

the proposed designation of critical habitat for *Arabia perstellata* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after review of our economic analysis and revised, if necessary, in the final rule.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and Executive Order 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn. v. U.S. Fish and Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

#### **Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))**

In the draft economic analysis, we determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the draft economic analysis for a discussion of the effects of this determination.

#### **Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat for *Arabis perstellata* include recreation, grazing, and logging. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Therefore, this action is not a significant action affecting energy production, supply, and distribution facilities, 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.*):

(a) This proposed rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no new obligations on State or local governments.

#### **Takings**

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of proposing to designate approximately 408 ha (1,008 ac) of lands in Franklin and Owen counties in Kentucky, and Rutherford county in Tennessee, as critical habitat for *Arabis perstellata* in a takings implication assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications.

#### **Federalism**

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State natural resource agencies in Kentucky and Tennessee. The impact of the proposed designation on State and local governments and their activities is not believed to be significant, and we are examining this more fully in the economic analysis of the proposal, on which we are seeking public comment. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While

making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than forcing/necessitating them to wait for case-by-case section 7 consultations to occur.

#### **Civil Justice Reform**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system, and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act, as amended. This rule uses standard property descriptions and identifies the primary constituent elements within the proposed areas to assist the public in understanding the habitat needs that are essential for the conservation of *Arabis perstellata*.

#### **Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)**

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### **National Environmental Policy Act**

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### **Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are not aware of any Tribal lands essential for the conservation of *Arabis perstellata*. Therefore, the proposed critical habitat for *Arabis perstellata* does not contain any Tribal lands or