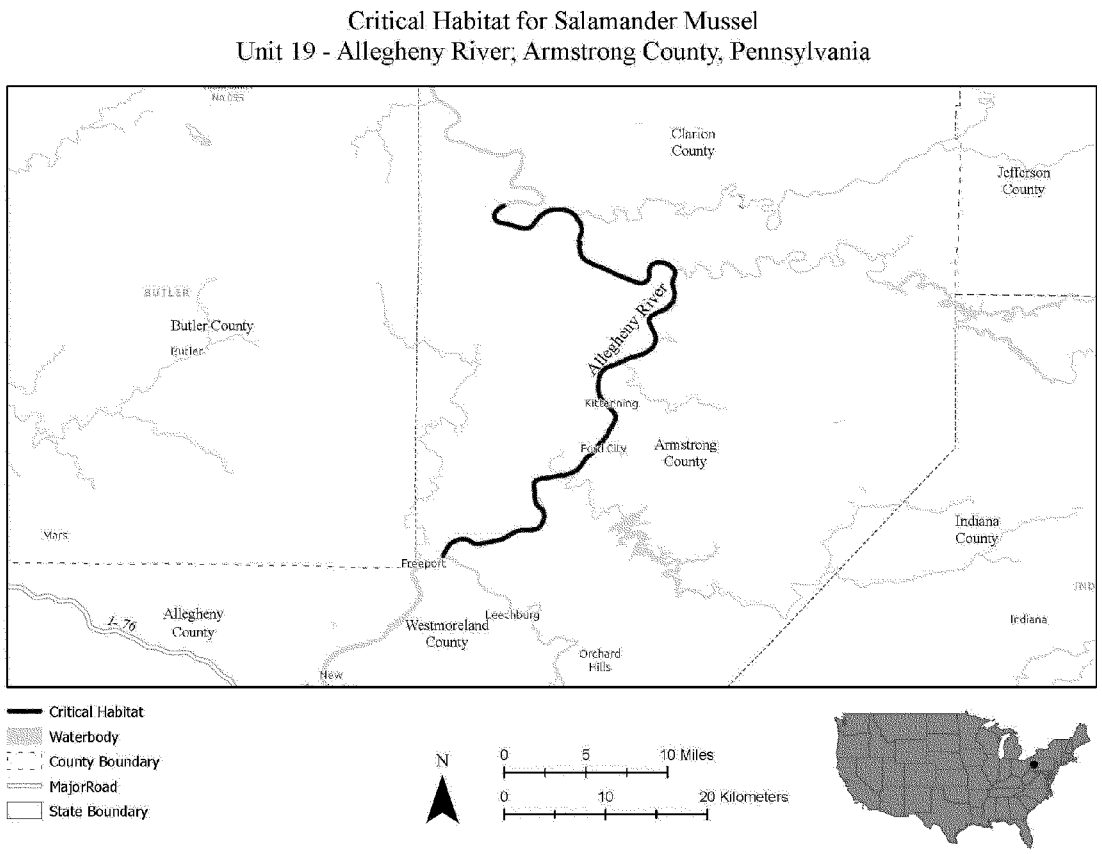
(i) Unit 19 consists of 39.45 miles (63.48 km) of Allegheny River from the Pennsylvania Route 68 bridge at East Brady (Armstrong County, Pennsylvania) downstream to the confluence of Kiskiminetas River northeast of Freeport (Armstrong County, Pennsylvania). The unit includes the river channel up to the ordinary high water mark. Approximately 4.6 miles (7.4 km) of the riparian lands adjacent to this unit are in public ownership, and 34.85 miles (56.08 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 1.86 miles (2.99 km) are city or county lands associated with the Armstrong County's West Ford City Park and Riverfront Park; and

(B) Approximately 2.74 miles (4.41 km) are State lands associated with the Pennsylvania Game Commission's State Game Land #287 and State Game Land #105.

(ii) Map of Unit 19 follows:

Figure 19 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (24)(ii)

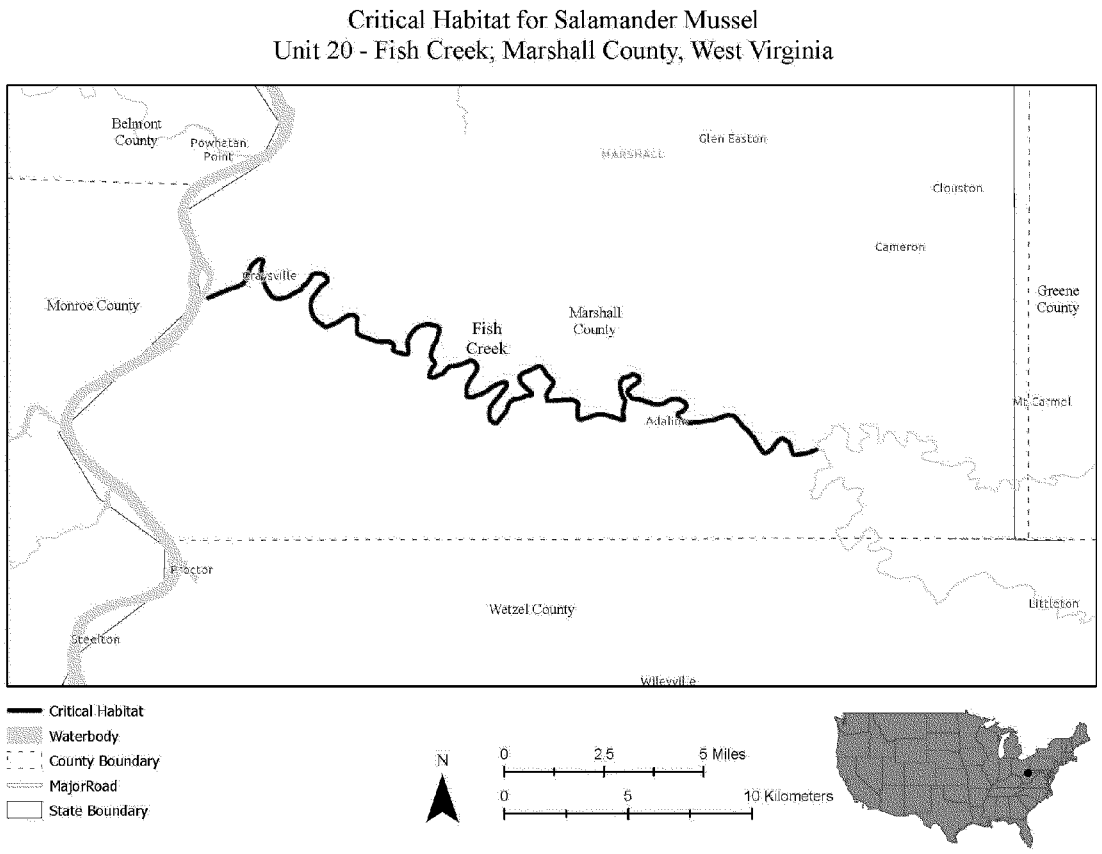


(25) Unit 20: Fish Creek (WV); Marshall County, West Virginia.

(i) Unit 20 consists of 26.58 miles (42.78 km) of Fish Creek from the confluence of Pennsylvania Fork Fish Creek and West Virginia Fork Fish Creek at Kausooth (Marshall County, West Virginia) downstream to the confluence with the Ohio River southwest of Graysville (Marshall County, West Virginia). The unit includes the river channel up to the ordinary high water mark. The lands in this unit are in private ownership.

(ii) Map of Unit 20 follows:

Figure 20 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (25)(ii)



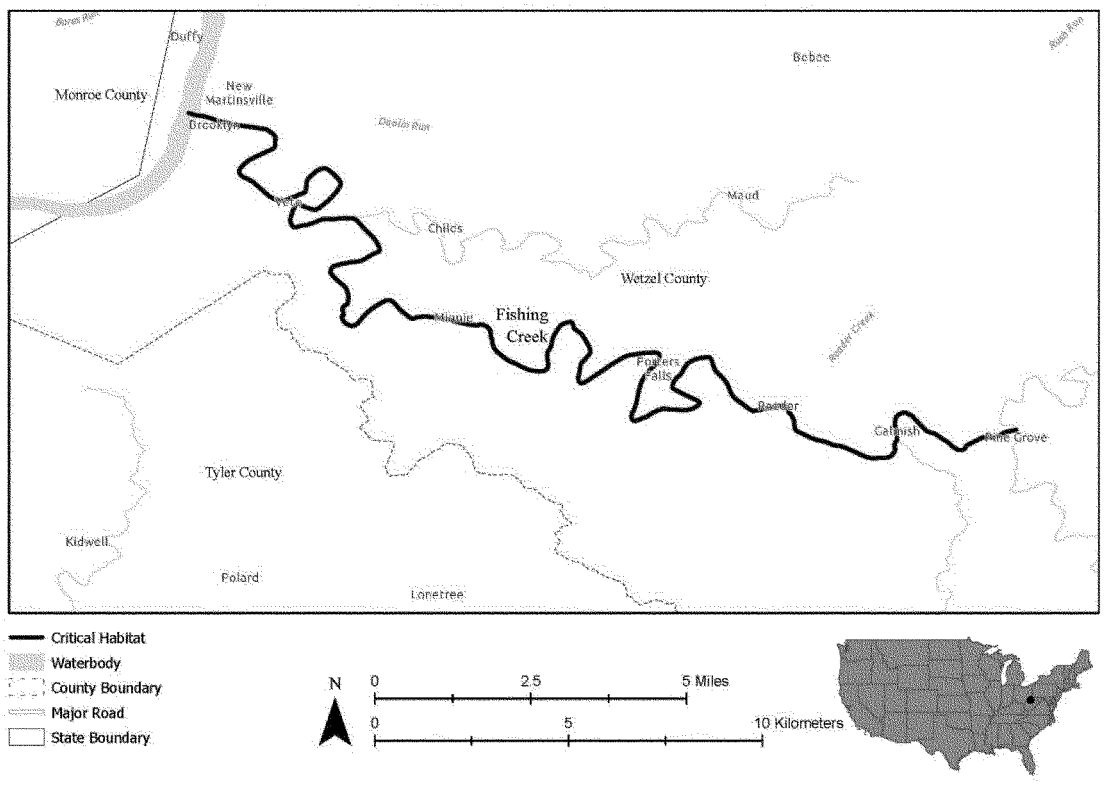
(26) Unit 21: Fishing Creek; Wetzel County, West Virginia.

(i) Unit 21 consists of 23.32 miles (37.54 km) of Fishing Creek from the confluence of the North Fork Fishing Creek and South Fork Fishing Creek at Pine Grove (Wetzel County, West Virginia) downstream to the confluence with the Ohio River at Brooklyn (Wetzel County, West Virginia). The unit includes the river channel up to the ordinary high water mark. Approximately 0.13 mile (0.21 km) of the riparian lands adjacent to this unit are in public ownership, and 23.19 miles (37.33 km) are in private ownership. The land in public ownership is land associated with the city of New Martinsville.

(ii) Map of Unit 21 follows:

Figure 21 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (26)(ii)

Critical Habitat for Salamander Mussel
Unit 21 - Fishing Creek; Wetzel County, West Virginia

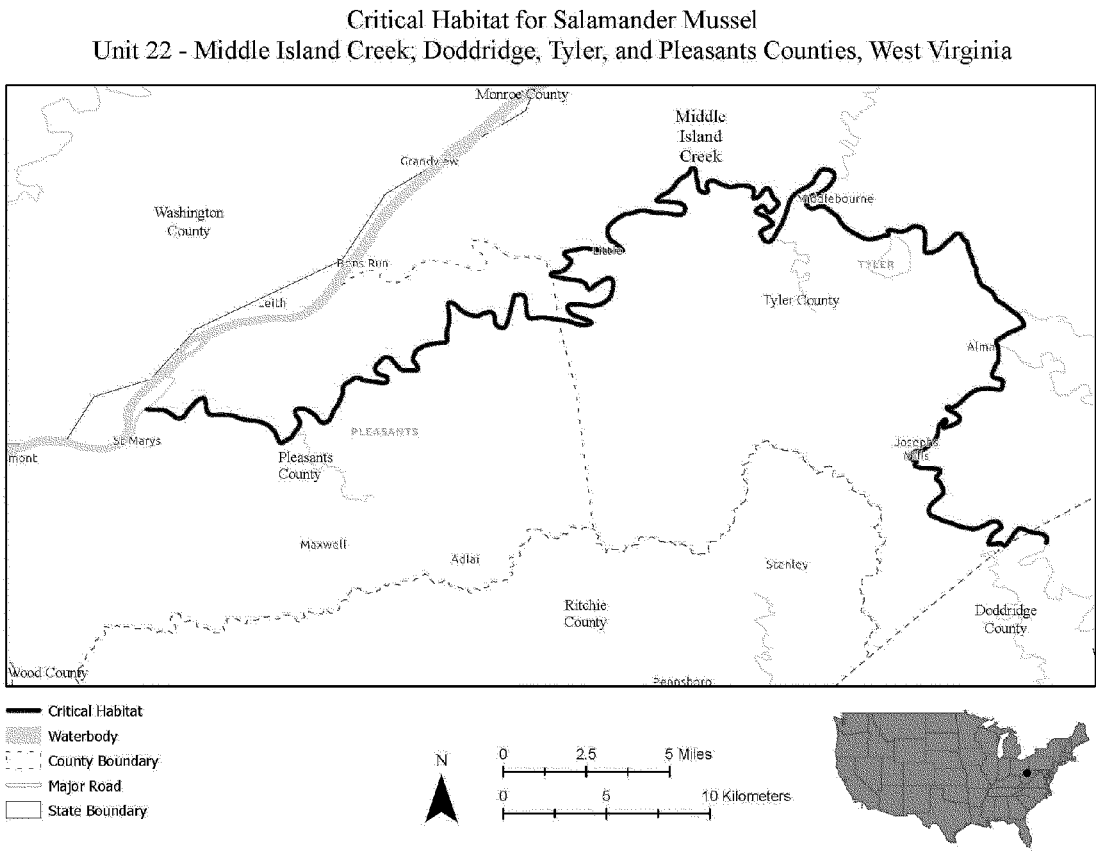


(27) Unit 22: Middle Island Creek; Doddridge, Tyler, and Pleasants Counties, West Virginia.

(i) Unit 22 consists of 62.25 miles (100.19 km) of Middle Island Creek from downstream of Keys Bend south of Camp (Doddridge County, West Virginia) downstream to the confluence with the Ohio River at Delong (Pleasants County, West Virginia). The unit includes the river channel up to the ordinary high water mark. Approximately 0.15 mile (0.25 km) of the riparian lands adjacent to this unit are in public ownership, and 62.10 miles (99.94 km) are in private ownership. The land in public ownership is State land associated with the West Virginia Division of Natural Resources' (WVDNR) Buffalo Run Wildlife Management Area.

(ii) Map of Unit 22 follows:

Figure 22 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (27)(ii)

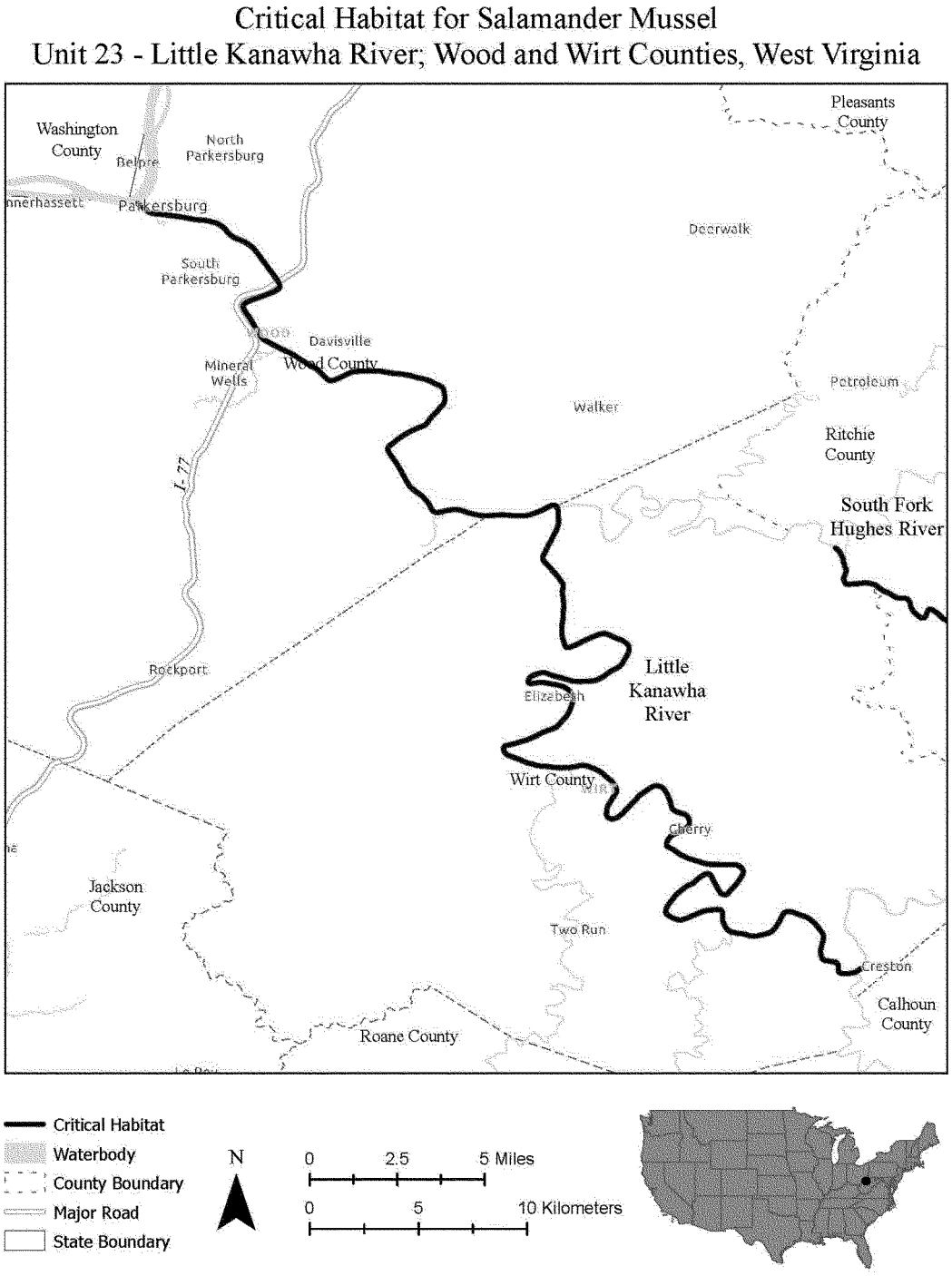


(28) Unit 23: Little Kanawha River; Wood and Wirt Counties, West Virginia.

(i) Unit 23 consists of 49.82 miles (80.18 km) of Little Kanawha River from the confluence with the West Fork Little Kanawha River west of Creston (Wirt County, West Virginia) downstream to the confluence with the Ohio River at Parkersburg (Wood County, West Virginia). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

(ii) Map of Unit 23 follows:

Figure 23 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (28)(ii)



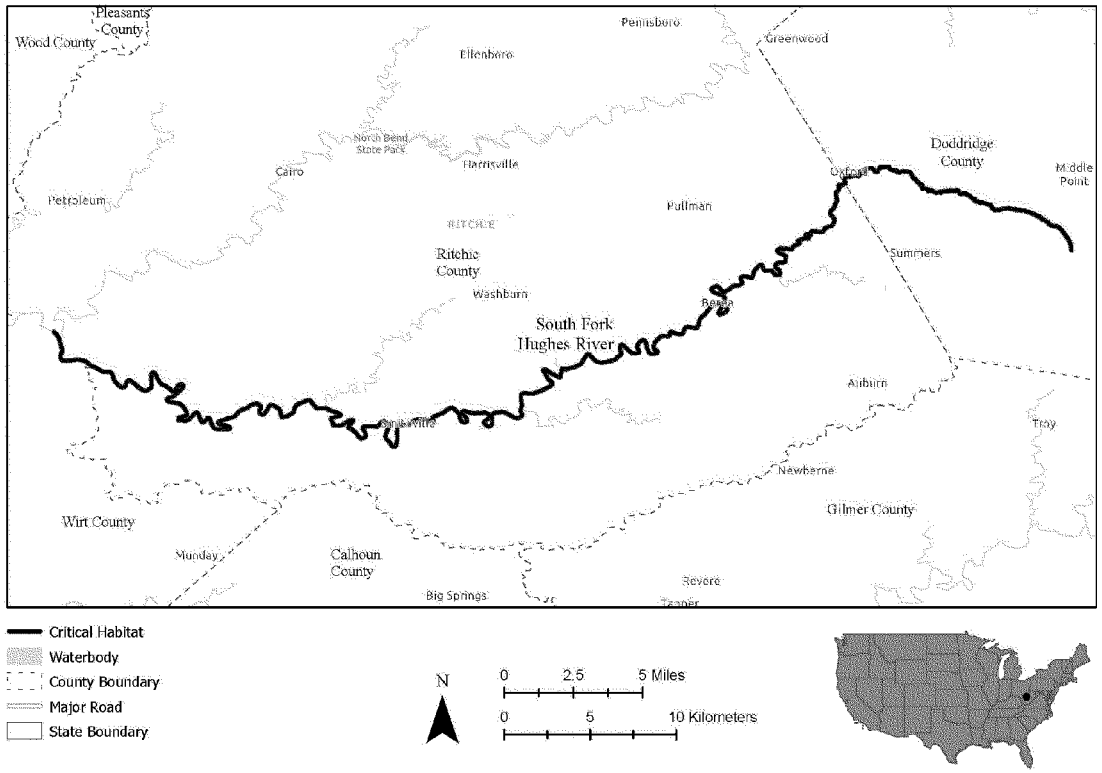
(29) Unit 24: South Fork Hughes River; Doddridge, Wirt, and Ritchie Counties, West Virginia.

(i) Unit 24 consists of 57.44 miles (92.43 km) of South Fork Hughes River from the headwaters of the South Fork Hughes River at Porto Rico (Doddridge County, West Virginia) downstream to the confluence with the Hughes River south of Cisco (Ritchie County, West Virginia). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

(ii) Map of Unit 24 follows:

Figure 24 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (29)(ii)

Critical Habitat for Salamander Mussel
Unit 24 - South Fork Hughes River; Doddridge, Wirt, and Ritchie Counties, West Virginia

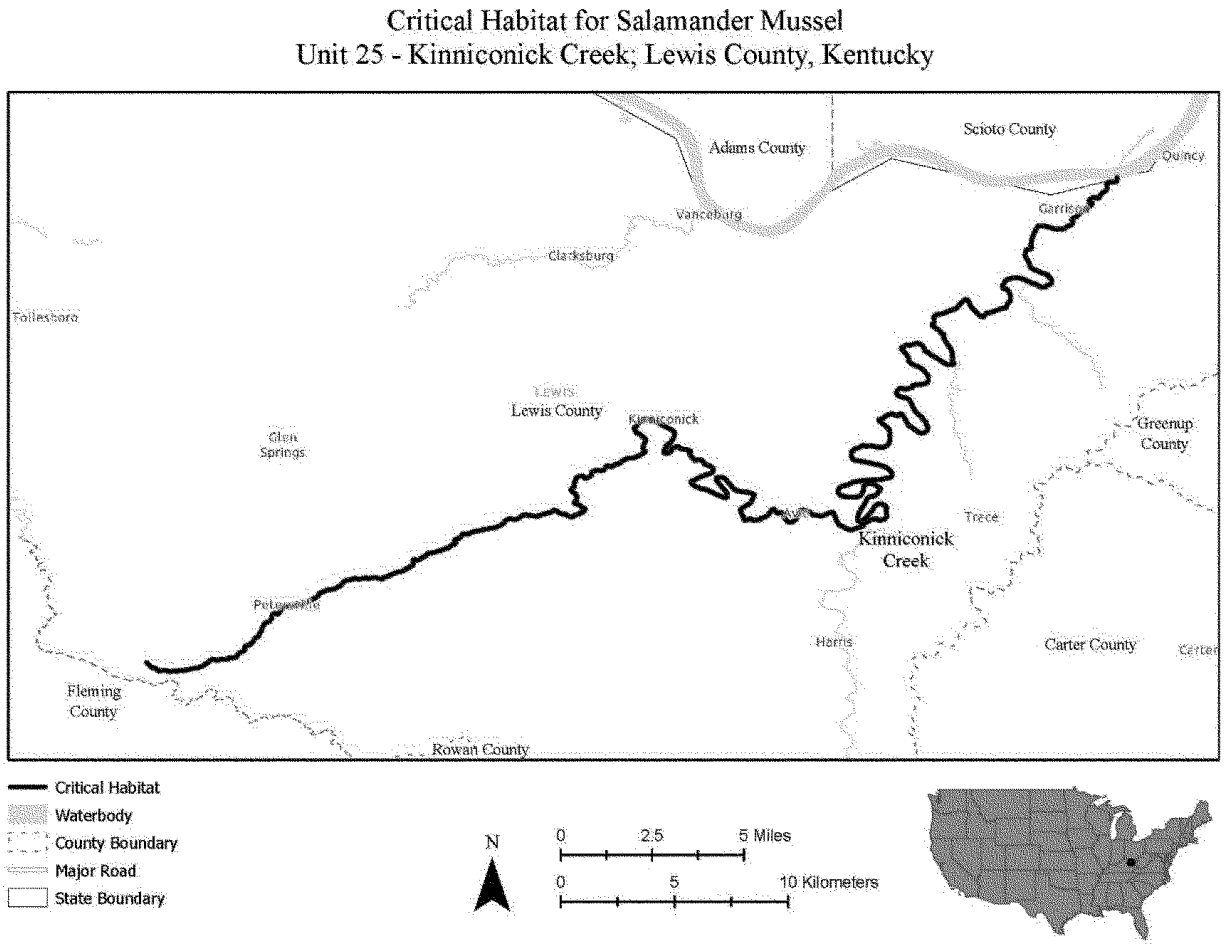


(30) Unit 25: Kinniconick Creek; Lewis County, Kentucky.

(i) Unit 25 consists of 51.01 miles (82.10 km) of Kinniconick Creek from the headwaters of Kinniconick Creek southwest of Petersville (Lewis County, Kentucky) downstream to the confluence with the Ohio River at Rexton (Lewis County, Kentucky). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

(ii) Map of Unit 25 follows:

Figure 25 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (30)(ii)



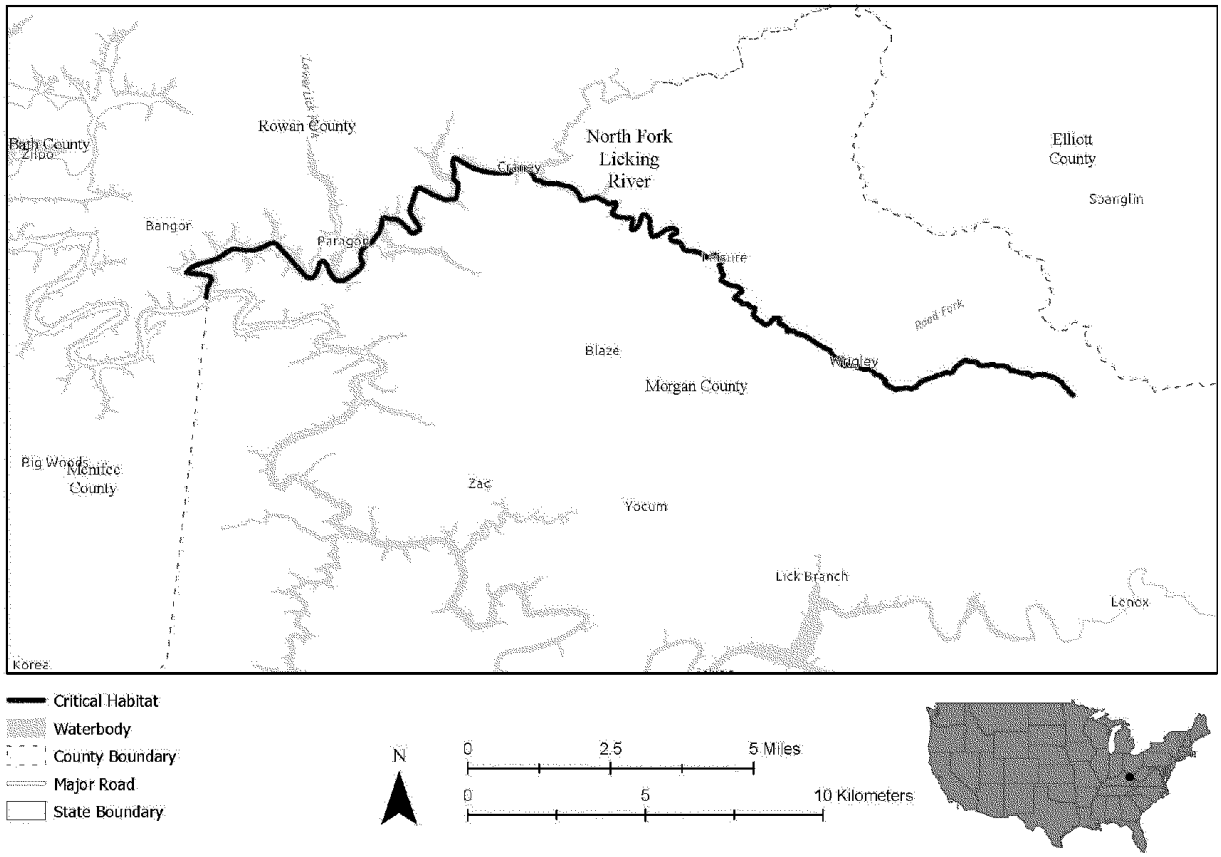
(31) Unit 26: North Fork Licking River; Morgan and Rowan Counties, Kentucky.

(i) Unit 26 consists of 20.67 miles (33.27 km) of North Fork Licking River from the headwaters of North Fork Licking River at Redwine (Morgan County, Kentucky) downstream to the confluence of the Licking River at Bangor (Rowan County, Kentucky). The unit includes the river channel up to the ordinary high water mark. Approximately 13.13 miles (21.14 km) of the riparian lands adjacent to this unit are in public ownership, and 7.54 miles (12.13 km) are in private ownership. The lands in public ownership are Federal lands associated with the U.S. Army Corps of Engineers' (USACE) Cave Run Recreation Area and U.S. Forest Service's (USFS) Daniel Boone National Forest.

(ii) Map of Unit 26 follows:

Figure 26 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (31)(ii)

Critical Habitat for Salamander Mussel
Unit 26 - North Fork Licking River; Morgan and Rowan Counties, Kentucky



(32) Unit 27: Licking River; Harrison, Robertson, Kenton, Bracken, Campbell, Rowan, Pendleton, Fleming, Bath, and Nicholas Counties, Kentucky.

(i) Unit 27 consists of 179.56 miles (288.98 km) of Licking River from below the dam at Cave Rune Lake south of Farmers (Rowan County, Kentucky) downstream to the confluence with the Ohio River at Newport (Campbell County, Kentucky). The unit includes the river channel up to the ordinary high water mark. Approximately 20.82 miles (33.51 km) of the riparian lands adjacent to this unit are in public ownership, and 158.74 miles (255.47 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 3.58 miles (5.76 km) are city or county lands associated with the city of Newport's General James Taylor Park; city of Covington's 19th St. Hollow Park, Meinken Park, and Eva G. Farris Complex; Kenton County's Locust Pike Park; Campbell County Conservation District's Hawthorne Crossing Conservation Area; and Kenton County Conservation District's Morning View Natural Area;

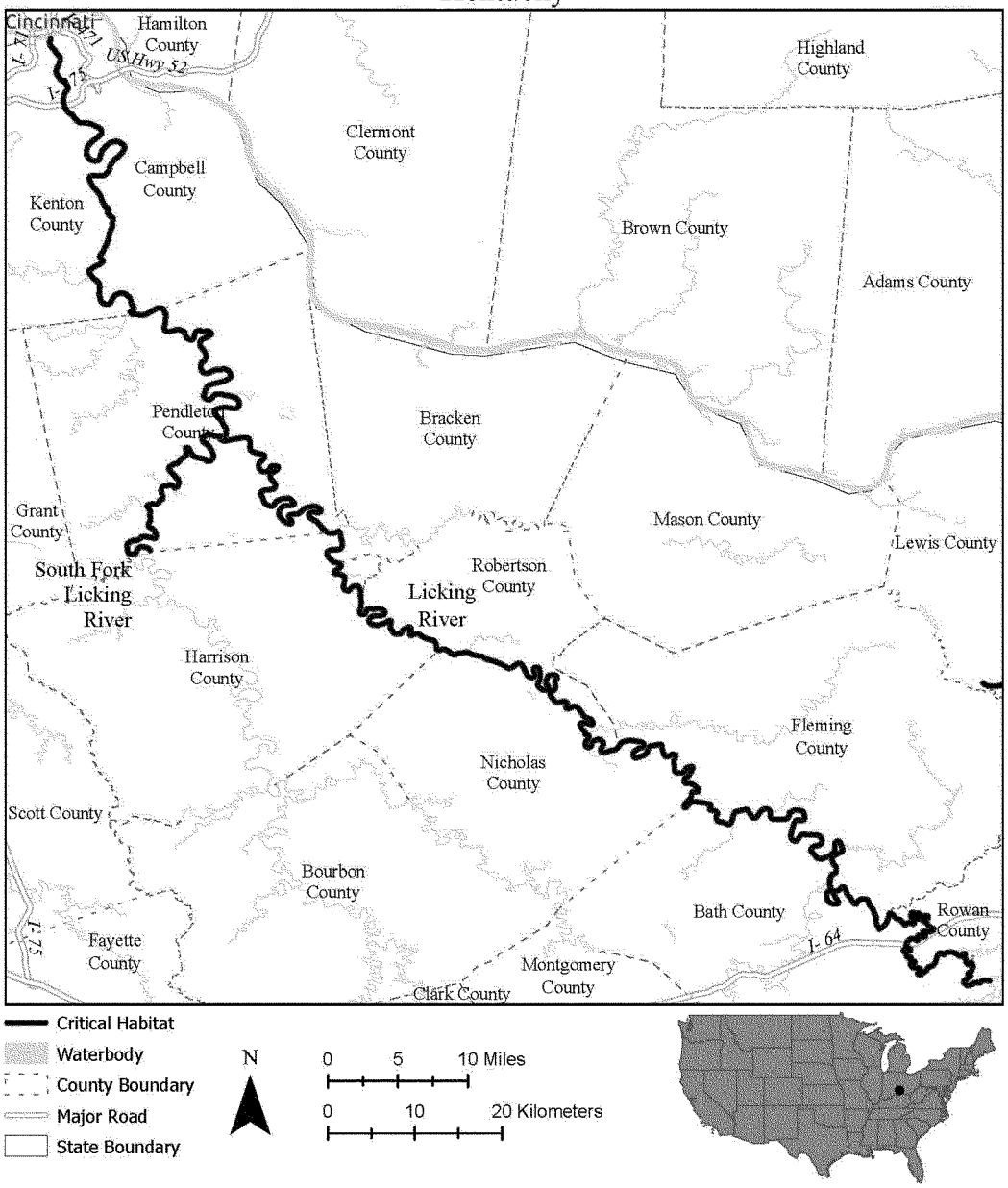
(B) Approximately 0.4 mile (0.64 km) is Federal land associated with the USACE's Cave Run Recreation Area;

(C) Approximately 0.5 mile (0.8 km) is Federal land associated with the USACE's Cave Run Recreation Area or USFS's Daniel Boone National Forest on one bank and State lands associated with the Kentucky Department of Fish and Wildlife Resources' (KDFWR) Minor Clark Fish Hatchery on the opposite bank; and

(D) Approximately 16.36 miles (26.33 km) are State lands associated with the Kentucky State Nature Preserves Commission's Quiet Trails State Nature Preserve, Kentucky Department of Parks' Blue Licks Battlefield State Recreational Park, and KDFWR's Clay Wildlife Management Area and Minor Clark Fish Hatchery.

(ii) Map of Units 27 and 28 follows:

Figure 27 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (32)(ii)



(33) Unit 28: South Fork Licking River; Pendleton and Harrison Counties, Kentucky.

(i) Unit 28 consists of 18.26 miles (29.39 km) of South Fork Licking River from 1 mile upstream from the confluence with Crooked Creek north of Boyd (Harrison County, Kentucky) downstream to the confluence with the Licking River at Falmouth (Pendleton County, Kentucky). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

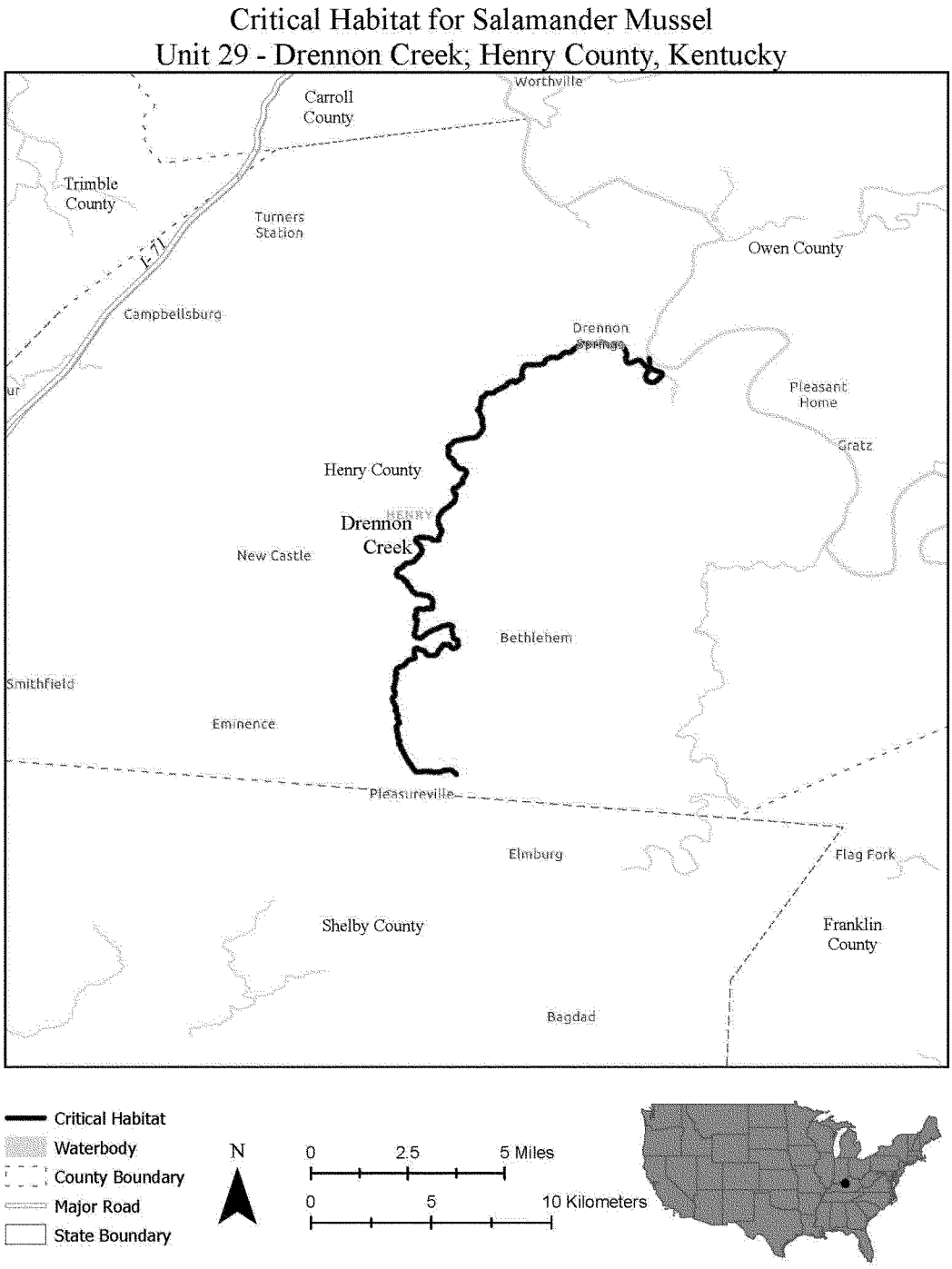
(ii) Map of Unit 28 is provided at paragraph (32)(ii) of this entry.

(34) Unit 29: Drennon Creek; Henry County, Kentucky.

(i) Unit 29 consists of 22.36 miles (35.99 km) of Drennon Creek from the headwaters of Drennon Creek south of Bethlehem (Henry County, Kentucky) downstream to the confluence with the Kentucky River southeast of Drennon Springs (Henry County, Kentucky). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

(ii) Map of Unit 29 follows:

Figure 28 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (34)(ii)

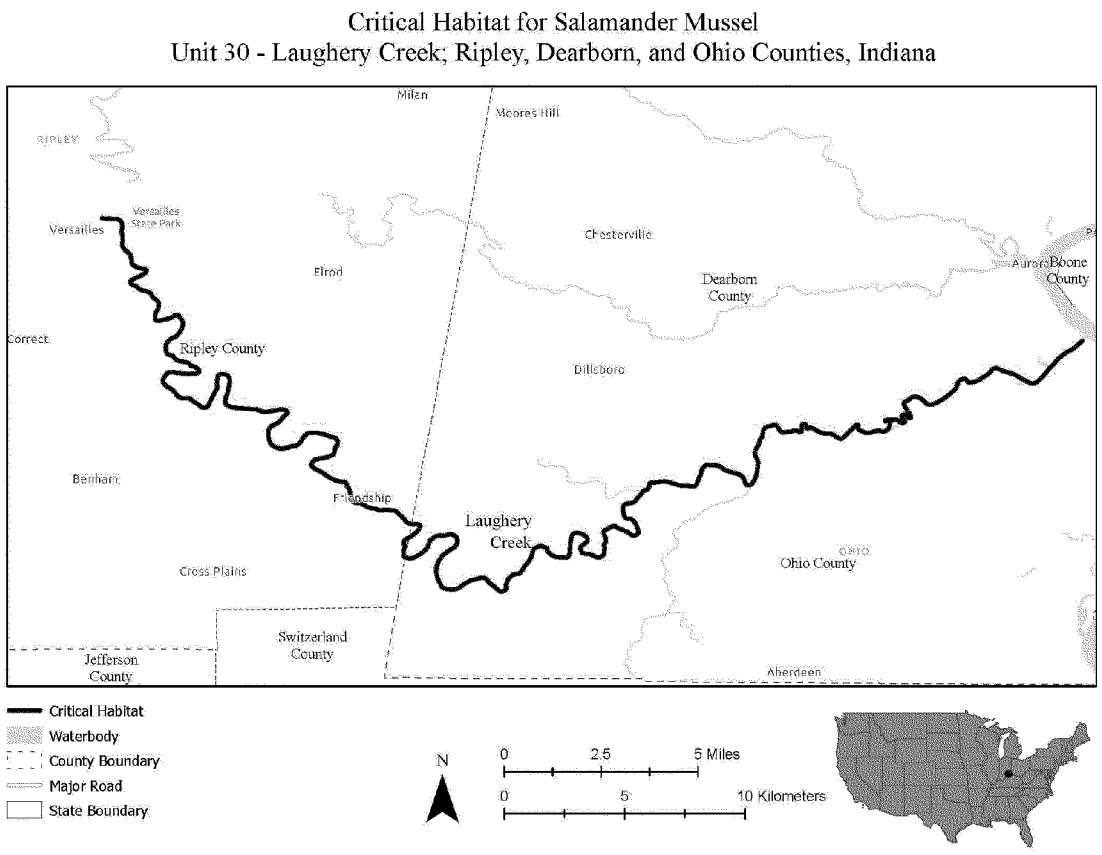


(35) Unit 30: Laughery Creek; Ripley, Dearborn, and Ohio Counties, Indiana.

(i) Unit 30 consists of 44.52 miles (71.65 km) of Laughery Creek from below the dam at Versailles Lake at Versailles (Ripley County, Indiana) downstream to the confluence with the Ohio River at Buffalo (Ohio County, Indiana). The unit includes the river channel up to the ordinary high water mark. Approximately 3.01 miles (4.85 km) of the riparian lands adjacent to this unit are in public ownership, and 41.51 miles (66.8 km) are in private ownership. The lands in public ownership are State lands associated with the IDNR's Versailles State Park.

(ii) Map of Unit 30 follows:

Figure 29 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (35)(ii)

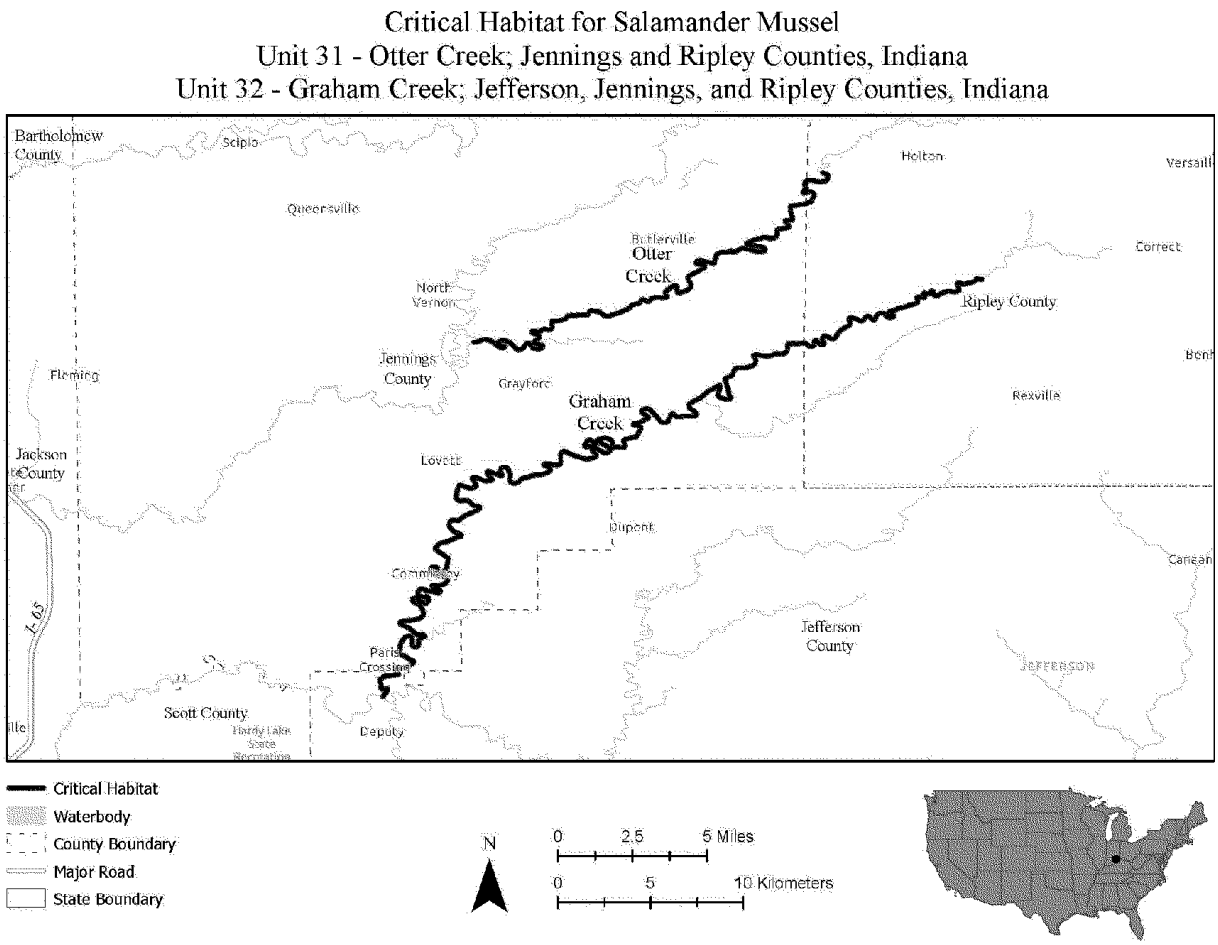


(36) Unit 31: Otter Creek; Jennings and Ripley Counties, Indiana.

(i) Unit 31 consists of 17.96 miles (28.91 km) of Otter Creek from the U.S. Highway 50 bridge west of Holton (Ripley County, Indiana) downstream to the confluence with the Vernon Fork Muscatatuck River at Vernon (Jennings County, Indiana). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

(ii) Map of Units 31 and 32 follows:

Figure 30 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (36)(ii)



(37) Unit 32: Graham Creek; Jefferson, Jennings, and Ripley Counties, Indiana.

(i) Unit 32 consists of 41.5 miles (66.79 km) of Graham Creek from west of South Old Michigan Road at New Marion (Ripley County, Indiana) downstream to the confluence with the Muscatatuck River north of Deputy (Jefferson County, Indiana). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

(ii) Map of Unit 32 is provided at paragraph (36)(ii) of this entry.

(38) Unit 33: East Fork White River; Dubois, Daviess, Pike, Martin, and Lawrence Counties, Indiana.

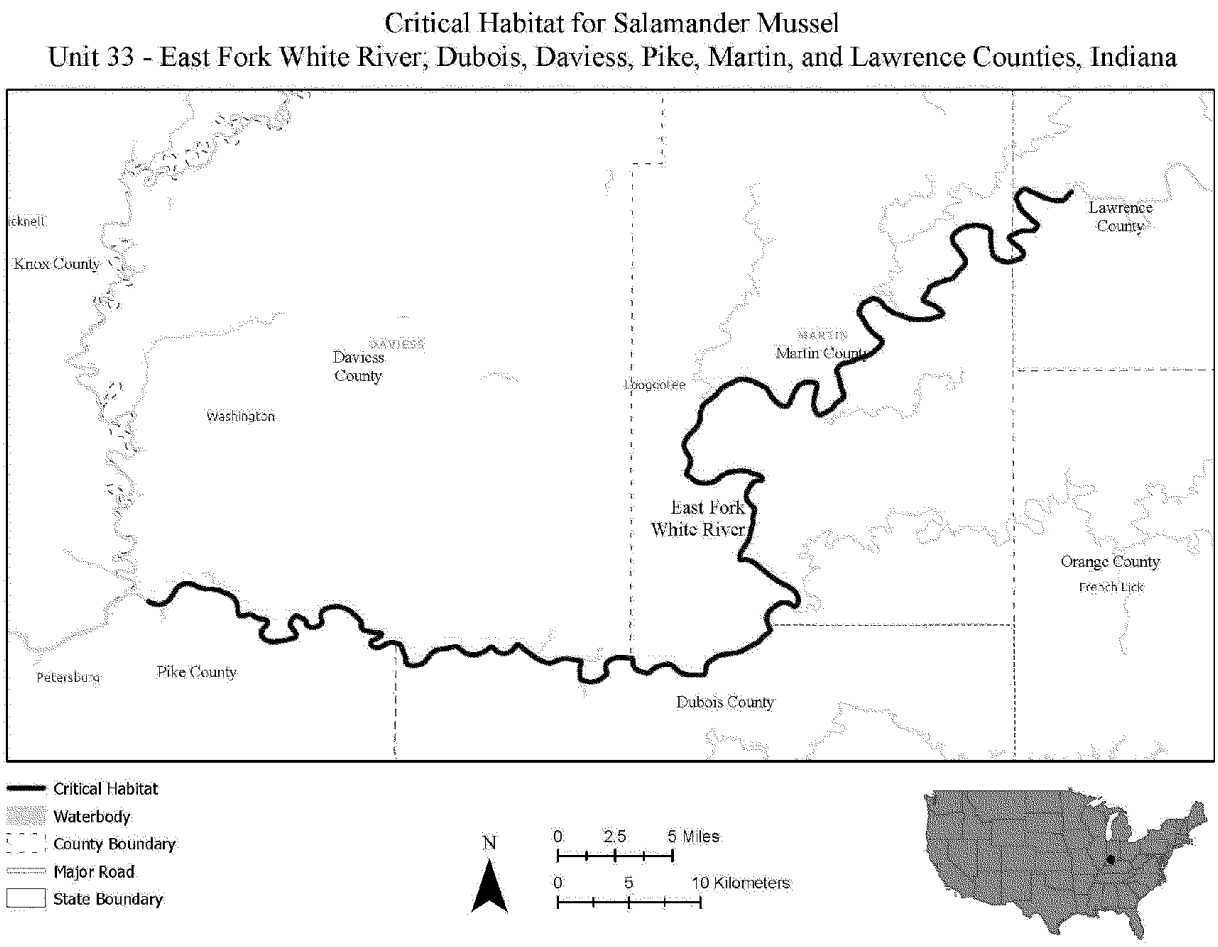
(i) Unit 33 consists of 78.57 miles (126.45 km) of East Fork White River from below the Williams dam south of Williams (Lawrence County, Indiana) downstream to approximately 0.25 mile west of North State Road 57 at Rogers (Pike County, Indiana). This unit includes the river channel up to the ordinary high water mark. Approximately 6.12 miles (9.85 km) of the riparian lands adjacent to this unit are in public ownership, and 72.45 miles (116.6 km) are in private ownership. Of the lands in public ownership:

(A) Approximately 0.12 mile (0.19 km) is Federal land associated with the USFS's Hoosier National Forest; and

(B) Approximately 6 miles (9.66 km) are State lands associated with the IDNR's Williams Dam Public Fishing Area, Hindostan Falls Public Fishing Area, Glendale Fish and Wildlife Area, Henshaw Bend Nature Preserve, and Bluffs on Beaver Pond.

(ii) Map of Unit 33 follows:

Figure 31 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (38)(ii)

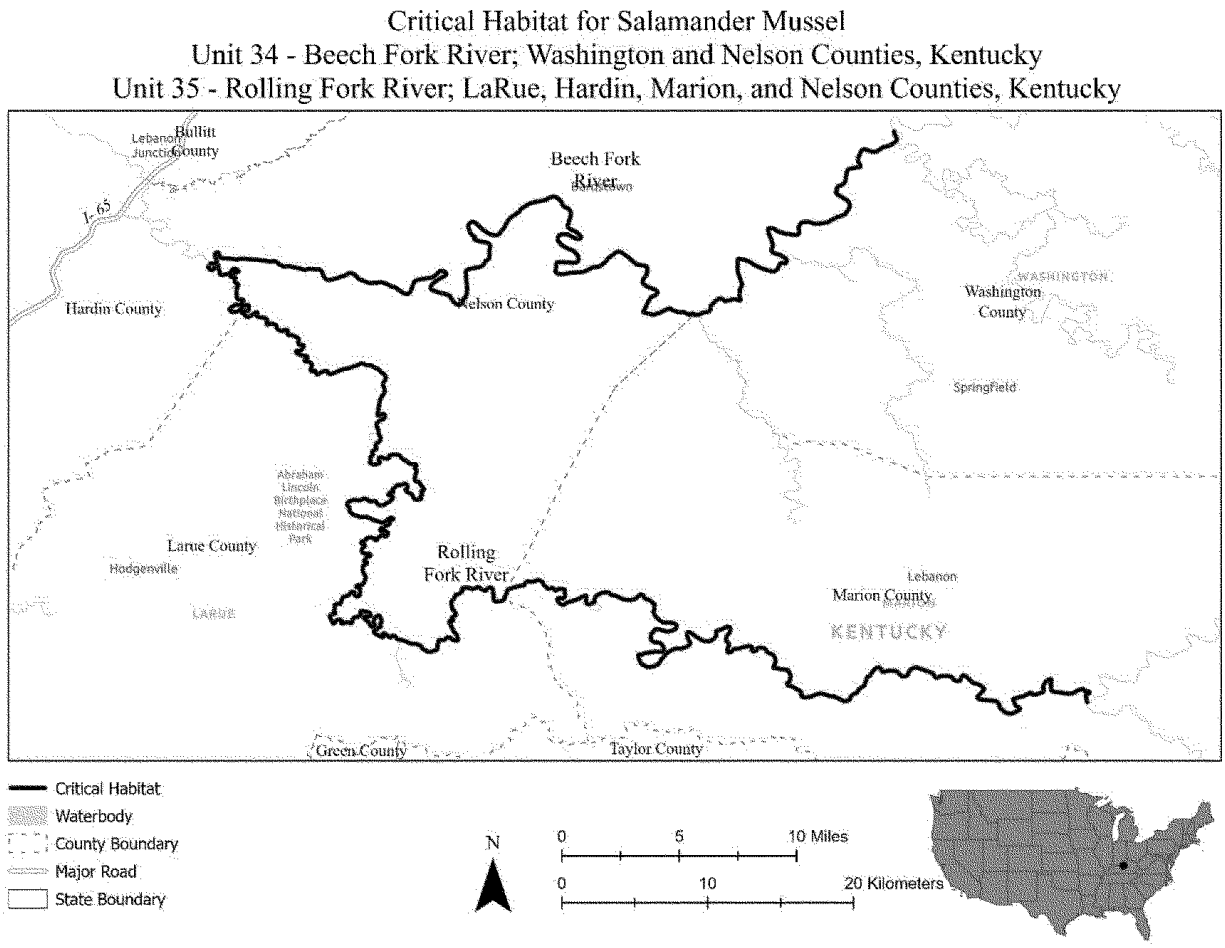


(39) Unit 34: Beech Fork River; Washington and Nelson Counties, Kentucky.

(i) Unit 34 consists of 50.39 miles (81.10 km) of Beech Fork River from the confluence of Beech Fork and Chaplin River north of Mooresville (Washington County, Kentucky) downstream to the confluence of Beech Fork River and the Rolling Fork River northeast of Elizabethtown (Hardin County, Kentucky). This unit includes the river channel up to the ordinary high water mark. Approximately 1.99 miles (3.21 km) of the riparian lands adjacent to this unit are in public ownership, and 48.4 miles (77.89 km) are in private ownership. The lands in public ownership are State lands associated with the KDFWR's John C. Williams Wildlife Management Area.

(ii) Map of Units 34 and 35 follows:

Figure 32 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (39)(ii)



(40) Unit 35: Rolling Fork River; LaRue, Hardin, Marion, and Nelson Counties, Kentucky.

(i) Unit 35 consists of 87.9 miles (141.47 km) of Rolling Fork River from the confluence of the North Rolling Fork River and Big South Fork River west of Bradfordsville (Marion County, Kentucky) downstream to the confluence with Beech Fork River east of Younger Creek (Hardin County, Kentucky). The unit includes the river channel up to the ordinary high water mark. The riparian lands adjacent to this unit are in private ownership.

(ii) Map of Unit 35 is provided at paragraph (39)(ii) of this entry.

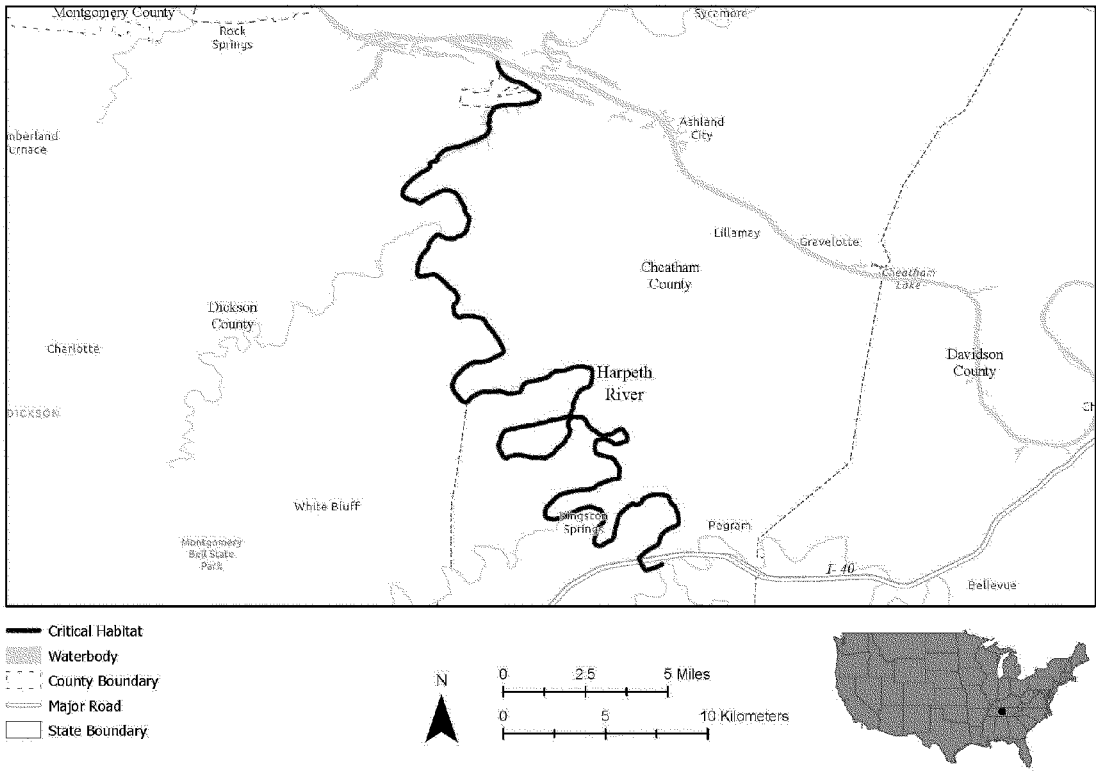
(41) Unit 36: Harpeth River; Cheatham and Dickson Counties, Tennessee.

(i) Unit 36 consists of 43.32 miles (69.72 km) of Harpeth River from the confluence of the South Harpeth River southeast of Kingston Springs (Cheatham County, Tennessee) downstream to the confluence with the Cumberland River northeast of Bellsburg (Dickson County, Tennessee). The unit includes the river channel up to the ordinary high water mark. Approximately 6.07 miles (9.77 km) of the riparian lands adjacent to this unit are in public ownership, and 37.25 miles (59.95 km) are in private ownership. The lands in public ownership are Federal lands associated with the USACE's Cheatham Lake Reservoir.

(ii) Map of Unit 36 follows:

Figure 33 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (41)(ii)

Critical Habitat for Salamander Mussel
Unit 36 - Harpeth River; Cheatham and Dickson Counties, Tennessee



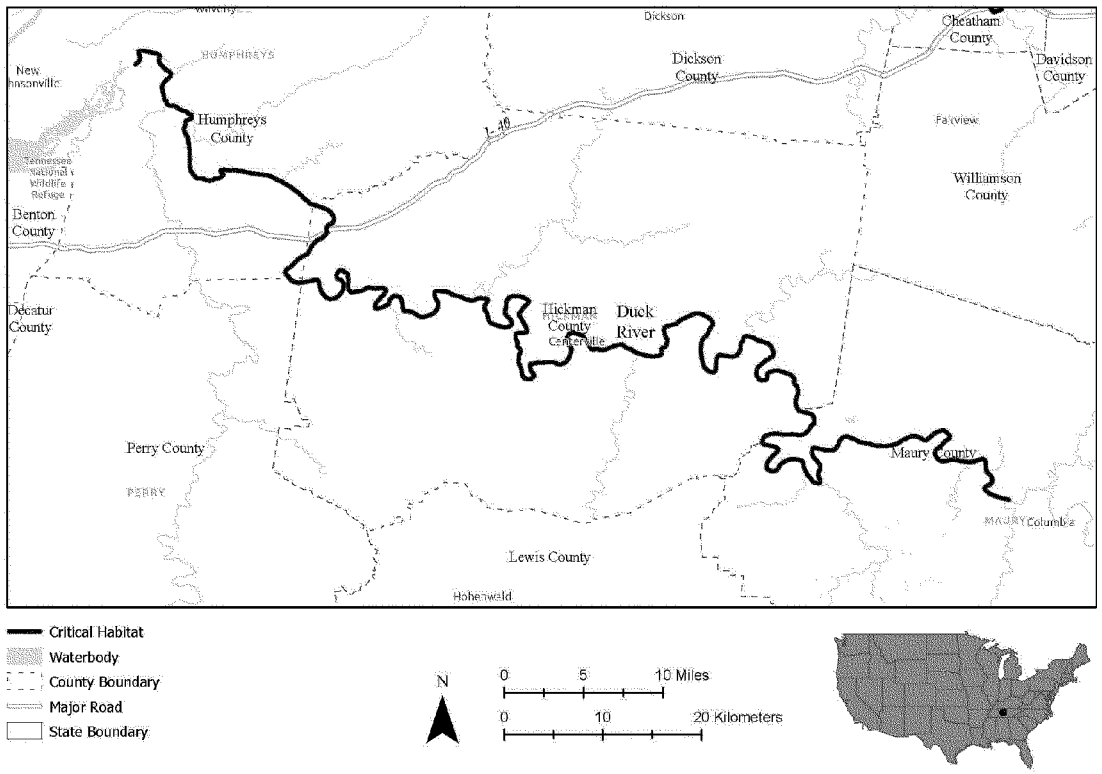
(42) Unit 37: Duck River; Hickman, Humphreys, Perry, and Maury Counties, Tennessee.

(i) Unit 37 consists of 116.42 miles (187.36 km) of Duck River from the confluence of the Little Bigby Creek northwest of Columbia (Maury County, Tennessee) downstream to the confluence of the Duck River and the Tennessee River, which creates a backwater effect at Elysian Grove (Humphreys County, Tennessee). The unit includes the river channel up to the ordinary high water mark. Approximately 0.52 mile (0.83 km) of the riparian lands adjacent to this unit are in public ownership, and 115.9 miles (186.53 km) are in private ownership. The land in public ownership is Federal land associated with the NPS's Natchez Trace Parkway.

(ii) Map of Unit 37 follows:

Figure 34 to Salamander Mussel (*Simpsonaias ambigua*) paragraph (42)(ii)

Critical Habitat for Salamander Mussel
Unit 37 - Duck River; Hickman, Humphreys, Perry, and Maury Counties, Tennessee



* * * * *

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–17668 Filed 8–21–23; 8:45 am]

BILLING CODE 4333–15–C

FEDERAL REGISTER

Vol. 88 Tuesday,

No. 161 August 22, 2023

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Brawleys Fork Crayfish and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2023–0065; FF09E21000; FXES1111090FEDR 234]

RIN 1018–BG18

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Brawleys Fork Crayfish and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Brawleys Fork crayfish (*Cambarus williami*), a freshwater crayfish species from Tennessee, as a threatened species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the Brawleys Fork crayfish. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the Brawleys Fork crayfish as a threatened species with a rule issued under section 4(d) of the Act (''4(d) rule''). If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We also propose to designate critical habitat for the Brawleys Fork crayfish under the Act. In total, approximately 86.6 river miles (139.4 river kilometers) in Cannon, Rutherford, and Warren Counties, Tennessee, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for Brawleys Fork crayfish.

DATES: We will accept comments received or postmarked on or before October 23, 2023. 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 a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 6, 2023.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2023–0065, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2023–0065, U.S. Fish and Wildlife Service, MS: PRB/3W, 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 *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available on the Service's website at at *https://www.fws.gov/library/collections/Brawleys-Fork-crayfish* and at *https://www.regulations.gov* in Docket No. FWS–R4–ES–2023–0065. For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2023–0065 and on the Service's website at *https://www.fws.gov/library/collections/Brawleys-Fork-crayfish.*

FOR FURTHER INFORMATION CONTACT: Daniel Elbert, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, Tennessee, 38501; Telephone 931–254–9617. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Brawleys Fork crayfish meets the definition of a threatened species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and making a critical habitat determination can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the Brawleys Fork crayfish as a threatened species with a rule under section 4(d) of the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because 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. We have determined that Brawleys Fork crayfish is threatened due to the following threats: habitat loss and degradation due to sedimentation and water quality impairments from sources including agricultural practices, horticultural practices, and urbanization; and instream modification including impoundments, gravel dredging, and channel alteration. Each of the threats influencing Brawleys Fork crayfish viability may be further exacerbated by the effects of small, isolated populations and the future effects of climate change.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time

it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) 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 and the locations of any additional populations of this species;

(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) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting 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.

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species.

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) Additional information concerning the historical and current status of this species.

(4) Information on regulations that may be necessary and advisable to provide for the conservation of the Brawleys Fork crayfish and that we can consider in developing a 4(d) rule for the species. In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

(5) Specific information on:

(a) The amount and distribution of Brawleys Fork crayfish habitat;

(b) Any additional areas occurring within the range of the species, Cannon, Rutherford, and Warren Counties, Tennessee, that should be included in the designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species; and

(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) To evaluate the potential to include areas not occupied at the time of listing, we particularly seek comments regarding whether occupied areas are adequate for the conservation of the species. Additionally, please provide specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species. We also seek comments or information regarding whether areas not occupied at the time of listing qualify as habitat for the species.

(6) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(7) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(8) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(9) 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. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please 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, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

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**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. 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 *https://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 *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas

proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. 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** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On April 20, 2010, we received a petition to list 404 species, including the Brawleys Fork crayfish, as endangered or threatened species, and designate critical habitat under the Act (Center for Biological Diversity et al. 2010, entire). Our subsequent 90-day finding concluded that the petition provided substantial information indicating that the Brawleys Fork crayfish may be warranted for listing, and that the status of the species warranted further review (September 27, 2011; 76 FR 59836).

Peer Review

A species status assessment (SSA) team prepared an SSA report for the Brawleys Fork crayfish. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the Brawleys Fork crayfish SSA report. The Service sent the SSA report to four independent peer reviewers and received no responses.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and distribution of the Brawleys Fork crayfish (*Cambarus williami*) is presented in the SSA report (version 1.1; Service 2023, pp. 14–24).

The Brawleys Fork crayfish is a small, freshwater crayfish endemic to the Nashville Basin and Eastern Highland Rim ecoregions of central Tennessee. The species occurs primarily in small- to medium-sized streams (first- to third-order streams) and in one medium-sized river (fifth order) of the Stones and Collins River systems (Bouchard and Bouchard 1995, p. 6; Williams et al. 2017, p. 51; Giddens and Mattingly 2020, pp. 2–3; Johansen 2021, pers. comm. 2021; Mattingly 2021, pers. comm.; Simmons 2021, pers. comm.; Williams 2021, pers. comm.).

Brawleys Fork crayfish is known to occur in 20 streams in 5 Hydrologic Unit Code 12 (HUC 12) watersheds within its range. The Brawleys Fork crayfish range has increased from historical levels and the current known range of the species is wider than the historical range (no range contraction) (Bouchard and Bouchard 1995, entire; Withers and McCoy 2005, entire; Rohrbach and Withers 2006, entire; Giddens and Mattingly 2020, entire). Brawleys Fork crayfish known occurrences are in streams with moderate to fast flow and main channel depths ranging from 5 to 30 centimeters (cm) (2–12 inches (in)) (Withers and McCoy 2005, pp. 3, 27–48; Rohrbach and Withers 2006, p. 3; Williams et al. 2017, p. 51). Brawleys Fork crayfish typically occupy runs and riffles in streams with layered chert gravel and cobble substrate with ample interstitial space not consolidated by finer substrates such as sand or silt (Khan 2021, unpublished data). This species frequently burrows into chert gravel substrate within the wetted stream channel during normal and reduced stream flows to escape predators and access subterranean water (Bouchard and Bouchard 1995, p. 6; Williams et al. 2017, p. 51; Giddens and Mattingly 2020, pp. 2–3). Streams with Brawleys Fork crayfish occurrence are characterized by water temperatures ranging from 10 to 23 degrees Celsius (°C) (50–73 degrees Fahrenheit (°F)) (Giddens and Mattingly 2020, pp. 4–5; Simmons 2021, pers. comm.). Ample riparian vegetation is an important habitat characteristic that creates shaded conditions to maintain the cooler water temperature required by the species and buffers streams against pollutants carried by stormwater runoff. Suitable habitat conditions also support an adequate prey base for Brawleys Fork crayfish, indicated by a healthy aquatic community structure including native benthic macroinvertebrates, fishes, and plant matter (*e.g.,* leaf litter, algae, detritus). Brawleys Fork crayfish site occupancy is associated with a high volume of clean groundwater discharged into the stream from subterranean aquifers (Simmons 2021, pers. comm.).

Although the specific diet of Brawleys Fork crayfish is unknown, it is likely similar to congeneric species of the same size and includes smaller invertebrates, periphyton, and plant detritus. Individuals reach reproductive maturity by their first year. A portion of males are in reproductive form in all months except August. Females bear eggs in the spring as typical of most crayfish species. The Brawleys Fork crayfish lifespan is estimated to be 3 years with two to three age classes present in healthy populations.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as

threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following 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.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess Brawleys Fork crayfish viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at FWS–R4–ES–2023–0065 on *https://www.regulations.gov.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

For Brawleys Fork crayfish populations to have sufficient

resiliency, the needs of individuals (cool, clean flowing water with unembedded substrate) must also be met at a large enough scale to address population and species-level needs. As described under Background above, the individual needs of Brawleys Fork crayfish are primarily a function of habitat condition and are summarized in Table 1.

TABLE 1—INDIVIDUAL NEEDS OF BRAWLEYS FORK CRAYFISH

Type of requirement	Description
Stream permanence	Permanent.
Stream order	First- to third-order streams.
Water temperature	10–23 °C (50–73 °F).
Stream flow velocity	Riffle and run habitats with moderate to fast flow.
Stream substrate	Chert gravel substrate with unconsolidated pieces of cobble and gravel.
Embeddedness	Low embeddedness so that food and refugia under rocks and in crevices remain accessible.
Refugia	Cavities and burrows within gravel.
Diet	Likely smaller invertebrates, periphyton, and/or plant detritus (specific diet unknown).

Brawleys Fork crayfish populations need the same key habitat-based resources as individuals to maintain sufficient resiliency (table 1), as well as a sustainable population size and connectivity within and among populations. Populations also need relatively stable conditions within the stream ecosystem each year, especially during the spring when females are ovigerous, to maintain successful reproduction and recruitment. Connectivity among populations is necessary to avoid the effects of genetic isolation, promote genetic diversity, and facilitate gene flow via emigration, immigration, and reproduction. For Brawleys Fork crayfish, maintaining gene flow within and among populations is facilitated by corridors of suitable habitat for movement of individuals throughout the stream network, including road crossings that are designed to easily pass aquatic organisms at a range of streamflow conditions. The species may move between areas of suitable habitat within and among connected streams in response to behavioral drivers (dispersal or mating) or in search of suitable habitat in response to environmental drivers when species' needs are no longer met in previously suitable habitat (reduced prey, unavailable shelter or refugia, inadequate conditions for breeding).

For species viability to be sufficient, there must be adequate redundancy (suitable number of populations, distribution of populations, and connectivity between populations to allow the species to withstand catastrophic events) and representation (suitable genetic and environmental diversity to allow the species to adapt to changing environmental conditions). Redundancy improves with more sufficiently resilient, connected populations to allow recovery after catastrophic events. Representation or adaptive capacity is maintained with genetic and ecological diversity within and among populations.

Threats

We identified sedimentation, water quality degradation, and instream modification as the primary threats currently affecting the Brawleys Fork crayfish. The impacts of these threats may be further exacerbated by the effects of small, isolated populations and the future effects of climate change. The following discussion provides a summary of the threats and stressors that are affecting or may be affecting the current and future condition of the Brawleys Fork crayfish throughout some or all of its range. A more detailed description may be found in the SSA report (Service 2023, pp. 24–38).

Sedimentation

Sedimentation of substrate and filling of interstitial spaces is the key driver affecting the Brawleys Fork crayfish's condition. Crayfish are benthic (bottom-dwelling) invertebrates that occupy stream or riverine habitats. The species requires unembedded rocks, crevices, and woody debris for access to prey, refuge from predation and competition, and cover during vulnerable periods such as molting or egg extrusion. Brawleys Fork crayfish density is strongly and positively correlated with the relative abundance of unconsolidated cobble and gravel substrates (Withers and McCoy 2005, p. 3; Rohrbach and Withers 2006, p. 3). Excessive sediment input from a variety of sources can overwhelm the capacity of the lower order stream systems where the species occurs to remove sediment (except during heavy rainfall events), resulting in sediment deposition that embeds necessary species' resources (*e.g.,* food, shelter, refugia) and negatively impacts Brawleys Fork crayfish individuals and populations (Withers and McCoy 2005, p. 5; Rohrbach and Withers 2006, p. 8). Sedimentation is also related to water quality as sediment may carry pollutants into the stream and cloud the water with suspended solids, reducing light availability and causing aquatic plants to die.

In the Brawleys Fork crayfish range, the sources of sedimentation that have affected or are affecting the species and its habitat as a result of current and historical surrounding land uses include agriculture and horticulture practices, stream impoundment, and urbanization and development. These stressors are present rangewide and impact the viability of Brawleys Fork crayfish at a species level, but the sources are more concentrated in some areas and may affect some individuals and populations to a greater extent (*e.g.,* increased urbanization in the West Fork Stones watershed).

Agriculture and horticulture occur rangewide on the relatively flat terrain of the Eastern Highland Rim and Nashville Basin regions where the species occurs, particularly lands in row crops, hay/pasture, livestock grazing, and plant nurseries. Agricultural and horticultural practices that do not implement best management practices (BMPs) or improperly implement BMPs influence Brawleys Fork crayfish viability by contributing to sedimentation within nearby streams. Practices that contribute to sedimentation include harvest techniques that expose bare soil and use of heavy machinery that disturbs soil composition and breaks down sediments into fine particles (Burskey and Simon 2009, p. 207). Heavy machinery entering the stream channel via the stream bank contributes sediment and modifies the channel structure (Schmidt 1982, p. 39).

Stream impoundment results in decreased flow velocity and fine sediment accumulation leading to

subsequent substrate embeddedness, decreased woody debris availability, more severely entrenched stream channels, and increased water temperature (Arnwine et al. 2006, p. 3; Adams 2013, p. 1328; Barnett and Adams 2021, p. 3; Williams 2021, pers. comm.). In the Brawleys Fork crayfish's range, impounded streams demonstrated a lower percentage of dominant cobble substrate compared to unimpounded streams, and, statewide, 80 percent of impoundments failed to meet regional habitat quality expectations as a result of sediment deposition below small dams (Arnwine et al. 2006, pp. 3, 62). However, the percentage of small impoundments (less than 250 acres) within the Brawleys Fork crayfish's range is relatively low in comparison to other watersheds in Tennessee (0.6 and 1.7 percent in the Stones and Collins watersheds, respectively) (Arnwine et al. 2006, pp. 9–14). Small impoundments are associated with large plots of residential development in this region, and we expect the impact of this threat may increase in the future as projected future residential development increases, particularly in the East and West Fork Stones River watersheds (Withers and McCoy 2005, p. 5; Rohrbach and Withers 2006, p. 8).

Urbanization, commercial and residential development, and associated infrastructure and road construction have affected Brawleys Fork crayfish and its habitat in the past and are expected to continue to affect the species. In the Brawleys Fork crayfish's range, the human population increased as much as 122 percent from 1990 to 2010 and an additional 32 percent from 2010 to 2020 (World Population Review 2021). In the future, urbanization in the Southeast is projected to increase up to 192 percent by 2060. In addition, the greatest change in land use associated with urbanization and development is expected to be the conversion of agricultural land into urban land use (Terando et al. 2014, p. 5). Because Brawleys Fork crayfish occurs in a region of heavy agricultural land use, the threat of land conversion as a result of urbanization and development is expected to affect the species to a greater extent in the future as urbanization increases. Streams in the Southeast experience significant impacts to water quality when urban land use reaches 10–14 percent of the catchment or drainage area (Suttles et al. 2018, p. 813). One watershed with Brawleys Fork crayfish occurrences now has greater than 10 percent of its area in urban land use (West Fork Stones River).

Urbanization and development can alter water quality and hydrology in a number of ways. An increase in impervious surfaces associated with urban land use directly results in a higher volume and velocity of stormwater runoff, scouring of streambeds and stream banks, increased water temperatures, and increased sediment and pollutants discharged into receiving streams. The effects of sedimentation and other pollutants on water quality and the Brawleys Fork crayfish as a result of a variety of stressors are described under *Sedimentation* below. Brawleys Fork crayfish requires cool, clean water, and the increased water quantity and pollutants associated with increased urbanization negatively impact habitat conditions. Temperature tolerances of the Brawleys Fork crayfish are unknown. However, life stage development of several aquatic organisms, including crayfish, is temperature-dependent and an increase in water temperature could result in changes to growth rates, reproduction, and overall survival (Poff et al. 2002, p. 7). In addition, a higher rate of microbial activity is associated with warmer water temperatures, leading to an increased rate of organic material decomposition and nutrient loading within streams (Poff et al. 2002, p. 7). Although we do not have temperature information for all streams with Brawley's crayfish occurrences, we expect that increased water temperature associated with urbanization and other stressors negatively impacts the species (Lockaby et al. 2013, p. 333).

Water Quality

Suitable water quality is a requirement for the Brawleys Fork crayfish. Although little is known regarding the Brawleys Fork crayfish's specific water quality requirements, water quality parameters such as water temperature, nutrient load, pH, and conductivity are significant factors influencing several biological processes of crayfish including osmoregulation, immunology, acid/base regulation, gas exchange, reproduction, molting, growth rate, and behavior (Romano and Zeng 2013, p. 17; Schorr et al. 2013, p. 340). In the Brawleys Fork crayfish's range, agriculture and horticultural practices, urbanization, and wastewater treatment outfall negatively affect the species and its habitat through changes to water quality.

Agricultural and horticultural practices influence water quality by means of stormwater runoff that transports chemicals (pesticides, fungicides, and herbicides) and nutrients (fertilizers and livestock waste) into nearby streams. In areas with no BMPs or improperly implemented BMPs, stormwater runoff from agricultural fields during planting season (spring and early summer) is the most significant source of water quality contamination. Several stream reaches with Brawleys Fork crayfish occurrences may be exposed to contaminants on an ongoing basis. For example, horticultural lands surrounding occurrences in Mountain Creek receive pesticide, fungicide, and fertilizer applications, and these chemicals enter the adjacent stream (Mattingly et al. 2021, entire; Mattingly 2021, pers. comm.). Pesticides can cause deleterious effects on crayfish behavior, increasing risk of predation (Sohn et al. 2018, pp. 900, 905).

Stormwater runoff from agricultural and horticultural practices also contributes to increased nutrient (nitrogen and phosphate) loads within nearby streams through fertilizers and livestock waste transported into the streams. Nitrogen loading has deleterious effects on molting, respiration, disease resistance, and disruption of reproductive behaviors in crustaceans, and we expect similar effects to Brawleys Fork crayfish fitness and reproductive success (Romano and Zeng 2013, p. 17; Schorr et al. 2013, p. 340). In addition, slower areas of stream habitat between occupied riffles and runs may become stagnant and oxygen depleted as a result of livestock waste discharged into the stream (Rorhbach and Withers 2006, p. 8; Withers and McCoy 2005, p. 5).

Urbanization and development influence Brawleys Fork crayfish through effects to water quality as described under *Sedimentation* above. The increased impervious surface associated with urbanization results in higher flow, higher velocity, increased transport of contaminants, and warmer water temperatures that negatively impact Brawleys Fork crayfish through habitat degradation.

Historically, the Woodbury wastewater treatment plant has contributed to increased nutrient loads in the East Fork Stones River with negative impacts including fish kills and decreased benthic macroinvertebrate communities (indication of water quality and ecosystem function) (Schmidt 1982, pp. 26, 30, 49–50). The effects of excessive nutrients and nutrient loading on crustaceans are described above. More recently, the treatment plant was out of compliance or not complete and/or

stable in 4 of 13 inspections from 2007 to 2022, primarily due to issues with sampling. Spring overflows with discharges outside of the National Permit Discharge Elimination System limits have occurred in recent years as well.

Instream Modification

Stream modification and impoundment influences Brawleys Fork crayfish and its habitat through altered stream depth and flow, sedimentation, and water quality degradation. Stream channel modification has occurred and continues to occur in the Brawleys Fork crayfish range. Reaches of Mountain Creek, East Fork Stones River, and Hollis Creek with Brawleys Fork crayfish occurrences have experienced significant disturbance and modification including heavy machinery directly entering the stream channel to dredge gravel, modify stream banks, and alter the stream channel (Mattingly et al. 2021, entire; Mattingly 2021, pers. comm.). For headwater species with specific habitat needs such as Brawleys Fork crayfish, even small alterations to the channel, flow, and substrate may affect individuals or populations. In Mountain Creek, small rock dams resulted in local alteration of flows, depths, and siltation of substrate particles, negatively impacting Brawleys Fork crayfish (Mattingly 2021, pers. comm.).

In addition to the effects of sedimentation described above, stream impoundment also results in changes to stream depth, flow, and water temperature that may influence Brawleys Fork crayfish resiliency. Upstream of impoundments, stream flows are slower, stream channels are wider, and water temperatures are higher. Downstream, flows are decreased. Thus, crayfish assemblages are altered both upstream and downstream of impoundments in affected stream reaches (Arnwine et al. 2006, p. 152; Hartfield 2010, pp. 25, 43; Adams 2013, pp. 1325, 1328; Barnett and Adams 2021, pp. 2, 4). The changes associated with impoundments degrade the habitat conditions required by Brawleys Fork crayfish including changes from cool, clean water with moderate to fast flow in riffles and runs to slower, warmer water with increased sedimentation and pollutants.

Climate Change

Climate change is projected to result in changes to precipitation and temperature in the range of Brawleys Fork crayfish in the future (Nissenbaum 2016, pp. 6–7). We used a downscaled model of projected climate change and changes to the frequency and severity of drought and extreme weather events (*e.g.,* flooding) to assess the effect of climate change on the Brawleys Fork crayfish and its habitat (Nissenbaum 2016, entire).

The range of Brawleys Fork crayfish experienced above-average annual rainfall in the period 2010–2020 (Climate Explorer 2021). An increase in the frequency, duration, and severity of rain events will result in heavier stormwater runoff transporting larger loads of sediment, pollutants, and nutrients into streams and will also modify stream channels and substrate composition through flooding (Poff et al. 2002, p. 12; Lockaby et al. 2013, p. 310). These changes may negatively influence the Brawleys Fork crayfish through the effects associated with increased sedimentation and degraded water quality as described above.

Since the 1970s, moderate to severe droughts in the Southeast have increased by 12 to 14 percent during spring and summer months and this trend is projected to continue or increase (Jones et al. 2015, p. 126; Nissenbaum 2016, p. 6). An increase in the frequency and severity of droughts could result in shallower or dry headwater streams due to increased evapotranspiration if this loss is not counteracted by rainfall and groundwater recharge (Lockaby et al. 2013, p. 310). We expect decreased stream flow and reduced habitat availability to reduce the availability of food, shelter, or refugia sites as well as increase predation and competition for these resources. However, Brawleys Fork crayfish exhibits an adaptive strategy during dry periods by burrowing deeper into the streambed, thereby accessing subterranean water, likely providing some resiliency to drought conditions (Simmons 2021, pers. comm.; Williams 2021, pers. comm.). In addition to effects to flow, warmer water temperatures, particularly in lower order streams, may influence Brawleys Fork crayfish growth and reproduction as described under *Water Quality* above. The best available information does not indicate that the effects of climate change are currently impacting Brawleys Fork crayfish, but increased drought conditions and the frequency of extreme weather events, including increased frequency, severity, and duration of precipitation, are projected to increase in the future. Accordingly, the impact of climate change on Brawleys Fork crayfish viability may increase in the future.

Small, Isolated Populations

The Brawleys Fork crayfish is a narrow endemic species with a limited range and fragmented distribution. These species' characteristics coupled with small population size (low abundance of less than 1 crayfish/100 meters or less than 1 crayfish/person hour) in 8 of 20 streams with Brawleys Fork crayfish occurrences may exacerbate the impact of other threats described above (Service 2023, appendix A). Small, isolated populations may have reduced genetic diversity as a result of inbreeding, resulting in lower levels of population resiliency and species' representation (Frankham 1995, p. 309; Frankham 2005, pp. 132–135; Johansen 2018, p. 38; Grubb 2019, p. 29). Although the effects of small, isolated populations may exacerbate other threats, the best available information indicates that the threat of small, isolated populations is not currently influencing Brawleys Fork crayfish viability alone.

Conservation Efforts and Regulatory Mechanisms

State Protections

Brawleys Fork crayfish is listed as endangered by the State of Tennessee and receives some protections under the provisions of the State wildlife code (Tennessee Nongame and Endangered or Threatened Wildlife Species Conservation Act of 1974 (Tennessee Code Annotated, Section 70–8–101–112)), which states that it is unlawful for any person to take, attempt to take, possess, transport, export, process, sell or offer for sale, or ship nongame wildlife, or for any common or contract carrier knowingly to transport or receive for shipment nongame wildlife. Brawleys Fork crayfish is considered a Species of Greatest Conservation Need (SGCN) in Tennessee's State Wildlife Action Plan (TN–SWAP 2015, appendix C, p. 255). Key goals of TN–SWAP are to develop and implement conservation strategies and prioritize funding for conservation projects to protect SGCN species and their habitats, although specific actions for Brawleys Fork crayfish have not been implemented. The protections for the Brawleys Fork crayfish in Tennessee do not prohibit the species' habitat from destruction, modification, or alteration.

In addition to State protections, the Brawleys Fork crayfish receives some habitat protection through the Clean Water Act of 1972 (33 U.S.C. 1251). Section 404 of the Clean Water Act requires a Department of the Army permit to discharge dredge or fill material in ''waters of the United

States'' that includes most streams where Brawleys Fork crayfish occurs. Before acquiring a permit, the requester must first show that steps have been taken to avoid impacts to wetlands, streams, and other aquatic resources, such as Brawleys Fork crayfish; that potential impacts have been minimized; and that compensation will be provided for all remaining unavoidable impacts. State-level regulation of water quality occurs through the Tennessee Department of Environment and Conservation (TDEC), whereby laws such as Tennessee's Water Quality Control Act of 1977 (T.C.A. 69–3–101) are enforced. TDEC personnel also monitor water quality in surface waters throughout the State, including watersheds within the Brawleys Fork crayfish's range.

Cumulative Threats

Due to the complexity of freshwater ecosystems, any single factor influencing Brawleys Fork crayfish viability often impacts the species in a variety of ways. The interconnectedness of these influences and their ecological impacts create synergistic and cumulative effects on Brawleys Fork crayfish viability. For example, conversion of forested land to agricultural use may be associated with subsequent stream impoundment to create small reservoirs for livestock or crop irrigation. The effects of climate change (warmer temperatures and more frequent and/or severe drought) could lead to decreased water availability. As a result, water withdrawal from nearby streams would increase to support crop irrigation demands. Additionally, urbanization can exacerbate drought conditions in streams by channeling stormwater runoff from impervious surfaces into ditches and drains that flow into sewer lines and/or larger-order streams, bypassing headwater streams and decreasing the amount of water available for groundwater recharge to headwater streams. Without adequate groundwater recharge, lower-order streams including those with Brawleys Fork crayfish occurrence are susceptible to going dry during severe droughts. Reduced groundwater recharge would also impact Brawleys Fork crayfish by decreasing the availability of subterranean water, which the species uses as refuge during periods of drought. Climate change and the effects of small, isolated populations may exacerbate the effects of other threats, including cumulative threats.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Current Condition

For the purposes of the Brawleys Fork crayfish SSA, we delineated five analysis units (AUs) using available spatial occurrence data (1955–2021) obtained from State agency survey reports and data (Tennessee Wildlife Resources Agency (TWRA), TDEC), federally owned corporation data (Tennessee Valley Authority), an interim research report (Tennessee Tech University), peer-reviewed literature, and other surveys (Bouchard and Bouchard 1995; Withers and McCoy 2005; Rohrbach and Withers 2006; Giddens and Mattingly 2020). We evaluated the current viability of Brawleys Fork crayfish using the conservation biology principles of population resiliency, and species' redundancy and representation.

Based on Brawleys Fork crayfish survey information and species' needs (*e.g.,* the availability of unembedded chert gravel and cobble substrate within areas of fast to moderate flow, adequate water quality, sufficient population size, and connectivity to support reproduction and recruitment), we developed an approach using key habitat and demographic parameters to assess population resiliency. These included three habitat condition parameters (percent riparian canopy cover, percent agricultural and/or urban development, and drought) and three demographic condition parameters (extent, abundance, and age class distribution). We developed four condition categories for each parameter ranging from high to very low condition. Descriptions of the parameters included in our resiliency assessment are summarized individually below (Service 2023, pp. 38–47). We developed a scoring framework for current resiliency that categorized each AU as either high, moderate, low, or very low resiliency based on the overall condition of assessed parameters.

Habitat Parameters

Riparian canopy cover (vegetation) regulates stream temperature, reduces sedimentation, and sequesters stormwater runoff and associated pollutants. To assess the influence of riparian vegetation on Brawleys Fork crayfish resiliency, we determined the mean percent canopy cover score within 30 meters (m) of the stream edge for each occupied stream catchment. We categorized the canopy cover condition (table 2), then averaged the catchment scores for an overall AU canopy cover score.

The extent of land use in agriculture and urban development impact Brawleys Fork crayfish current resiliency through the effects of increased sedimentation and water quality degradation. We assessed the percentage of the stream catchment in agricultural and urban land cover categories in the National Land Cover Database (NLCD 2016 Products in Dewitz 2019, entire). We developed four categories for percent agriculture and/or urban development and scored each stream catchment with Brawleys Fork crayfish occurrences, then averaged the catchment scores within each AU.

We assessed the level of drought in each AU in the Brawleys Fork crayfish range using U.S. Drought Monitor data on the severity and duration of extreme drought (category D3) and exceptional drought (category D4) from 2000 to 2020 (U.S. Drought Monitor 2021). We categorized drought experienced by Brawleys Fork crayfish AUs based on the duration of D3 or D4 category drought conditions that occurred during reproductive (March–June) and non-reproductive seasons (July–February) (table 2).

The habitat parameters of riparian canopy cover and percent agriculture and/or urban development were adjusted by –0.5 at the catchment level to account for the greater impact of the factors on first-, second- and third-order streams. Drought scores were not adjusted at the AU level. The adjusted riparian canopy cover and land cover scores and the drought parameter scores were summed for an overall habitat condition score.

TABLE 2—HABITAT PARAMETERS AND PARAMETER CONDITION CATEGORIES USED IN DETERMINING BRAWLEYS FORK CRAYFISH RESILIENCY

[Parameters were assessed at the catchment level and averaged over the analysis unit, except drought, which was assessed at the analysis unit level. D3 = extreme drought; D4 = exceptional drought.]

Habitat parameter	High (4)	Moderate (3)	Low (2)	Very low (1)
Mean percent riparian canopy cover.	Greater than 75 percent ...	50–75 percent	25–50 percent	Less than 25 percent.
Percent agriculture and urban land use.	Less than 10 percent	10–30 percent	30–50 percent	Greater than 50 percent.
Drought (D3 or D4 2000–2020).	D3 or D4 drought never exceeds 4 consecutive weeks in any season in a calendar year.	D3 or D4 drought exceeds 4 consecutive weeks in any non-reproductive season in a calendar year.	D3 or D4 drought exceeds 4 consecutive weeks during reproductive season in 1 calendar year.	D3 or D4 drought exceeds 4 consecutive weeks during reproductive season in 2 or more calendar years.

Demographic Parameters

Suitable habitat conditions and occurrence records for Brawleys Fork crayfish are patchily distributed within streams. To assess the species' distributional extent within occupied streams, we determined the proportion of stream catchments with Brawleys Fork crayfish occurrences out of the total catchments in each AU (extent) (table 3). We categorized each extent from high to very low and adjusted the score based on the level of connectivity between known occurrences (Service 2023, p. 44). The level of connectivity was determined using a dendritic network complexity model.

We used abundance estimates as an indicator of population size, an essential demographic factor influencing Brawleys Fork crayfish resiliency. For each stream occupied by Brawleys Fork crayfish, we used quantitative abundance estimates (reported as crayfish/100 m) if available, or, if no quantitative estimate was available, we used qualitative abundance estimates (reported as number of crayfish/person hour or average catch per site visit) (Withers and McCoy 2005, pp. 20–48; Rohrbach and Withers 2006, p. 18; Khan 2021, unpublished data). We developed abundance estimate categories (table 3) and averaged the occupied catchment level abundance scores to obtain an overall abundance score for each AU.

Evidence of reproduction is an indicator of a population's fitness and ability to sustain itself over time (viability). For Brawleys Fork crayfish, we used evidence of reproduction (population age class distribution) as a parameter to assess current resiliency (table 3). If age class information was not available, we assigned each stream with any abundance data a default score of one age class. We recognize that this assignment of a very low age class distribution to populations with unknown age class distribution may lead to an underestimation of the level of reproduction in that stream. We next averaged the population age class distribution scores for each stream within an AU to calculate the overall score for the AU. We then summed the (adjusted) extent, abundance, and population age class distribution scores for each AU to obtain a total demographic score for each AU. Finally, we summed the total AU habitat and total AU demographic parameter scores to obtain an overall AU resiliency condition score. Each AU was assigned an overall resiliency condition class from high to very low based on the overall resiliency score.

TABLE 3—DEMOGRAPHIC PARAMETERS AND CONDITION CATEGORIES USED TO ASSESS BRAWLEYS FORK CRAYFISH CURRENT RESILIENCY

Demographic parameter	High (4)	Moderate (3)	Low (2)	Very Low (1)
Extent	50 percent or greater	30–50 percent	10–30 percent	Less than 10 percent.
Abundance	Quantitative density greater than 20 crayfish/100 m^2; or qualitative greater than 10 crayfish/person hour or per site visit.	Quantitative density 10–20 crayfish/100 m^2; or qualitative 5–10 crayfish/person hour or per site visit.	Quantitative density 1–9 crayfish/100 m^2; or qualitative 1–4 crayfish/person hour or per site visit.	Quantitative density less than 1 crayfish/100 m^2; or qualitative less than 1 crayfish/person hour or per site visit.
Age Class Distribution	3 distinct age classes including hatchlings or juveniles.	2 distinct age classes including hatchlings or juveniles.	2 distinct age classes, but no hatchlings or juveniles.	1 age class of any type.

Of the five delineated Brawleys Fork crayfish AUs, two currently exhibit moderate resiliency (Hollis Creek–East Fork Stones River and Brawleys Fork AUs), and three exhibit low resiliency (Lower West Fork Stones River, Bullpen Creek, and Mountain Creek AUs) (figure 1). Values for habitat parameters were generally low, while most AUs have moderate or high demographic parameters (Service 2023, appendix A). Three AUs have very low extent (area of occupancy) (Lower West Fork Stones River, Bullpen Creek, and Mountain Creek AUs), contributing to a lack of connectivity within AUs.

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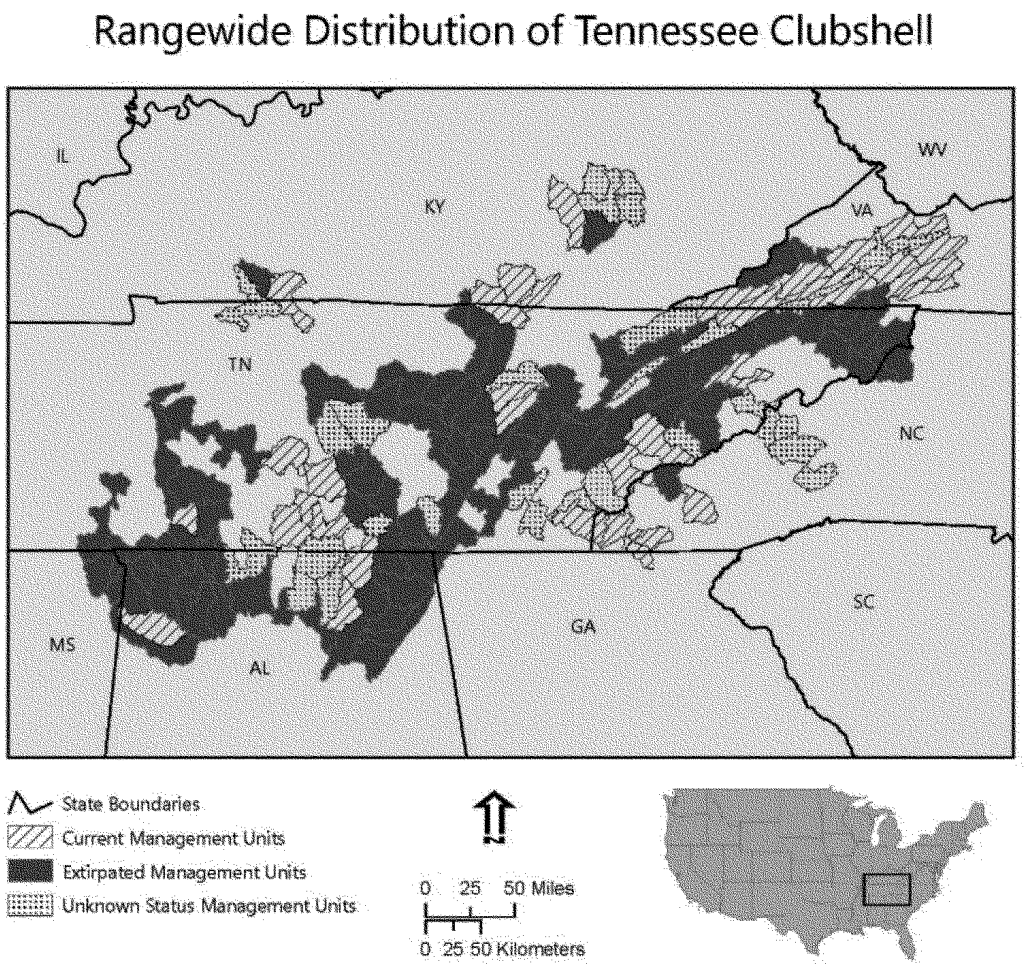

Figure 1. Tennessee clubshell range map. Management units are 10-digit hydrologic unit code (HUC) watersheds (HUC-10).

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For Brawleys Fork crayfish, we assessed redundancy by mapping the number and distribution of occupied streams across the species' geographic range. We determined that current redundancy is sufficient to support species viability with small populations patchily distributed in streams with suitable habitat across the known current range. The species occurs in a limited geographic area, although the West Fork Stones River Lower analysis unit is spatially separated from the other four analysis units, potentially providing protection against some catastrophic events. The best available information does not indicate that Brawleys Fork crayfish redundancy has decreased from historical levels as the current known range of the species is wider than the historical range (no range contraction).

Brawleys Fork crayfish has a known distribution in first- to third-order streams and a fifth-order stream in two EPA level IV ecoregions. We expect the species occurrence in a diversity of habitat conditions across ecoregions and stream types indicates inherent adaptive capacity that may allow adaption to changing biotic and abiotic conditions. We determined that Brawleys Fork crayfish current representation is moderate, and best available information indicates that the species' representation has not declined from historical levels (no range contraction).

Future Condition

To project the future condition of Brawleys Fork crayfish, we developed three plausible future scenarios with varying levels of key threats to the species. We assessed both the projected threats and the species' likely response to those threats to determine the effect on the resiliency, representation, and redundancy of Brawleys Fork crayfish in 2036 and 2051. We modeled the scenarios at these timesteps based on the average lifespan of the species (approximately 3 years), confidence in models and projections of factors influencing the species' viability, and certainty in predictions of the species' response to those factors. To assess the future condition of Brawleys Fork crayfish, we selected four key threats (urbanization, agricultural land-use change, climate change, and water withdrawal) based on the potential influence these factors have on Brawleys Fork crayfish viability. We quantitatively assessed expected levels of urbanization (SLEUTH model), land use change (cropland in the FORE–SCE model), and climate change (air temperature in USGS National Climate Change Viewer (NCCV 2021) model), and we qualitatively assessed the threat of future water withdrawals (see chapter 5 of the SSA report for additional modeling and scoring details) (Service 2023, pp. 53–57). The three scenarios considered when predicting future conditions include: (1) status quo with

lower development; (2) status quo with higher development; and (3) increased impacts (table 4) (Service 2023, pp. 57–61).

TABLE 4—DATA SOURCES AND MODELED LEVELS OF FOUR KEY DRIVERS OF SPECIES CONDITION IN EACH FUTURE SCENARIO FOR BRAWLEYS FORK CRAYFISH

Scenario	Parameters			
	Urbanization	Land use change	Climate change	Water withdrawal
Scenario 1: Status quo/ lower development.	Greater than 50 percent probability of urbanization in SLEUTH*.	FORE–SCE*; SRES B1*	USGS NCCV*; RCP 4.5*	Reduced rate of increase in withdrawal.
Scenario 2: Status quo/ higher development.	Greater than 50 percent probability of urbanization in SLEUTH.	FORE–SCE SRES B1	USGS NCCV; RCP 4.5	Current rate of increase in withdrawal.
Scenario 3: Increased impacts.	Greater than 50 percent probability of urbanization in SLEUTH.	FORE–SCE; SRES A2* ...	USGS NCCV; RCP 8.5* ...	Increased rate of increase in withdrawal.

*The three future scenarios include the following models or data sources: the SLEUTH model (slope, land use, excluded area, urban area, transportation, hillside area) to predict the probability of urbanization (Chaudhuri and Clarke 2013, pp. 1–3); the United States Geological Survey (USGS) Earth Resources Observation and Science Center FOREcasting SCEnarios (FORE–SCE) to model projections of land use change under two different Special Report on Emission Scenarios (SRES), similar to what is assumed under the two future climate scenarios with varying levels of CO_2 concentration known as representative concentration pathways RCP4.5 and RCP8.5 (Nakicenovic et al. 2000, entire; Sohl et al. 2014, entire); and, the USGS National Climate Change Viewer to model projections of future air temperatures and precipitation in the species' range.

Overall, our analysis projected declines in Brawleys Fork crayfish future resiliency, representation, and redundancy with the magnitude of decline increasing with increased impacts and longer timesteps (table 5). At the 15-year timestep, resiliency is projected to decline in 3 AUs under scenarios 1 and 2. At the 15-year timestep, resiliency is projected to decline in 4 AUs under scenario 3. At the 30-year timestep, resiliency is projected to decline in 3 AUs under scenario 1. Resiliency is projected to decline in 4 AUs under scenario 2, and resiliency is projected to decline in 5 AUs under scenario 3.

Two AUs are projected to maintain current low resiliency under some scenarios: Bullpen Creek is projected to maintain low resiliency at 15 years under scenarios 1 and 2, and Mountain Creek is projected to maintain low resiliency for 15 years under all scenarios and for 30 years under scenarios 1 and 2 (table 5). No AUs are estimated to maintain moderate resiliency in 15 or 30 years under the three future condition scenarios. Our analysis did not project the extirpation of any AUs under any scenario; however, at least one AU is predicted to exhibit very low resiliency in all scenarios, and all AUs are predicted to exhibit very low resiliency in 2051 under scenario 3 (increased impacts).

Redundancy is expected to decline in the future as a function of loss of resiliency in AUs, although no AUs are projected to be extirpated and the distribution of the species across the range is projected to remain at the current level. Representation is expected to decline slightly from current levels in both future timesteps as populations (not AUs) are extirpated and habitat fragmentation reduces inherent adaptive capacity in Brawleys Fork crayfish due to decreases in connectivity and gene flow.

TABLE 5—FUTURE RESILIENCY OF BRAWLEYS FORK CRAYFISH ANALYSIS UNITS UNDER THREE PLAUSIBLE FUTURE SCENARIOS AT 15- AND 30-YEAR TIMESTEPS

Analysis unit (HUC 12*)	Current resiliency class	Scenario 1		Scenario 2		Scenario 3	
		2036	2051	2036	2051	2036	2051
Hollis Creek–East Fork Stones River.	Moderate	Low	Low	Low	Low	Low	Very Low.
Brawleys Fork	Moderate	Low	Low	Low	Low	Low	Very Low.
Lower West Fork Stones River	Low	Very Low	Very Low	Very Low	Very Low	Very Low	Very Low.
Bullpen Creek	Low	Low	Low	Low	Very Low	Very Low	Very Low.
Mountain Creek	Low	Low	Low	Low	Low	Low	Very Low.

*Hydrologic Unit Code.

Determination of Brawleys Fork Crayfish Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following 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.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of

the threats under the Act's section 4(a)(1) factors, we determined the following threats are acting as the primary drivers of Brawleys Fork crayfish viability and are ongoing: habitat loss and degradation (Factor A) due to sedimentation and water quality degradation from sources including agricultural practices, horticultural practices, and urbanization; and instream modification including impoundments, gravel dredging, and channel alteration. The impacts of these threats may be further exacerbated by the effects of small, isolated populations (Factor E) and the future effects of climate change (Factor E).

Brawleys Fork crayfish is known to occur in 20 streams in 5 central Tennessee HUC12 watersheds and is distributed across the current range of the species, which represents an expansion of the known historical range. Available information does not indicate population-level extirpations or evidence of range contraction for the species. Of the five delineated analysis units (HUC12 watersheds), two currently exhibit moderate resiliency and three low resiliency. Although Brawleys Fork crayfish is impacted by past and ongoing threats of sedimentation, water quality degradation, and instream modifications, the species currently exhibits sufficient population-level resiliency and species-level representation and redundancy to withstand stochastic and catastrophic events and has inherent capacity to adapt to environmental change. Accordingly, we conclude that the Brawleys Fork crayfish is not in danger of extinction throughout its range.

Upon determining that the Brawleys Fork crayfish is not in danger of extinction throughout its range, we consider whether it is likely to become an endangered species in the foreseeable future throughout its range. Our analysis of the species' future condition under future scenarios at two timesteps encompasses the best available information for future projections of modeled parameters under a range of plausible threat levels. We selected these time steps based on the Brawleys Fork crayfish's lifespan of approximately 3 years and the reliability of the data and models used in the future threat projections and analysis. We determined we can reliably predict both the future threats and the species' responses to those threats within a 30-year timeframe (*i.e.,* the foreseeable future). However, after that time period, we have less confidence in projections.

We found that impacts from habitat loss and degradation present the most substantial threat to the Brawleys Fork crayfish viability. As described above, the threats currently acting on the species include sedimentation, water quality degradation, and instream modifications, all of which may be exacerbated by the effects of climate change and small, isolated populations. In the foreseeable future, we anticipate that threats associated with urbanization, land use change, and climate change will continue to increase in magnitude and will have the greatest influence on species' viability. We also considered the effects of instream impoundments, water withdrawals, and small, isolated populations, including cumulative effects. The best available information indicates that the threats and stressors currently acting on the Brawleys Fork crayfish are expected to continue into the foreseeable future, some of which (*e.g.,* urbanization, land use change (agriculture and horticulture), and climate change) are reasonably expected to worsen over time.

Our assessment of plausible future scenarios projects declines in resiliency, representation, and redundancy in the future as a result of ongoing threats of habitat loss and degradation. However, no extirpations of AUs are projected. In our future condition analysis, no moderate resiliency populations are projected and all 5 Brawleys Fork crayfish AUs are projected to exhibit low or very low resiliency in the three plausible future scenarios. Representation and redundancy are also projected to be reduced from current levels in the future as a result of declining resiliency, extirpations of individual populations within AUs, and loss of connectivity. Thus, after assessing the best available information, we conclude that the Brawleys Fork crayfish is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of 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'' (hereafter ''Final Policy''; 79 FR 37578, July 1, 2014) that provided if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for Brawleys Fork crayfish, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify portions of the range where the species may be endangered.

We evaluated the range of the Brawleys Fork crayfish to determine if the species is in danger of extinction now in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species. For Brawleys Fork crayfish, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now in that portion.

We examined the following threats: sedimentation and water quality degradation from sources including agricultural/horticultural practices and urbanization; and instream modification including impoundments, gravel dredging, and channel alteration, including cumulative effects. We also considered the effects of climate change, small and isolated populations, and conservation efforts and regulatory mechanisms. These stressors are present rangewide, and threats influence Brawleys Fork crayfish viability rangewide, but the sources are more

concentrated in some areas and may affect some individuals and populations to a greater extent (*e.g.,* increased urbanization in the West Fork Stones watershed). We identified three AUs where the impact of these threats may have a more pronounced effect such that the species may have a different status in those AUs than the remainder of the range. The portions we considered are the geographic areas described as the West Fork Stones River, Bullpen Creek, and Mountain Creek AUs (HUC 12 watersheds) in the SSA report (Service 2023).

As described in *Status Throughout All of Its* Range, the threats of sedimentation, water quality degradation, and instream modifications have impacted the Brawleys Fork crayfish's viability through habitat loss and degradation. Although threats are similar throughout the range of the species, the threats associated with increased urbanization and development are greater in the West Fork Stones River unit. In addition, this unit does not have connectivity to any other watershed with Brawleys Fork crayfish occurrences and is geographically distanced from other occupied streams. The West Fork Stones River unit currently exhibits low resiliency, and resiliency is projected to decline in this unit under our future condition scenarios. Given the current and ongoing threats, including urbanization, and the species' current and future condition within this unit, we have identified the West Fork Stones River AU as an area that may have a different status than the remainder of the range.

We also considered the Bullpen Creek and Mountain Creek AUs as areas that may require further analysis. The best available historical information indicated that the Brawleys Fork crayfish has occurred and continues to occur with low abundance at limited sites within Bullpen Creek and Mountain Creek. In addition, although threats are similar throughout the range of the species, the species' response to threats may be more pronounced in the Bullpen Creek and Mountain Creek AUs. Due to low current resiliency, threats are having a greater impact in the Bullpen Creek and Mountain Creek AUs. The two AUs exhibit low current resiliency driven primarily by low extent of occupancy (few sites known within the streams), and resiliency is projected to decline in the two AUs in future scenarios. Given the current and ongoing threats and the species' current and future condition within this unit, we have identified the Bullpen Creek and Mountain Creek AUs as areas that may have a different status than the remainder of the range.

We then proceeded to the significance question, asking whether these portions of the range (West Fork Stones River, Bullpen Creek, or Mountain Creek AU) are significant. The Service's most recent definition of ''significant'' within agency policy guidance has been invalidated by court order (see *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018)). In undertaking this analysis for the range of the Brawleys Fork crayfish, we considered whether any of the three portions of the range identified are significant based on the biological importance to the overall viability of the Brawleys Fork crayfish. Therefore, for the purposes of this analysis, when considering whether this portion is significant, we considered whether the portion may (1) occur in a unique habitat or ecoregion for the species, (2) contain high-quality or high-value habitat relative to the remaining portions of the range, for the species' continued viability in light of the existing threats, (3) contain habitat that is essential to a specific life-history function for the species and that is not found in the other portions of the range, or (4) contain a large geographic portion of the suitable habitat relative to the remaining portions of the range.

Although every unit provides some contribution to a species' viability, the West Fork Stones River AU comprises a small geographic portion of the range with low-quality habitat. This unit may offer some value to representation as the West Fork Stones River is the only fifth-order stream with Brawleys Fork crayfish occurrences and provides somewhat different habitat conditions (*e.g.,* a larger, perennial stream that does not go dry seasonally) and may offer a refugia in extreme drought. However, the habitat does not support high abundance or high-quality habitat. Brawleys Fork crayfish occurrences are known only from the Lower West Fork Stones River in this AU with a low extent of occupancy compared to the two moderate-resiliency units (4.3 percent of stream catchments in the unit have occurrence records) (Service 2023, appendix A). Overall, there is little evidence to suggest that the geographical area of the West Fork Stones River unit has higher quality or higher value habitat or provides any unique resource to the species life history. Thus, based on the best available information, we find that this portion of the range is not biologically significant in terms of the habitat considerations discussed above.

Although every unit provides some contribution to a species' viability, the Bullpen Creek and Mountain Creek AUs comprise a small percentage of the known Brawleys Fork crayfish sites and abundance. The habitat in the Bullpen Creek and Mountain Creek AUs does not support high abundance or represent high-quality habitat. Brawleys Fork crayfish occurrences are known from only one site in each AU resulting in a low extent of occupancy compared to the two moderate-resiliency units. In Bullpen Creek AU, 1.4 percent of stream catchments in the unit have known occurrences, and, in Mountain Creek AU, 3.8 percent of stream catchments have known occurrences (Service 2023, appendix A). Overall, there is little evidence to suggest that the geographical areas of the Bullpen Creek or Mountain Creek AU have higher quality or higher value habitat or provide any unique resource to the species life history. Thus, based on the best available information, we find that the portions of the range represented by the Bullpen Creek and Mountain Creek AU are not biologically significant in terms of the habitat considerations discussed above.

In addition, we considered the three AUs (West Fork Stones River, Bullpen Creek, and Mountain Creek) as one portion that may have a different status in order to assess the potential significance as one geographic area. In total, the three units represent approximately 9.5 percent of occupied catchments in the species' range. The units do not provide high-value or unique habitat for the species, as described above. Thus, based on the best available information, we find that the portion of the range represented by the West Fork Stones River, Bullpen Creek, and Mountain Creek AUs is not biologically significant in terms of the habitat considerations and occupancy described above.

We found no biologically meaningful portion of the Brawleys Fork crayfish's range where the species may have a different status than the species rangewide and the portion is significant. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017)

because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Brawleys Fork crayfish meets the definition of a threatened species. Therefore, we propose to list the Brawleys Fork crayfish as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of 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, including the Service, 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. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. 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.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''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. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/recovery/recovery-plans*), or from our Tennessee 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 Tennessee would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Brawleys Fork crayfish. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the Brawleys Fork crayfish is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act pertains to interagency cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, 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 to be listed under the Act or result in destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2).

Examples of discretionary actions for the Brawleys Fork crayfish that may be subject to the conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the U.S. Army Corps of Engineers (USACE) as well as actions on State, Tribal, local, or private lands that require a Federal permit

(such as a permit from USACE 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, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the extent known at the time a species is listed, specific activities that will not be considered likely to result in a violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in a violation will also be identified in as specific a manner as possible. 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 the species proposed for listing. Although most of the prohibitions in section 9 of the Act apply to endangered species, sections 9(a)(1)(G) and 9(a)(2)(E) prohibit the violation of any regulation under section 4(d) pertaining to any threatened species of fish or wildlife, or threatened species of plant, respectively. Section 4(d) of the Act directs the Secretary to promulgate protective regulations that are necessary and advisable for the conservation of threatened species. As a result, we interpret our policy to mean that, when we list a species as a threatened species, to the extent possible, we identify activities that will or will not be considered likely to result in violation of the protective regulations under section 4(d) for that species.

At this time, we are unable to identify specific activities that will or will not be considered likely to result in violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions and exceptions established by protective regulation under section 4(d) of the Act.

Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language similar to the language in section 4(d) of the Act authorizing the Secretary to take action that she ''deems necessary and advisable'' affords a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592, 600 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting one or more of the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this proposed 4(d) rule would promote conservation of the Brawleys Fork crayfish by encouraging management of the habitat for the species in ways that facilitate conservation for the species. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the Brawleys Fork crayfish. This proposed 4(d) rule would apply only if and when we make final the listing of the Brawleys Fork crayfish as a threatened species.

As mentioned previously in Available Conservation Measures, 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 that 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. 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.

These requirements are the same for a threatened species with a species-specific 4(d) rule. For example, a Federal agency's determination that an action is ''not likely to adversely affect'' a threatened species will require the Service's written concurrence. Similarly, a Federal agency's determination that an action is ''likely to adversely affect'' a threatened species will require formal consultation and the formulation of a biological opinion.

Provisions of the Proposed 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a proposed rule that is designed to address the Brawleys Fork crayfish's conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that the Brawleys Fork crayfish is likely to become in danger of extinction within the foreseeable future primarily due to habitat loss and degradation due to sedimentation and water quality degradation from sources including agricultural practices, horticultural practices, and

urbanization; and instream modification including impoundments, gravel dredging, and channel alteration. Each of the threats influencing Brawleys Fork crayfish viability may be further exacerbated by the effects of small, isolated populations and the future effects of climate change.

As stated previously, section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species. We find that, if finalized, the protections, prohibitions, and exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Brawleys Fork crayfish.

The protective regulations we are proposing for Brawleys Fork crayfish incorporate prohibitions from section 9(a)(1) to address the threats to the species. Section 9(a)(1) prohibits the following activities for endangered wildlife: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. This protective regulation includes all of these prohibitions because the Brawleys Fork crayfish is at risk of extinction in the foreseeable future and putting these prohibitions in place will help to prevent further declines, preserve the species' remaining populations, and decrease synergistic, negative effects from other ongoing or future threats.

In particular, this proposed 4(d) rule would provide for the conservation of the Brawleys Fork crayfish by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take would help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other ongoing or future threats. Therefore, we propose to prohibit take of the Brawleys Fork crayfish, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

Exceptions to the prohibition on take would include all the general exceptions to the prohibition against take of endangered wildlife, as set forth in 50 CFR 17.21 and additional exceptions, as described below.

The proposed 4(d) rule would also provide for the conservation of the species by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the Brawleys Fork crayfish, are not expected to rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on the species' conservation. The proposed exceptions to these prohibitions include channel restoration and bank stabilization projects, migration barrier removal projects, and transportation projects that provide fish passage (described below) and are expected to have negligible impacts to the Brawleys Fork crayfish and its habitat.

The first exception is for incidental take resulting from channel restoration projects for creation of natural, physically stable, ecologically functioning streams (or stream and wetland systems). These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

The second exception is for incidental take resulting from bank stabilization projects that use bioengineering methods to replace preexisting, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. This exception includes a requirement that the bank stabilization bioengineering use methods such as native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). This exception also includes a requirement to use native species vegetation including woody and herbaceous species appropriate for the region and habitat conditions. This exception does not apply if the bank stabilization includes the sole use of quarried rock (riprap) or the use of rock baskets or gabion structures.

The third exception is for incidental take resulting from bridge and culvert replacement/removal projects or low head dam removal projects that remove migration barriers or generally allow for improved upstream and downstream movements of Brawleys Fork crayfish while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species.

The fourth exception is for incidental take resulting from transportation projects that provide for fish passage at stream crossings, thereby providing for connectivity and dispersal for the Brawleys Fork crayfish.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique

position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve Brawleys Fork crayfish that may result in otherwise prohibited take without additional authorization.

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 our ability to enter into partnerships for the management and protection of the Brawleys Fork crayfish. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. 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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

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 also 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 Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would likely result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must 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 data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

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.

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 from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the

species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the 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 those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, 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. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features.

A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

As described above under *Species Needs,* the Brawleys Fork crayfish occurs in riffles and runs with fast to moderately rapid flow in first- to third-order streams and one fifth-order stream. Brawleys Fork crayfish typically occupy streams with layered chert gravel and cobble substrate with ample interstitial space not consolidated by finer substrates such as sand or silt. Cool water with ample riparian vegetation and a high volume of clean groundwater discharged into the stream from subterranean aquifers also characterize streams with Brawleys Fork crayfish occurrences.

The primary habitat elements that influence resiliency of the Brawleys Fork crayfish include water quantity and flow, water quality, substrate, and habitat connectivity. These features are also described above as resource needs under Background and Summary of Biological Status and Threats, with individual needs summarized in table 1, and a full description is available in the SSA report (Service 2023, pp. 18–20).

We derive the specific physical or biological features essential to the conservation of Brawleys Fork crayfish from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2023, pp. 14–24); available on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2023–0065). We have determined that the following physical or biological features are essential to the conservation of Brawleys Fork crayfish:

(1) Moderate to fast-flowing stream with unembedded chert gravel and cobble substrate within an unobstructed stream continuum (*i.e.,* riffle, run, pool complexes) of perennial, small- to moderate-sized (generally third order or smaller) streams and rivers (up to the ordinary high-water mark as defined at 33 CFR 329.11).

(2) Stream banks with intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs that may reduce availability of substrate interstitial spaces.

(3) Water quality characterized by seasonally moderated, or spring influenced, water temperatures and physical and chemical parameters (*e.g.,* pH, conductivity, dissolved oxygen) sufficient for the normal behavior, growth, reproduction, and viability of all life stages.

(4) Adequate food base, indicated by a healthy aquatic community structure including native benthic macroinvertebrates, fishes, and plant matter (*e.g.,* leaf litter, algae, detritus).

(5) An interconnected network of streams and rivers that have the physical and biological features described in (1) through (4), above, that allow for the movement of individual crayfish in response to environmental, physiological, or behavioral drivers. The connectivity of the stream network should be sufficient to allow for gene flow within and among watersheds.

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 features essential to the conservation of the Brawleys Fork crayfish may require special management considerations or protection to reduce the following threats: (1) Urbanization of the landscape, including, but not limited to, land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment); (2) nutrient pollution from agricultural and horticultural activities that impact water quantity and quality; (3) significant alteration of water quality; (4) significant alteration of channel morphology or geometry, including channelization,

impoundment, road and bridge construction, or instream mining, dredging, or channelization; and (5) watershed, riparian, and floodplain disturbances that release sediments or nutrients into the water or fill suitable habitat.

Special management considerations or protections may be required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include, but are not limited to, restoration and protection of riparian corridors and retention of sufficient canopy cover along banks; implementation of best management practices to reduce sedimentation, erosion, and streambank degradation; stream bank restoration projects; increased use of stormwater management and reduction of stormwater flows into the stream systems; reduction of other watershed, riparian, and floodplain disturbances that release sediments, pollutants, or nutrients into the water; and improvements to industrial and municipal water treatment facilities and sewage systems to reduce nutrient and pathogen pollution.

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 specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat; specifically, no unoccupied areas are essential for the conservation of the species.

We are proposing to designate six units that are currently occupied across the geographic range as critical habitat. The occupied areas proposed are sufficient and adequate to ensure the conservation of the species, as they will support the species' redundancy and representation (table 6). We anticipate that recovery will require continued protection of the existing populations and habitat, as well as ensuring there are streams distributed across the known range with stable Brawleys Fork crayfish occurrences in five or more analysis units (as delineated in the SSA) with sufficient abundance and occupied reaches to increase species' viability. This conservation strategy and the designation of proposed critical habitat support the species' ability to withstand the loss of occurrences or occupied stream reaches through a catastrophic event, such as the effects of a rangewide drought or mega-drought or chemical spills and help ensure such an event is less likely to simultaneously affect all known streams with species' occurrence. Rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation across the current range of the species, were considered in formulating this proposed critical habitat designation.

Sources of data for this proposed critical habitat designation include the SSA (Service 2023, entire); records maintained by the Tennessee Department of Environment and Conservation, Tennessee Wildlife Resources Agency, Tennessee Valley Authority; research published in peer-reviewed articles or presented in academic theses and agency reports (Rohrbach and Withers 2006; Williams et al. 2017; Grubb 2019; Giddens and Mattingly 2020); university and museum collections; regional Geographic Information System (GIS) coverages; and information from other survey reports on streams throughout the species' range (Khan 2021, unpublished data). We have also reviewed available information that pertains to the habitat requirements of the Brawleys Fork crayfish. Sources of information on habitat requirements include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2023, pp. 14–24).

In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

We identified streams and rivers within the geographical area occupied at the time of listing (*i.e.,* with Brawleys Fork crayfish occurrence records from 2000 to 2021). Many streams with suitable habitat in the species' range have been surveyed in the last 15 years; however, a rangewide survey has not been conducted. Accordingly, it is possible the species may be detected in other locations upon subsequent surveys. For example, the crayfish was observed in the West Fork Stones River in 2016 and Mountain Creek in 2018, both representing new collection sites and range extensions for the species (TWRA 2021, unpublished data).

We then identified those streams that contain one or more of the physical or biological features to support the life-history functions essential to the conservation of the Brawleys Fork crayfish. We delineated end points of stream and river units by evaluating the presence or absence of habitat conditions and physical or biological features essential to the species. We selected upstream and downstream endpoints for each unit where habitat conditions no longer meet species requirements (*i.e.,* do not contain the physical or biological features essential to the conservation of the Brawleys Fork crayfish). The endpoints often correspond to tributary confluences, dams, or headwater sources because of the effect of these features on habitat conditions. Where favorable habitat that contains physical or biological features essential to the conservation of Brawleys Fork crayfish shifts to less favorable habitat that does not contain these features, we selected a reference point such as a highway or bridge crossing that will allow the public to identify proposed critical habitat units. The occurrence data are linear in nature; therefore, for stretches of habitat between occurrences, and between occurrences and endpoints of units, we assumed the interposing stream segments contain at least one of the physical or biological features essential to the conservation of the species and include the interposing stream segment in the proposed critical habitat unit. Based on the best available scientific data, we determined that all currently known occupied habitat for the Brawleys Fork crayfish contains one or more of the physical or biological features essential to the conservation of the species and which may require special management considerations or protection.

Based on this analysis, the following streams or rivers meet the criteria for areas occupied by the species: West Fork Stones River, Brawleys Fork, Carson Fork, Haws Spring Fork, East Fork Stones River, Rockhouse Creek, Bullpen Creek, and Mountain Creek. The critical habitat designation includes only the occupied streams or rivers within the current range that have one or more of the physical or biological features essential to the conservation of the species.

The result was the inclusion of six units of critical habitat occupied by the Brawleys Fork crayfish. These six units encompass the same geographic area and streams as the five analysis units delineated in the SSA report (Service

2023). These six occupied units constitute approximately 86.6 river miles (139.4 river kilometers). No areas outside the geographical area occupied by the species at the time of listing were delineated as proposed critical habitat. We are not designating any areas outside the geographical area currently occupied by the Brawleys Fork crayfish because we determined that occupied areas are sufficient to conserve the species. Accordingly, we did not find any unoccupied areas to be essential for the conservation of the species.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for Brawleys Fork crayfish. Critical habitat for the Brawleys Fork crayfish includes only stream channels up to bankfull height, where the stream base flow is contained within the channel. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. Units are proposed for designation based on one or more of the physical or biological features being present to support Brawleys Fork crayfish's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the Brawleys Fork crayfish's particular use of that habitat.

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 under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R4–ES–2023–0065 and on our internet site *https://www.fws.gov/library/collections/Brawleys-Fork-crayfish.*

Proposed Critical Habitat Designation

We are proposing to designate 86.6 rmi (139.4 rkm) in six units as critical habitat for Brawleys Fork crayfish. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Brawleys Fork crayfish. The six areas we propose as critical habitat are: (1) West Fork Stones River, (2) Brawleys Fork, (3) Carson Fork, (4) East Fork Stones River, (5) Bullpen Creek, and (6) Mountain Creek. Table 6 shows the proposed critical habitat units and the approximate area of each unit. All six areas proposed as critical habitat are occupied by Brawleys Fork crayfish.

TABLE 6—PROPOSED CRITICAL HABITAT UNITS FOR BRAWLEYS FORK CRAYFISH

[Area estimates reflect stream length within critical habitat unit boundaries]

Unit/subunit No.	Unit name	Private (rmi)	Federal (rmi)	State or local (rmi)	Total river miles
1	West Fork Stones		6.2		6.2
2	Brawleys Fork	13.8			13.8
Unit 3—Carson Fork					
3a	Carson Fork	12.3			12.3
3b	Haws Spring Fork	5.9			5.9
Unit 4—East Fork Stones River					
4a	East Fork Stones	30.9		1.6	32.5
4b	Rockhouse Creek	3.4			3.4
5	Bullpen Creek	3.1			3.1
6	Mountain Creek	9.4			9.4
Total		78.8	6.2	1.6	86.6

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Brawleys Fork crayfish, below.

Unit 1: West Fork Stones

Unit 1 consists of approximately 6.2 rmi (10 rkm) of the West Fork Stones River beginning at the Nice's Mill Recreation Area lowhead dam and continuing to the confluence with the Stones River in Rutherford County, Tennessee. All riparian lands in Unit 1 are in Federal ownership (Department of Defense, USACE, J. Percy Priest Lake). Unit 1 is considered to be occupied by the Brawleys Fork crayfish. Unit 1 contains four of the identified physical or biological features essential to the conservation of the Brawleys Fork crayfish. The West Fork Stones River is isolated and does not have connectivity to any other streams with known Brawleys Fork crayfish occurrences; thus, Unit 1 lacks the physical or biological feature related to an interconnected network of streams and rivers. There is no overlap with any designated critical habitat for other listed species.

Threats identified within this unit include the degradation of habitat and water quality from sedimentation and water quality degradation due to urbanization and development, flow reduction and water quality degradation due to water withdrawals and wastewater treatment plants, and habitat degradation due to instream modifications including impoundments and activities that degrade streambanks. Special management considerations or protection that may be required within Unit 1 to reduce or alleviate impacts may include implementation of best management practices to improve water quality or reverse degradation resulting from urbanization and development (see Special Management Considerations or Protection, above). Special management or protection may also include consideration of Brawleys Fork crayfish in the J. Percy Priest Lake Master Plan and inclusion of habitat restoration efforts in future actions.

Unit 2: Brawleys Fork

Unit 2 consists of approximately 13.8 rmi (22.2 rkm) of the Brawleys Fork and tributaries in Cannon County, Tennessee. Unit 2 includes the Brawleys Fork from the headwaters at Mill Bluff Hollow to the confluence with the Carson Fork and Shelton Branch from the Gene Perkins Road crossing to the confluence with Brawleys Fork. Riparian lands in Unit 2 are in private ownership except for a small amount of publicly owned bridge crossings and road easements. Unit 2 is considered to be occupied by the Brawleys Fork crayfish and contains all physical or biological features essential to the conservation of the Brawleys Fork crayfish. There is no overlap with any designated critical habitat for other listed species.

Threats identified within this unit include the degradation of habitat and water quality from sedimentation, siltation, and pollution due to agriculture, flow reduction and water quality degradation due to water withdrawals, and habitat degradation due to instream modifications including gravel dredging, impoundments, and activities that degrade streambanks. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Special management considerations or protection measures that may be required within Unit 2 to alleviate impacts include reducing wastewater or stormwater runoff, removal of barriers or impoundments, natural stream restoration, and implementation of agricultural and grazing practices that minimize nutrient and sediment input. Special management or protection may also include consideration of Brawleys Fork crayfish in agriculture and urban development plans and habitat restoration efforts.

Unit 3: Carson Fork

Unit 3 consists of approximately 18.2 rmi (29.3 rkm) of the Carson Fork and tributaries in Cannon County, Tennessee. Two subunits are included in Unit 3 (Carson Fork), Subunit 3a (Carson Fork) and Subunit 3b (Haws Spring Fork).

Subunit 3a (Carson Fork) consists of 12.3 rmi (19.8 rkm) and extends from the headwaters of the Carson Fork near Sadler Lane downstream to the confluence with the East Fork Stones River, from the headwaters of Duck Branch to the confluence of Carson Fork, and from the headwaters of an unnamed tributary in Simmons Hollow to the confluence of Carson Fork. Subunit 3b (Haws Spring Fork subunit) consists of 5.9 rmi (9.5 rkm) and extends from the headwaters of Smith Branch near Carrick Hollow to the confluence with Haws Spring Fork and from the headwaters of Haws Spring to the confluence with the Carson Fork. Riparian lands in Unit 3 are in private ownership except for a small amount of publicly owned bridge crossings and road easements. Unit 3 is considered to be occupied by the Brawleys Fork crayfish. Unit 3 (subunits 3a and 3b) contains all physical or biological features essential to the conservation of the Brawleys Fork crayfish. There is no overlap with any designated critical habitat for other listed species.

Threats identified within this unit include the following: degradation of habitat and water quality from sedimentation, siltation, and pollution due to agriculture, flow reduction, and water withdrawals; and habitat degradation due to instream modifications including gravel dredging, impoundments, and activities that degrade streambanks. Special management considerations or protection that may be required within Unit 3 to alleviate impacts include reducing wastewater or stormwater runoff, removal of barriers or impoundments, natural stream restoration, and implementation of agricultural and grazing practices that minimize nutrient and sediment input into receiving streams. Special management or protection may also include consideration of Brawleys Fork crayfish in agriculture and urban development plans and habitat restoration efforts.

Unit 4: East Fork Stones River

Unit 4 consists of approximately 35.9 rmi (57.8 rkm) of the East Fork Stones River mainstem and some of its tributaries in Cannon County, Tennessee. Two subunits are included in Unit 4 (East Fork Stones River), Subunit 4a (East Fork Stones) and Subunit 4b (Rockhouse Creek). Subunit 4a (East Fork Stones subunit) consists of 32.5 rmi (52.3 rkm) and includes Hollis Creek from the headwaters near Hollis Creek South Road to the confluence with the East Fork Stones River, Hill Creek from the tributary at Wood Hollow to the confluence with the East Fork Stones River, Parchcorn Hollow Branch from the Parchcorn Hollow road crossing to the confluence with the East Fork Stones River, Cavender Branch from the Cavender Road bridge to the confluence with the East Fork Stones River, and from Locke Creek to the confluence with the East Fork Stones River.

Subunit 4b (Rockhouse Creek subunit) consists of 3.4 rmi (5.5 rkm) and extends from the stream crossing at Seal Hollow Branch by Seal Hollow Road to the confluence with Rockhouse Branch and from the Higgins Road crossing of Rockhouse Creek downstream to the confluence with the East Fork Stones River. Riparian lands in Unit 4 are in State (0.7 rmi (1.1 rkm) of Headwater Wildlife Management Area), local (0.9 rmi (1.4 rkm) in two parks), and private ownership, as well as small amount of publicly owned bridge crossings and road easements. Unit 4 is considered to be occupied by the Brawleys Fork crayfish. Unit 4 (subunits 4a and 4b) contains all physical or biological features essential to the conservation of the Brawleys Fork crayfish. There is no overlap with any designated critical habitat for other listed species.

Threats identified within this unit include the following: degradation of habitat and water quality from sedimentation, siltation, and pollution due to urbanization and development, agriculture, flow reduction, water withdrawals, and wastewater treatment plant discharge; and habitat degradation due to instream modifications including gravel dredging, impoundments, and activities that degrade streambanks. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Special management considerations or protection that may be required within Unit 4 to alleviate impacts include treating wastewater to the greatest extent feasible, reducing wastewater or stormwater runoff, removal of barriers or impoundments,

natural stream restoration, implementation of appropriate silvicultural and forestry best management practices, and implementation of agricultural and grazing practices that minimize nutrient and sediment input. Special management or protection may also include consideration of Brawleys Fork crayfish in agriculture and urban development plans and habitat restoration efforts.

Unit 5: Bullpen Creek

Unit 5 consists of approximately 3.1 rmi (5.0 rkm) of Bullpen Creek beginning at the Lonnie Smith Road crossing and extending downstream to the lowhead dam near Charlie Powell Road in Cannon County, Tennessee. Riparian lands in Unit 5 are in private ownership except for a small amount of publicly owned bridge crossings and road easements. Unit 5 is considered to be occupied by the Brawleys Fork crayfish. Unit 5 contains four of the identified physical or biological features essential to the conservation of the Brawleys Fork crayfish. The Bullpen Creek unit is isolated and does not have connectivity to any other streams with known Brawleys Fork crayfish occurrences; thus, Unit 5 lacks the physical or biological feature related to an interconnected network of streams and rivers. There is no overlap with any designated critical habitat for other listed species.

Threats identified within this unit include the following: degradation of habitat and water quality from sedimentation, siltation, and pollution due to agriculture and horticulture, flow reduction, and water withdrawals; and habitat degradation due to instream modifications including gravel dredging, impoundments, and activities that degrade streambanks. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Special management considerations or protection that may be required within Unit 5 to alleviate impacts from stressors include but are not limited to the following: treating wastewater to the greatest extent feasible, reducing wastewater or stormwater runoff, removal of barriers or impoundments, natural stream restoration, and implementation of agricultural and grazing practices that minimize nutrient and sediment input. Special management or protection may also include consideration of Brawleys Fork crayfish in agriculture and urban development plans and habitat restoration efforts.

Unit 6: Mountain Creek

Unit 6 consists of approximately 9.4 rmi (15.1 rkm) of Mountain Creek in Warren County, Tennessee. Unit 6 extends from the Mountain Creek road crossing at Short Mountain Road downstream to the Smithville Highway bridge in the city of Dibrell, Warren County, Tennessee. Riparian lands in Unit 6 are in private ownership except for a small amount of publicly owned bridge crossings and road easements. Unit 6 is considered to be occupied by the Brawleys Fork crayfish. Unit 6 contains four of the identified physical or biological features essential to the conservation of the Brawleys Fork crayfish. The Mountain Creek unit is isolated and does not have connectivity to any other streams with known Brawleys Fork crayfish occurrences, thus, Unit 6 lacks the physical or biological feature related to an interconnected network of streams and rivers. There is no overlap with any designated critical habitat for other listed species.

Threats identified within this unit include the following: degradation of habitat and water quality from sedimentation, siltation, and pollution due to urbanization and development, agriculture, and horticulture, flow reduction, and water withdrawals; and habitat degradation due to instream modifications including gravel dredging, impoundments, and activities that degrade streambanks. Special management considerations or protection that may be required within Unit 6 to alleviate impacts from stressors include but are not limited to the following: treating wastewater to the greatest extent feasible, reducing wastewater or stormwater runoff, removal of barriers or impoundments, natural stream restoration, and implementation of agricultural and grazing practices that minimize nutrient and sediment input. Special management or protection may also include consideration of Brawleys Fork crayfish in agriculture and urban development plans and habitat restoration efforts.

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.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed 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, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented 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 Service 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 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action. The reinitiation requirement applies only to actions that remain subject to some discretionary Federal involvement or control. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (*e.g.,* land management plans issued by the Bureau of Land Management in certain circumstances.

Application of the ''*Destruction or Adverse Modification*'' *Standard*

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed 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 violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to: (1) Actions that would impede or disconnect stream and river channels and contribute to further habitat fragmentation at a scale and magnitude that appreciably diminishes the value of critical habitat (*e.g.,* large impoundments, reservoir creation). Such activities include, but are not limited to, construction of barriers that impede the instream movement of the Brawleys Fork crayfish (*e.g.,* impoundments, dams, culverts, or weirs). These activities could result in destruction or fragmentation of habitat, block movements between habitats, and/or affect flows within or into critical habitat. In addition, these activities can isolate populations that are more at risk of decline or extirpation as a result of genetic drift, demographic or environmental stochasticity, and catastrophic events.

(2) Actions that would affect channel substrates and stability or geomorphology at a scale and magnitude that appreciably diminishes the value of critical habitat (*e.g.,* multiple or large tributaries or main channel rerouting, dam construction on a river with Brawleys Fork crayfish occurrences). Such activities include channelization, impoundment, mining, dredging, road and bridge construction, removal of riparian vegetation, and land clearing. These activities may lead to changes in channel substrates, erosion of the streambed and banks, and excessive sedimentation that could degrade Brawleys Fork crayfish habitat.

(3) Actions that would reduce flow levels or alter flow regimes at a scale and magnitude that appreciably diminishes the value of critical habitat (*i.e.,* flow levels or regimes that no longer support Brawleys Fork crayfish in one or more critical habitat units). These could include, but are not limited to, activities that block or lower surface flow or groundwater levels, including channelization, impoundment, groundwater pumping, and surface water withdrawal or diversion. Such activities can result in long-term changes in stream flows that affect habitat quality and quantity for the Brawleys Fork crayfish and its prey.

(4) Actions that would significantly alter water chemistry or quality to the extent that the value of critical habitat is appreciably diminished (*i.e.,* water quality does not support the Brawleys Fork crayfish's needs in one or more units). Such activities could include, but are not limited to, release of chemicals or biological pollutants or heated effluents into the 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 Brawleys Fork crayfish and result in direct or cumulative adverse effects to individuals and their life cycles.

(5) Actions that would significantly increase sediment deposition or stream bottom embeddedness within the stream channel to the extent that the value of critical habitat is appreciably diminished (*e.g.,* excessive siltation such that Brawleys Fork crayfish are not able to use the critical habitat unit). Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, and agricultural or horticultural practices that do not implement BMPs or improperly implement BMPs, mining, dredging, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Brawleys Fork crayfish by increasing the sediment deposition to levels that would adversely affect the Brawleys Fork crayfish's 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 (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (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. No DoD lands with a completed INRMP are 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 designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, 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. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

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). Therefore, the baseline 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 a discretionary section 4(b)(2) exclusion analysis.

Executive Order (E.O.) 12866, as reaffirmed by E.O.s 13563 and 14094, 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 Executive order's regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a ''significant regulatory action'' and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of $200 million in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for Brawleys Fork crayfish is likely to exceed the economically significant threshold.

For this particular 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 Brawleys Fork crayfish (Industrial Economics, Inc. 2022, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already 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. 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.

The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. For that reason, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. Therefore, the screening analysis focuses on areas of unoccupied critical habitat. If there are any unoccupied units in the proposed critical habitat designation, the screening analysis assesses whether any additional management or conservation efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic

analysis (DEA) of the proposed critical habitat designation for the Brawleys Fork crayfish; our DEA is summarized in the narrative below.

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 Brawleys Fork crayfish, first we identified, in the IEM dated April 8, 2022, probable incremental economic impacts associated with the following categories of activities: (1) agriculture, (2) forestry, (3) development, (4) recreation, (5) restoration activities, (6) flood control, (7) transportation, (8) water quantity/supply, (9) dredging, and (10) utilities. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the Brawleys Fork crayfish is present, Federal agencies would be 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, when we list the species, we also finalize this proposed critical habitat designation, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would 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 Brawleys Fork crayfish's critical habitat. Because the designation of critical habitat for Brawleys Fork crayfish is being 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 likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the Brawleys Fork crayfish. 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 Brawleys Fork crayfish totals approximately 86.6 rmi (139.4 rkm) of stream and river channels in six units in Tennessee. Ownership of riparian lands adjacent to the proposed units includes 78.8 rmi (126.8 rkm; 91 percent) in private ownership and 7.8 rmi (12.5 rkm; 9 percent) in public (Federal or State) ownership. All six units are currently occupied by the species and contain recent (2000 to 2021) occurrences of Brawleys Fork crayfish. In these areas, any actions that may affect the species or its habitat would also affect proposed critical habitat. Thus, 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 Brawleys Fork crayfish. We are not proposing to designate any units of unoccupied habitat.

Because we are proposing the designation only of occupied critical habitat, the only additional costs that are expected in all of the proposed critical habitat designation are administrative costs. The entities most likely to incur incremental costs are the Federal action agencies that are parties to section 7 consultations. While the analysis for adverse modification of critical habitat will require time and resources by both the Federal action agency and the Service, these costs would predominantly be administrative in nature. About 91 percent of the proposed critical habitat designation for the Brawleys Fork crayfish lies on private lands. As such, incremental costs from public perception of the designation have some potential to arise (Industrial Economics, Inc. (IEc) 2022, pp. 14–15). However, the critical habitat units are in largely rural areas that are not experiencing significant development pressures. As such, the likelihood that critical habitat designation for the Brawleys Fork crayfish will result in perception-related impacts appears unlikely. The estimated incremental costs of critical habitat designation for the Brawleys Fork crayfish in the first year are not expected to exceed $9,200 per year (2022 dollars) (IEc 2022, p. 14). Thus, critical habitat designation for the Brawleys Fork crayfish is unlikely to generate costs or benefits exceeding $200 million in a single year. Therefore, this rule is unlikely to meet the threshold for an economically significant rule, with regard to costs, under E.O. 12866.

We are soliciting data and comments from the public on the DEA discussed above. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. 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.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal

requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

We have evaluated whether any of the lands within the proposed designation of critical habitat are owned by DoD or DHS or could lead to national-security or homeland-security impacts if designated. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for Brawleys Fork crayfish including the J. Percy Priest Reservoir in Unit 1 are owned or managed by the DoD Army Corps of Engineers. However, we anticipate no impact on national security or homeland security resulting from the proposed critical habitat designation.

Consideration of 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 discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

In preparing this proposal, we have determined that no HCPs or other management plans for Brawleys Fork crayfish currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

However, if through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

We are required by E.O.s 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 **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.

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. We have developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rulemaking action is not significant.

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 whether 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.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies 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 would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, 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 made final, 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. Facilities that provide energy supply, distribution, or use occur within some units of the proposed critical habitat designations (for example, dams, pipelines) and may potentially be affected. We determined that consultations, technical assistance, and requests for species lists may be necessary in some instances. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

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 finding:

(1) This proposed 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 are not likely to 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 small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a small government agency plan is not required.

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 Brawleys Fork crayfish 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 for the proposed designation of critical habitat for Brawleys Fork crayfish, and it concludes that, if adopted, this designation of critical habitat 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 requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. 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 proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed 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 for 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 State and local governments in long-range planning because they 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) of the Act 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 would 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, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed 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 information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are 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.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat. In a line of cases starting with *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995) the courts have upheld this position.

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 (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 federally recognized Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Brawleys Fork crayfish, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

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 § 17.11, amend paragraph (h) by adding an entry for ''Crayfish, Brawleys Fork'' to the List of Endangered and Threatened Wildlife in alphabetical order under CRUSTACEANS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* *	*	*	*	* *
CRUSTACEANS				
* *	*	*	*	* *
Crayfish, Brawleys Fork	*Cambarus williami*	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.46(d); [4d] 50 CFR 17.95(h).[CH]
* *	*	*	*	* *

■ 3. Amend § 17.46 by adding paragraph (d) to read as follows:

* * * * *

§ 17.46 Special rules—crustaceans.

* * * * *

(d) Brawleys Fork crayfish (*Cambarus williami*). (1) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to Brawleys Fork crayfish. Except as provided under paragraph (d)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to Brawleys Fork crayfish:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Channel restoration projects that create natural, physically stable, ecologically functioning streams (or stream and wetland systems). These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with low shear stress (force of water moving against the channel); bank heights that enable reconnection to the floodplain; a reconnection of surface and groundwater systems, resulting in perennial flows in the channel; riffles and pools composed of existing soil, rock, and wood instead of large imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(B) Bank stabilization projects that use bioengineering methods to replace preexisting, 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 bioengineering methods, stream banks may be stabilized using native species live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native species live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native species brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Native species vegetation includes woody and herbaceous species appropriate for the region and habitat conditions. These methods will not include the sole use of quarried rock (riprap) or the use of rock baskets or gabion structures.

(C) Bridge and culvert replacement/removal projects or low head dam removal projects that remove migration barriers or generally allow for improved upstream and downstream movements of Brawleys Fork crayfish while maintaining normal stream flows, preventing bed and bank erosion, and improving habitat conditions for the species.

(D) Transportation projects that provide for fish passage at stream crossings.

■ 4. In § 17.95, amend paragraph (h) by adding an entry for ''Brawleys Fork Crayfish (*Cambarus williami*)'' after the entry for ''Big Sandy Crayfish (*Cambarus callainus*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

Brawleys Fork Crayfish (*Cambarus williami*)

(1) Critical habitat units are depicted for Cannon, Rutherford, and Warren Counties, Tennessee, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Brawleys Fork crayfish consist of the following components:

(i) Moderate to fast-flowing stream with unembedded cherty-gravel and cobble substrate within an unobstructed stream continuum (*i.e.,* riffle, run, pool complexes) of perennial, small- to moderate-sized (generally third order or smaller) streams and rivers (up to the ordinary high-water mark as defined at 33 CFR 329.11).

(ii) Stream banks with intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs that may reduce availability of substrate interstitial spaces.

(iii) Water quality characterized by seasonally moderated, or spring influenced, water temperatures and physical and chemical parameters (*e.g.,* pH, conductivity, dissolved oxygen) sufficient for the normal behavior, growth, reproduction, and viability of all life stages.

(iv) Adequate food base, indicated by a healthy aquatic community structure including native benthic macroinvertebrates, fishes, and plant matter (*e.g.,* leaf litter, algae, detritus).

(v) An interconnected network of streams and rivers that have the physical and biological features described in paragraphs (2)(i) through (iv) of this entry that allow for the movement of individual crayfish in response to environmental, physiological, or behavioral drivers. The connectivity of the stream network should be sufficient to allow for gene flow within and among watersheds.

(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 [EFFECTIVE DATE OF FINAL RULE].

(4) Data layers defining map units were created using Esri ArcGIS Pro mapping software, version 2.7.2 with U.S. Geological Survey's National Hydrography Dataset flowline data, on a base map of State, County, and city limit boundaries from the State of Tennessee's Strategic Technology Solutions branch. Critical habitat units were mapped using the Tennessee State Plane Coordinate System, Lambert Conformal Conic projection and North American 1983 (NAD83) datum. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/library/collections/Brawleys-Fork-crayfish,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2023–0065, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map of critical habitat units for the Brawleys Fork crayfish follows:

Figure 1 to Brawleys Fork crayfish (Cambarus williami) paragraph (5)

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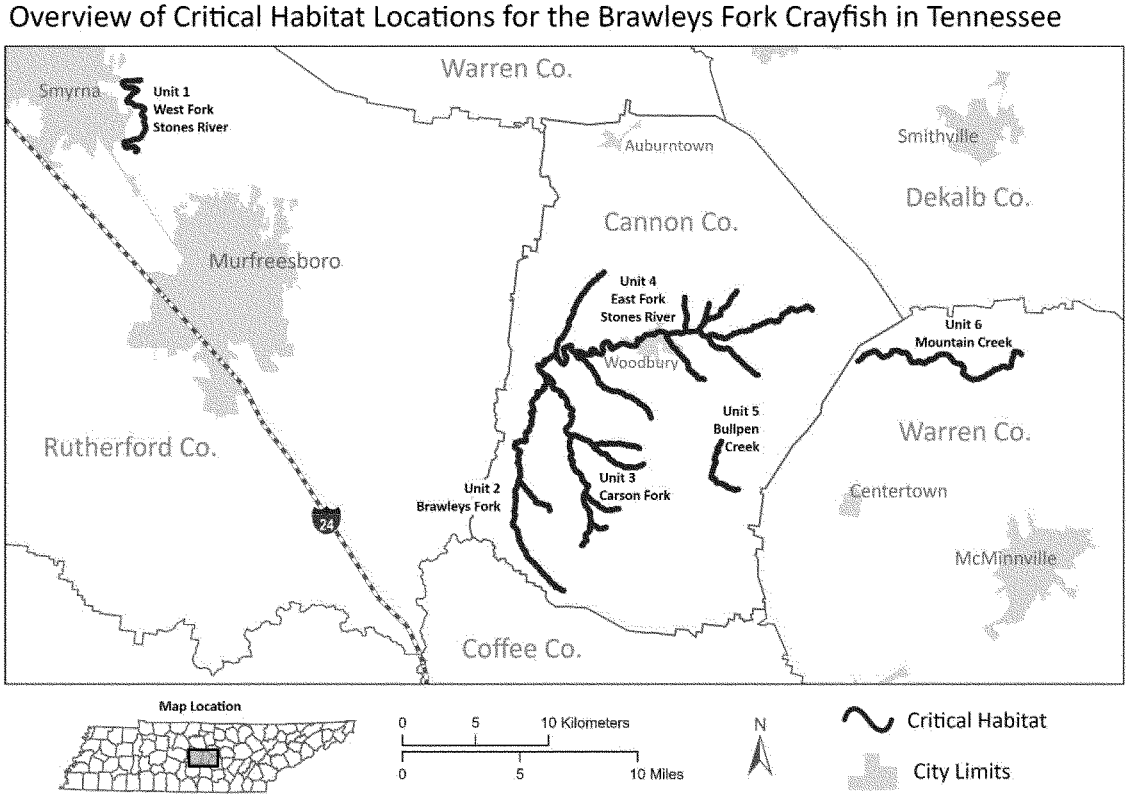


(6) Unit 1: West Fork Stones; Rutherford County, Tennessee.

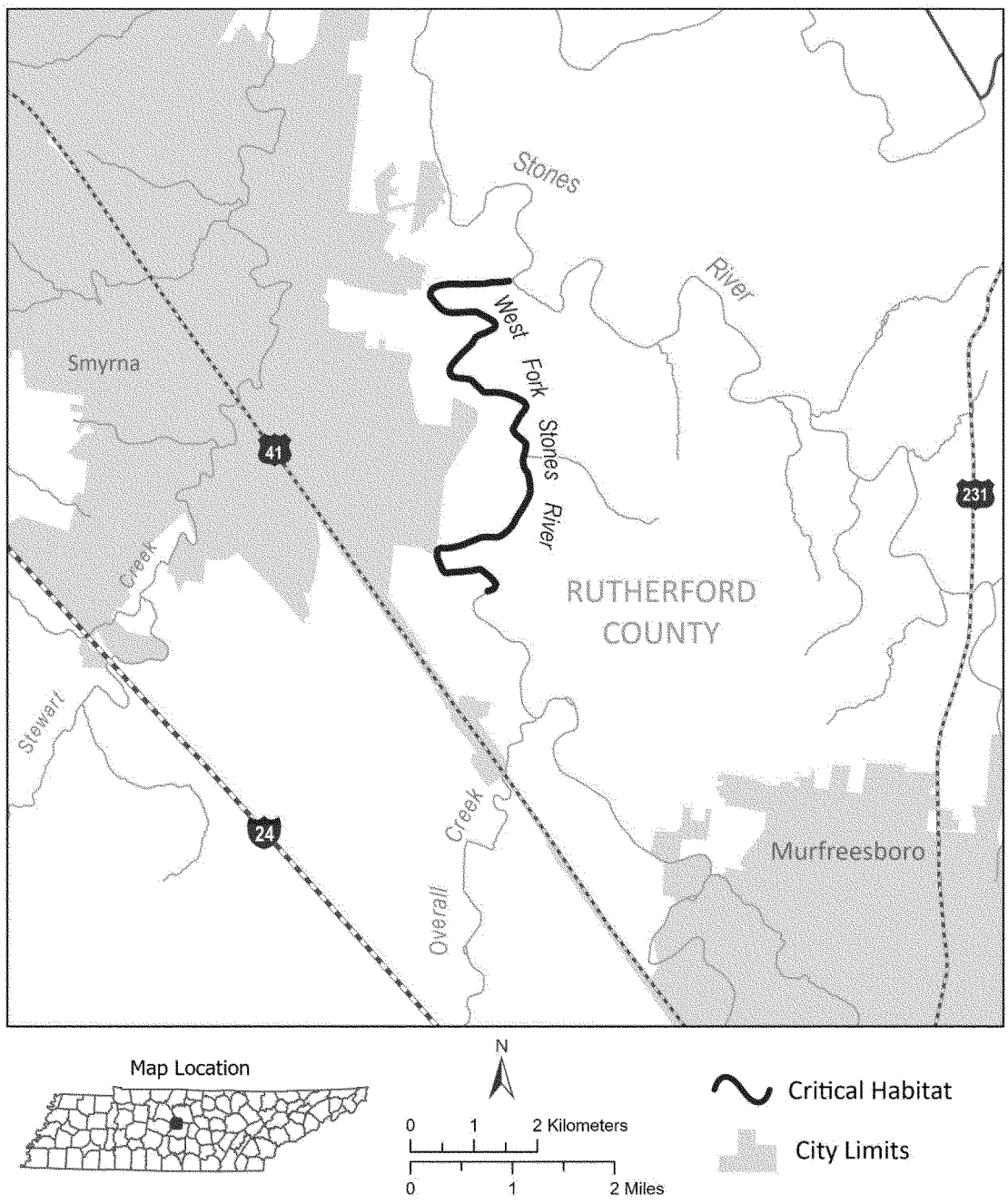
(i) Unit 1 consists of 6.2 rmi (10 rkm) of the West Fork Stones River beginning at the Nice's Mill Recreation Area lowhead dam and continuing to the confluence with the Stones River in Rutherford County, Tennessee. Riparian lands in Unit 1 are in Federal ownership (Department of Defense, U.S. Army Corps of Engineers, J. Percy Priest Lake).

(ii) Unit 1 includes stream channel up to bankfull height.

(iii) Map of Unit 1 follows:

Figure 2 to Brawleys Fork crayfish (Cambarus williami) paragraph (6)(iii)

Unit 1: West Fork Stones River, Brawleys Fork Crayfish Critical Habitat
Rutherford County, Tennessee



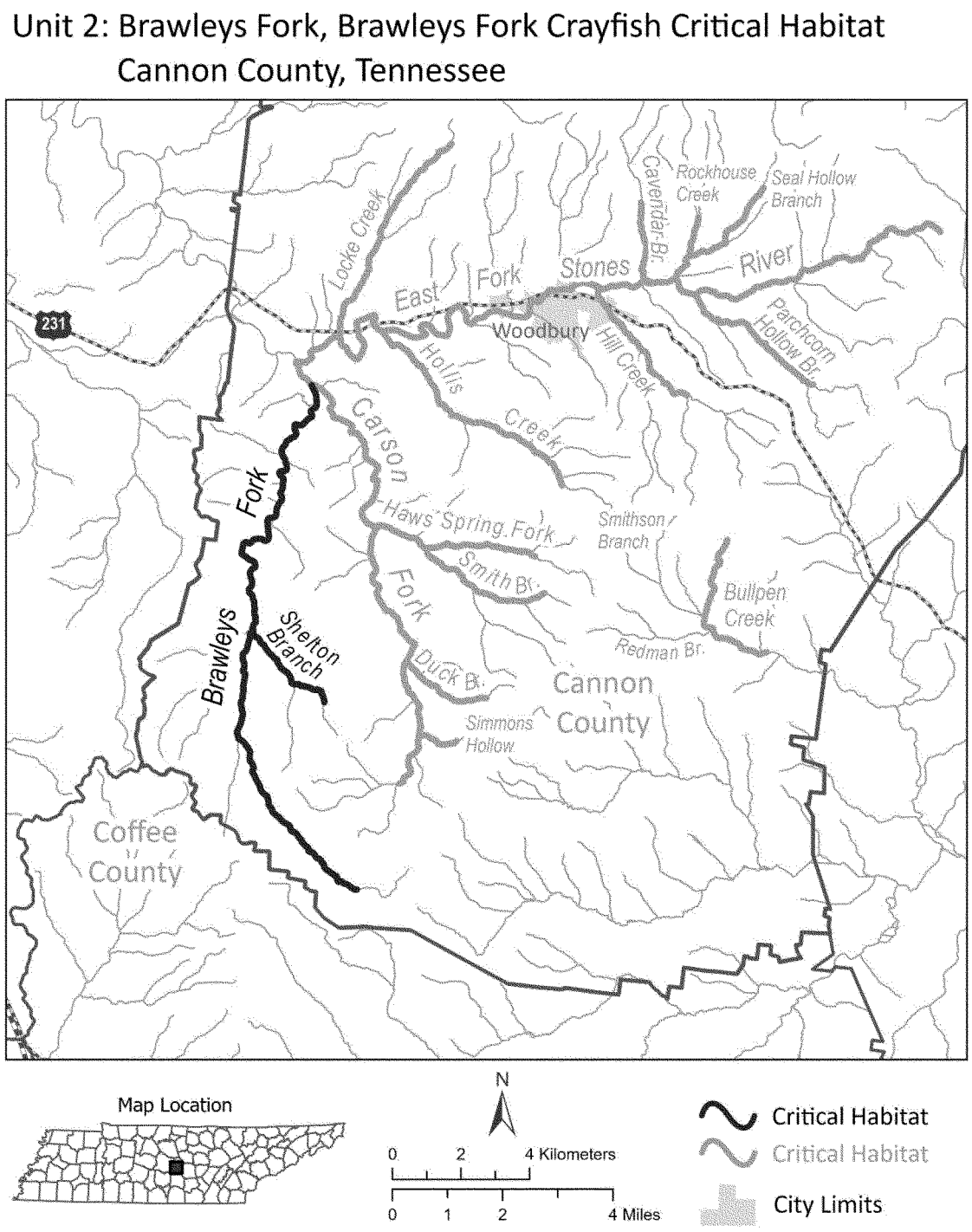
(7) Unit 2: Brawleys Fork; Cannon County, Tennessee.

(i) Unit 2 consists of approximately 13.8 rmi (22.2 rkm) of the Brawleys Fork and tributaries in Cannon County, Tennessee. Unit 2 includes the Brawleys Fork from the headwaters at Mill Bluff Hollow to the confluence with the Carson Fork and Shelton Branch from the Gene Perkins Road crossing to the confluence with Brawleys Fork. Riparian lands in Unit 2 are in private ownership except for a small amount of publicly owned bridge crossings and road easements.

(ii) Unit 2 includes stream channel up to bankfull height.

(iii) Map of Unit 2 follows:

Figure 3 to Brawleys Fork crayfish (Cambarus williami) paragraph (7)(iii)



(8) Unit 3: Carson Fork; Cannon County, Tennessee.

(i) Unit 3 consists of approximately 18.2 rmi (29.3 rkm) of the Carson Fork and tributaries in Cannon County, Tennessee. Riparian lands in Unit 3 are in private ownership except for a small amount of publicly owned bridge crossings and road easements.

(A) Subunit 3a (Carson Fork) consists of 12.3 rmi (19.8 rkm) and extends from the headwaters of the Carson Fork near Sadler Lane downstream to the confluence with the East Fork Stones River, from the headwaters of Duck Branch to the confluence of Carson Fork, and from the headwaters of an unnamed tributary in Simmons Hollow to the confluence of Carson Fork.

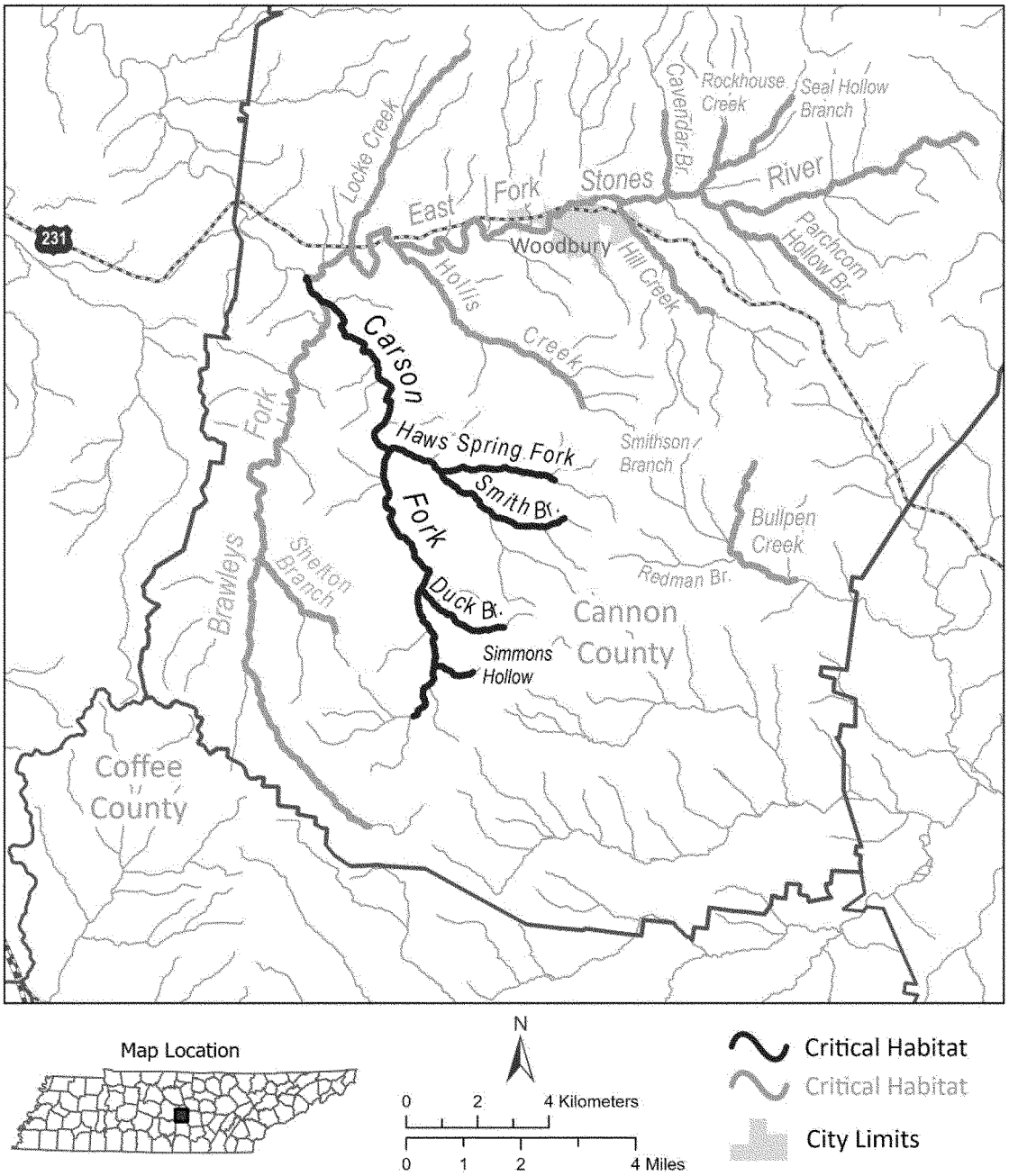
(B) Subunit 3b (Haws Spring Fork) consists of 5.9 rmi (9.5 rkm) and extends from the headwaters of Smith Branch near Carrick Hollow to the confluence with Haws Spring Fork and from the headwaters of Haws Spring to the confluence with the Carson Fork.

(ii) Unit 3 includes stream channel up to bankfull height.

(iii) Map of Unit 3 follows:

Figure 4 to Brawleys Fork crayfish (Cambarus williami) paragraph (8)(iii)

Unit 3: Carson Fork, Brawleys Fork Crayfish Critical Habitat
Cannon County, Tennessee



(9) Unit 4: East Fork Stones River, Cannon County, Tennessee.

(i) Unit 4 consists of approximately 35.9 rmi (57.8 rkm) of the East Fork Stones River mainstem and some of its tributaries in Cannon County, Tennessee. Riparian lands in Unit 4 are in State (0.7 rmi (1.1 rkm), local (0.9 rmi (1.4 rkm) in two parks), and private ownership, as well as small amount of publicly owned bridge crossings and road easements.

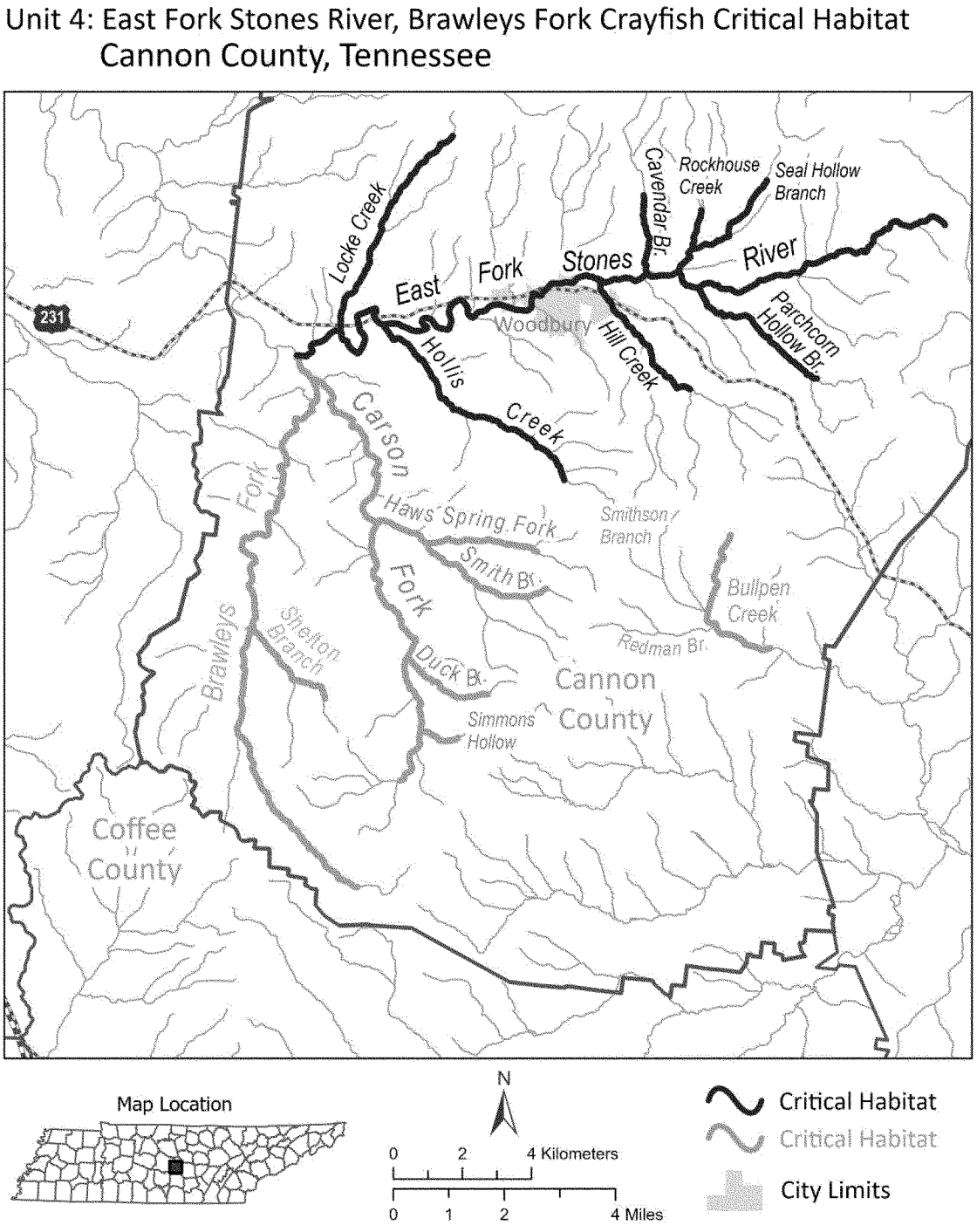
(A) Subunit 4a (East Fork Stones) consists of 32.5 rmi (52.3 rkm) and includes Hollis Creek from the headwaters near Hollis Creek South Road to the confluence with the East Fork Stones River, Hill Creek from the tributary at Wood Hollow to the confluence with the East Fork Stones River, Parchcorn Hollow Branch from the Parchcorn Hollow road crossing to the confluence with the East Fork Stones River, Cavender Branch from the Cavender Road bridge to the confluence with the East Fork Stones River, and from Locke Creek to the confluence with the East Fork Stones River.

(B) Subunit 4b (Rockhouse Creek) consists of 3.4 rmi (5.5 rkm) and extends from the stream crossing at Seal Hollow Branch by Seal Hollow Road to the confluence with Rockhouse Branch and from the Higgins Road crossing of Rockhouse Creek downstream to the confluence with the East Fork Stones River.

(ii) Unit 4 includes stream channel up to bankfull height.

(iii) Map of Unit 4 follows:

Figure 5 to Brawleys Fork crayfish (Cambarus williami) paragraph (9)(iii)



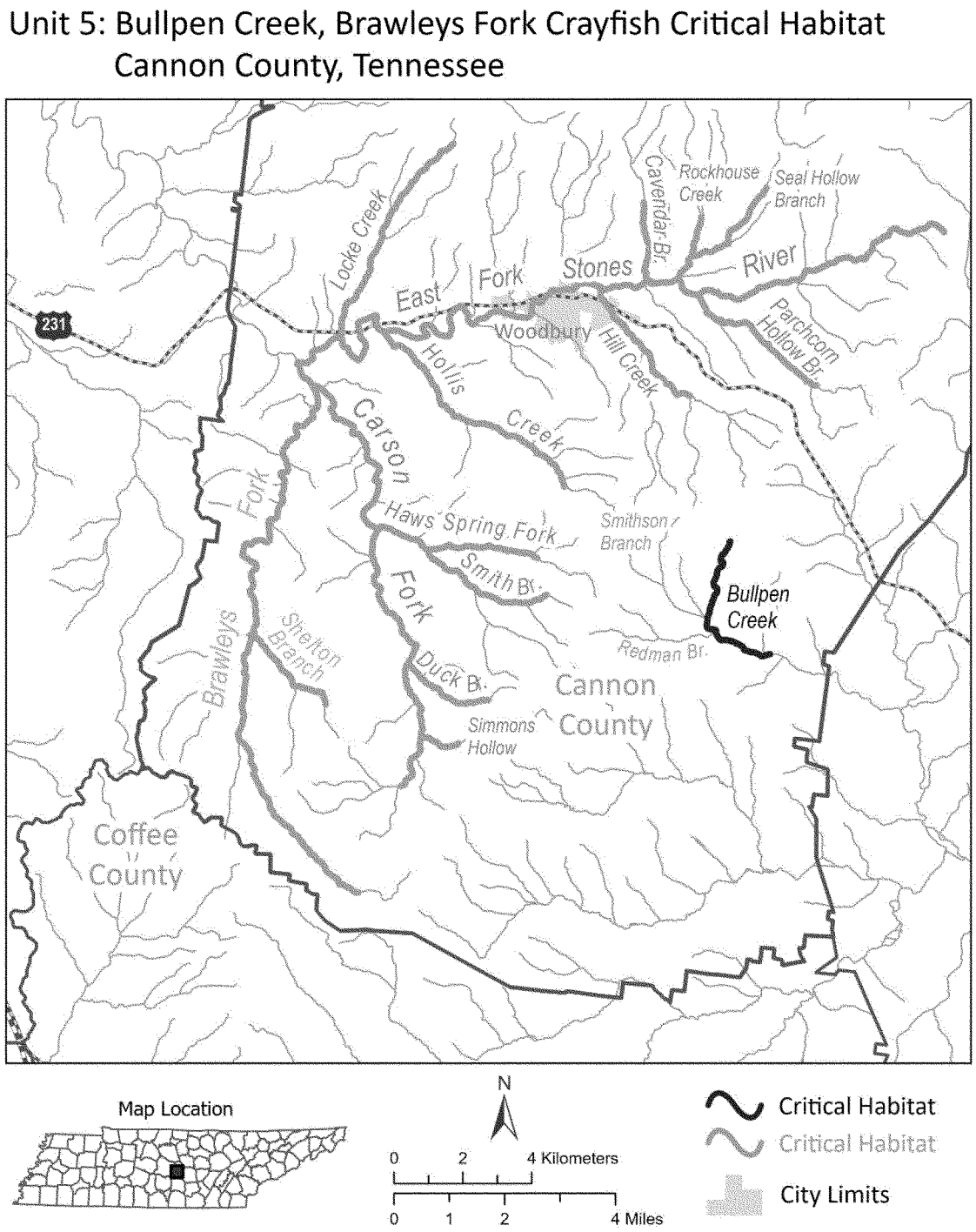
(10) Unit 5: Bullpen Creek; Cannon County, Tennessee.

(i) Unit 5 consists of approximately 3.1 rmi (5.0 rkm) of Bullpen Creek beginning at the Lonnie Smith Road crossing and extending downstream to the lowhead dam near Charlie Powell Road in Cannon County, Tennessee. Riparian lands in Unit 5 are in private ownership except for a small amount of publicly owned bridge crossings and road easements.

(ii) Unit 5 includes stream channel up to bankfull height.

(iii) Map of Unit 5 follows:

Figure 6 to Brawleys Fork crayfish (Cambarus williami) paragraph (10)(iii)



(11) Unit 6: Mountain Creek; Warren County, Tennessee.

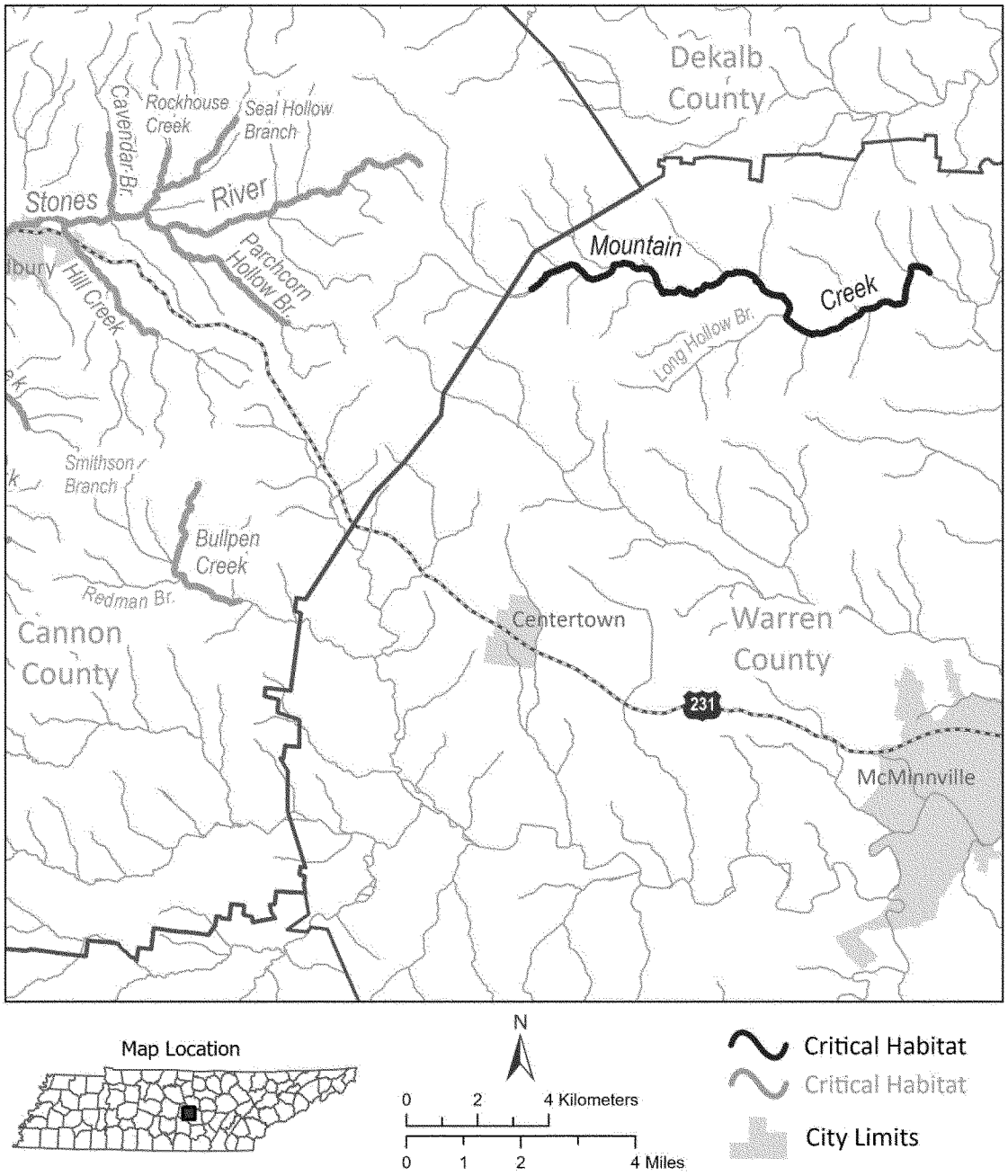
(i) Unit 6 consists of approximately 9.4 rmi (15.1 rkm) of Mountain Creek in Warren County, Tennessee. Unit 6 extends from the Mountain Creek road crossing at Short Mountain Road downstream to the Smithville Highway bridge in the city of Dibrell, Warren County, Tennessee. Riparian lands in Unit 6 are in private ownership except for a small amount of publicly owned bridge crossings and road easements.

(ii) Unit 6 includes stream channel up to bankfull height.

(iii) Map of Unit 6 follows:

Figure 7 to Brawleys Fork crayfish (Cambarus williami) paragraph (11)(iii)

Unit 6: Mountain Creek, Brawleys Fork Crayfish Critical Habitat
Warren County, Tennessee



* * * * *

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–17666 Filed 8–21–23; 8:45 am]

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