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WHEN: Tuesday, September 11, 2012
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WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 77, No. 175

Monday, September 10, 2012

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55475–55477
Meetings:
Healthcare Research and Quality Special Emphasis Panel, 55477–55478

Agricultural Research Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55451–55452

Agriculture Department
See Agricultural Research Service
See Forest Service
NOTICES
Determination of Total Amounts of Fiscal Year 2013 Tariff-Rate Quotas for Raw Cane Sugar and Certain Sugars, Syrups and Molasses; and the Fiscal Year 2013 Overall Allotment Quantity under the Sugar Marketing Allotment Program, 55451

Air Force Department
NOTICES
Issuances of Exclusive Patent Licenses, 55465–55466

Army Department
NOTICES
Environmental Impact Statements; Availability, etc.:
Short Range-Projects and Update of Real Property Master Plan for Fort Belvoir, VA, 55466

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55478–55479

Centers for Medicare & Medicaid Services
NOTICES
Medicare, Medicaid, and CHIP Programs:
Research and Analysis on Impact of Programs on Indian Health Care System, 55479–55480

Civil Rights Commission
NOTICES
Meetings:
North Dakota Advisory Committee, 55454

Coast Guard
RULES
Drawbridge Operations:
Inside Thoroughfare, New Jersey Intracoastal Waterway, Atlantic City, NJ, 55416
Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal, NY, 55416–55417
Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters:
Information Collection Approval; Correction, 55417
PROPOSED RULES
Special Local Regulations:
Partnership in Education, Dragon Boat race, Maumee River, Toledo, OH, 55436–55439
Vessel Traffic Service; Updates:
Vessel Traffic Service Requirements Establishment, Port Arthur, TX, and VTS Special Operating Area Expansion, Puget Sound, 55439–55448
NOTICES
Workshops:
Marine Technology and Standards, 55482–55484

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings:
Commission of Fine Arts, 55465

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 55465

Defense Department
See Air Force Department
See Army Department
NOTICES
Federal Acquisition Regulations:
Agency Information Collection Activities; Permits, Authorities, or Franchises, 55475

Drug Enforcement Administration
NOTICES
Controlled Substances:
Final Adjusted Aggregate Production Quotas for 2012, 55500–55503
Final Adjusted Assessment of Annual Needs:
List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2012, 55503
Importers of Controlled Substances; Registrations:
Cambrex Charles City, Inc., 55503–55504
Manufacturers of Controlled Substances; Registrations:
Alltech Associates, Inc., 55504–55505
AMPAC Fine Chemicals LLC, 55505
Noramco, Inc., 55504
Research Triangle Institute, 55504

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approvals and Promulgations of Air Quality Implementation Plans:
Delaware; Infrastructure Requirements for 2008 Lead National Ambient Air Quality Standards, 55419–55420
West Virginia; Infrastructure Requirements for 2008 Lead National Ambient Air Quality Standards, 55417–55419

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reporting and Recordkeeping Requirements of the HCFC Allowance System, 55470–55472

Export-Import Bank
NOTICES
Meetings; Sunshine Act, 55472

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 55472–55473

Federal Aviation Administration
RULES
Airworthiness Directives:
Glasflugel Gliders, 55411–55413

Federal Communications Commission
NOTICES
Meetings:
Emergency Access Advisory Committee, 55473

Federal Deposit Insurance Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Basel II Recordkeeping and Disclosures, 55473–55474
Terminations of Receiverships:
Access Bank, Champlin, MN, 55474

Federal Energy Regulatory Commission
NOTICES
Applications:
Barren River Lake Hydro LLC, 55466–55467
Oliver Hydro LLC, 55468–55469
Placer County Water Agency, 55467–55468
Filings:
Kinder Morgan Border Pipeline LLC, 55469
Records Governing Off-the-Record Communications, 55469–55470

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 55474

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
RULES
Endangered and Threatened Wildlife and Plants:
Removal of Gray Wolf in Wyoming from Federal List of Endangered and Threatened Wildlife and Removal of Wyoming Wolf Populations Status as Experimental Population, 55530–55604

Food and Drug Administration
RULES
New Animal Drugs:
Chorionic Gonadotropin; Naloxone; Oxymorphone; Oxytocin, 55413–55414
Enrofloxacin; Tylvalosin, 55414–55415
NOTICES
Draft Compliance Policy Guide Sec. 690.150:
Labeling and Marketing of Nutritional Products Intended for Use to Diagnose, Cure, Mitigate, Treat, or Prevent Disease in Dogs and Cats, 55480–55481
Withdrawal of Approvals of New Animal Drug Applications:
Chorionic Gonadotropin; Naloxone; Oxymorphone; Oxytocin, 55481–55482

Foreign-Trade Zones Board
NOTICES
Approvals for Manufacturing Authority:
Foreign-Trade Zone 72, Wind Turbine Gear Boxes; Brevini Wind USA, Inc., Yorktown, IN, 55455
Authorizations of Production Activity:
Foreign-Trade Zone 235, Fragrance Bottling; Cosmetic Essence Innovations, LLC, Holmdel, NJ, 55455

Forest Service
NOTICES
Meetings:
Butte County Resource Advisory Committee, 55453–55454
Juneau Resource Advisory Committee, 55453
Lynn Canal–Icy Strait Resource Advisory Committee, 55452–55453
Plumas County Resource Advisory Committee, 55454

General Services Administration
NOTICES
Federal Acquisition Regulations:
Agency Information Collection Activities; Permits, Authorities, or Franchises, 55475

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Healthcare Research and Quality Agency
See Agency for Healthcare Research and Quality

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection
See U.S. Immigration and Customs Enforcement

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Fair Housing Initiatives Program Grant Application and Monitoring Reports, 55491–55492
Funding Availability for OneCPD Technical Assistance and Capacity Building Program, 55489–55490
Neighborhood Stabilization Program Tracking Study, 55490–55491
Study of Public Housing Agencies' Engagement with Homeless Households, 55488–55489
Funding for Tenant-Protection Vouchers for Certain At-Risk Households in Low-Vacancy Areas; Availability, 55492
Mortgagee Review Board:
Administrative Actions, 55492–55495

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Meetings:
Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee, 55525
Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee, 55525
Taxpayer Advocacy Panel Joint Committee, 55526
Taxpayer Advocacy Panel Refund Processing Communications Project Committee, 55526
Taxpayer Advocacy Panel Return Processing Delays Project Committee, 55525–55526
Taxpayer Advocacy Panel Small Business / Self-Employed Decreasing Non-Filers Project Committee, 55527
Taxpayer Advocacy Panel Tax Forms and Publications Project Committee, 55526–55527
Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee, 55525
Taxpayer Advocacy Panel Toll-Free Project Committee, 55526

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Light-Walled Rectangular Pipe and Tube from Turkey, 55455–55456

International Trade Commission
NOTICES
Investigations; Determinations, Results, etc.:
Certain Electronic Imaging Devices, 55498–55499
Certain Light-Emitting Diodes and Products Containing Same, 55499

Justice Department
See Drug Enforcement Administration
NOTICES
Lodgings of Consent Decrees:
Comprehensive Environmental Response, Compensation, and Liability Act, 55499–55500

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Department of Labor Generic Solution for Customer Satisfaction Surveys and Conference Evaluations, 55506–55507
Department of Labor Generic Solution for Solicitation for Grant Applications, 55505–55506

Land Management Bureau
RULES
Minerals Management:
Adjustment of Cost Recovery Fees, 55420–55425
NOTICES
Realty Actions:
Application for Conveyance of Federally Owned Mineral Interests in Maricopa County, AZ, 55495–55496
Temporary Closures of Public Lands:
Eastern Lassen County, CA and Western Washoe County, NV, 55496–55497

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulations:
Agency Information Collection Activities; Permits, Authorities, or Franchises, 55475

National Highway Traffic Safety Administration
PROPOSED RULES
Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and Equipment Recall, 55606–55644

National Oceanic and Atmospheric Administration
RULES
Fisheries Off West Coast States:
Modifications of West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions Nos. 4 through 14, 55426–55428
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Snapper–Grouper Fishery off Southern Atlantic States; Transferability of Black Sea Bass Pot Endorsements, 55448–55450
Taking and Importing Marine Mammals:
Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Deepwater Port in the Gulf of Mexico, 55646–55679
NOTICES
Applications:
Marine Mammals; File No. 17410, 55456–55457
Atlantic Coastal Fisheries Cooperative Management Act Provisions:
Horseshoe Crabs; Application for Exempted Fishing Permit, 2012, 55457–55458
Endangered and Threatened Species:
90-Day Finding on Petition to Delist the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon under the Endangered Species Act, 55458–55459
Takes of Marine Mammals Incidental to Specified Activities:
Piling and Fill Removal in Woodard Bay Natural Resources Conservation Area, WA, 55459–55463
Workshops:
Atlantic Shark Identification and Protected Species Safe Handling, Release, and Identification, 55464–55465

Nuclear Regulatory Commission
PROPOSED RULES
Fitness-for-Duty Programs, 55429–55430
NOTICES
Approvals of Transfers of Early Site Permits and Conforming Amendments:
Virginia Electric and Power Co.; North Anna Site, 55507–55509
Exemption:
Indiana Michigan Power Company, 55509–55510
Guidance on Performing a Seismic Margin Assessment, 55510–55512

Reclamation Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Paradox Valley Unit, Montrose County, CO, 55497–55498

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55512–55513

Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Incorporated, 55515–55517
Financial Industry Regulatory Authority, Inc., 55517–55523
NASDAQ OMX PHLX LLC, 55513–55514

Small Business Administration
NOTICES
Disaster Declarations:
New Mexico, 55523

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Employment as a Locally Employed Staff or Family Member, 55523–55524

Substance Abuse and Mental Health Services Administration

NOTICES
Meetings:
Center for Substance Abuse Prevention, 55482

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Arkansas Regulatory Program and Abandoned Mine Land Reclamation Plan, 55430–55435

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55524

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 55484–55486
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 55486

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Importer ID Input Record, 55486–55487
Voluntary Customer Survey, 55487

U.S. Immigration and Customs Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Designation of Attorney in Fact, 55488

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 55530–55604

Part III
Transportation Department, National Highway Traffic Safety Administration, 55606–55644

Part IV
Commerce Department, National Oceanic and Atmospheric Administration, 55646–55679

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR

Proposed Rules:

26 55429

14 CFR

39 55411

21 CFR

510 55413
520 55414
522 (2 documents) 55413, 55414
556 55414

30 CFR

Proposed Rules:

904 55430

33 CFR

117 (2 documents) 55416
151 55417

Proposed Rules:

100 55436
161 55439

40 CFR

52 (2 documents) 55417, 55419

43 CFR

3000 55420

46 CFR

162 55417

49 CFR

Proposed Rules:

573 55606
577 55606
579 55606

50 CFR

17 55530
660 55426

Proposed Rules:

217 55646
622 55448

Rules and Regulations

Federal Register

Vol. 77, No. 175

Monday, September 10, 2012

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0046; Directorate Identifier 2011–CE–040–AD; Amendment 39–17186; AD 2012–15–07 R1]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Gliders

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

ACTION: Final rule; request for comments.

SUMMARY: We are revising an existing airworthiness directive (AD) for Glasflugel Models Standard Libelle-201B, Club Libelle 205, Mosquito, and Kestrel gliders. That AD currently requires actions to address the unsafe condition on these products. This new AD includes clarification that the replacement control rod has an additional drain hole at the rod bottom between the forks and is the acceptable configuration for compliance. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion damage to the elevator control rod that could lead to failure of the elevator control rod, possibly resulting in loss of control of the glider. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 25, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 11, 2012.

We must receive any comments on this AD by October 25, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Glasfaser Flugzeug-Service Hansjörg Streifeneder GmbH, D–72582 Grabenstetten, Germany; phone: +49(0)73821032, fax: +49(0)73821629; email: *info@streifly.de;* Internet: *www.streifly.de/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On July 18, 2012, we issued AD 2012–15–07, amendment 39–17136 (77 FR 46940, August 7, 2012) for Glasflugel Models Standard Libelle-201B, Club Libelle 205, Mosquito, and Kestrel gliders. That AD resulted from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We issued that AD to require actions to address the unsafe condition on these products.

Actions Since AD Was Issued

Since we issued AD 2012–15–07, amendment 39–17136 (77 FR 46940, August 7, 2012), compliance with the existing AD required operators to not install an elevator control rod with a control bore hole. An operator reported that the improved replacement rods, as expected, have no control bore hole on the side at the top of the rod where there had previously been a hole. However, the improved replacement rods do have a new drain hole at the bottom of the rod between the forks. The operator expressed confusion as to whether this drain hole would cause the new rod to not be in compliance since there was no clarification of ''on the side.''

Relevant Service Information

Glasfaser Flugzeug-Service GmbH has issued Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination

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

AD Requirements

This AD retains the actions from AD 2012–15–07 but adds the language of ''on the side'' to assure that the replacement control rod, which has an additional drain hole at the rod bottom between the forks, is an acceptable configuration for compliance.

FAA's Justification and Determination of the Effective Date

This action incorporates clarification that the additional drain hole at the rod bottom between the forks on the replacement control rods is the acceptable configuration for compliance and does not require any additional work for those airplanes. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–0046 and directorate identifier 2011–CE–040–AD at the beginning of your comments. We

specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 54 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $333 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $45,522, or $843 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–15–07 R1 Glasflugel: Amendment 39–17186; Docket No. FAA–2012–0046; Directorate Identifier 2011–CE–040–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 25, 2012.

(b) Affected ADs

This AD revises AD 2012–15–07, amendment 39–17136 (77 FR 46940, August 7, 2012).

(c) Applicability

This AD applies to the following Glasflugel models and serial number (S/N) gliders, certificated in any category:

(1) Club Libelle 205, all S/Ns.

(2) Kestrel, all S/Ns, except S/N 85, 110, and 125.

(3) Mosquito, all S/Ns.

(4) Standard Libelle-201B, S/N 169.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion damage to the elevator control rod that could lead to failure of the elevator control rod, possibly resulting in loss of control of the glider. We are issuing this AD to require actions to address the unsafe condition on these products.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within 30 days after September 11, 2012 (the effective date of AD 2012–15–07), inspect the elevator control rod in the vertical fin following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(2) If you find any discrepancy in the inspection required by paragraph (f)(1) of this AD, before further flight, replace the elevator control rod with an elevator control rod that does not have a control bore hole on the side following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(3) Within 9 months after September 11, 2012 (the effective date of AD 2012–15–07), unless already done as required by paragraph (f)(2) of this AD, replace the elevator control rod in the vertical fin with an elevator control rod that does not have a control bore hole on the side following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(4) As of September 11, 2012 (the effective date of AD 2012–15–07), do not install an elevator control rod with a control bore hole on the side.

Note to paragraphs (f)(2), (f)(3), and (f)(4) of this AD: The replacement control rod has an additional drain hole at the rod bottom between the forks and is an acceptable configuration for compliance.

(5) The actions mandated by this AD may be accomplished by persons authorized to perform maintenance in accordance with 14 CFR 43.3 and by persons authorized to approve aircraft for return to service after maintenance in accordance with 14 CFR 43.7.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures

found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0213R1, dated November 8, 2011; and Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), for related information. For service information related to this AD, contact Glasfaser Flugzeug-Service Hansjörg Streifeneder GmbH, D–72582 Grabenstetten, Germany; phone: +49(0)73821032, fax: +49(0)73821629; email: *info@streifly.de;* Internet: *www.streifly.de/*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(i) 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 information was approved for IBR on September 11, 2012.

(i) Glasfaser Flugzeug Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011.

(ii) Reserved.

(4) For Glasflugel service information identified in this AD, contact Glasfaser Flugzeug-Service Hansjörg Streifeneder GmbH, D–72582 Grabenstetten, Germany; phone: +49(0)73821032, fax: +49(0)73821629; email: *info@streifly.de;* Internet: *www.streifly.de/*.

(5) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(6) 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, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/index.html.*

Issued in Kansas City, Missouri, on August 31, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–22039 Filed 9–7–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

[Docket No. FDA–2012–N–0902]

New Animal Drugs; Chorionic Gonadotropin; Naloxone; Oxymorphone; Oxytocin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal of approval of four new animal drug applications (NADAs) at the sponsor's request because the products are no longer manufactured or marketed.

DATES: This rule is effective September 20, 2012.

FOR FURTHER INFORMATION CONTACT: David Alterman, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855; 240–453–6843; email: *david.alterman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The sponsors of the four approved NADAs listed in table 1 of this document have requested that FDA withdraw approval because the products are no longer manufactured or marketed:

TABLE 1—WITHDRAWAL OF APPROVAL REQUESTS

NADA No.	Trade name (drug)	Applicant	Citation in 21 CFR
030–525	NUMORPHAN (oxymorphone hydrochloride) Injection.	Endo Pharmaceuticals Inc., 100 Painters Dr., Chadds Ford, PA 19317.	522.1642
035–825	NARCAN (naloxone hydrochloride) Injection.	Endo Pharmaceuticals Inc., 100 Painters Dr., Chadds Ford, PA 19317.	522.1462
046–822	VETOCIN (oxytocin) Injection	United Vaccines, A Harlan Sprague Dawley, Inc., Co., P.O. Box 4220, Madison, WI 53711.	522.1680
103–090	CHORTROPIN (chorionic gonadotropin) Injection.	United Vaccines, A Harlan Sprague Dawley, Inc., Co., P.O. Box 4220, Madison, WI 53711.	522.1081

Elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADAs 030–525, 035–825, 046–822, and 103–090, and all supplements and amendments thereto, is withdrawn, effective September 20, 2012. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these voluntary withdrawals of approval.

Following these withdrawals of approval, Endo Pharmaceuticals Inc. and United Vaccines, A Harlan Sprague Dawley, Inc., Co., will no longer be the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for these firms.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entries for ''Endo Pharmaceuticals Inc.'' and ''United Vaccines, A Harlan Sprague Dawley, Inc., Co.''; and in the table in paragraph (c)(2), remove the entries for ''058639'' and ''060951''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1081 [Amended]

■ 4. In § 522.1081, remove and reserve paragraph (b)(2).

§ 522.1462 [Removed]

■ 5. Remove § 522.1462.

§ 522.1642 [Removed]

■ 6. Remove § 522.1642.

§ 522.1680 [Amended]

■ 7. In § 522.1680, in paragraph (b), remove ''058639,''.

Dated: September 5, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–22196 Filed 9–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, and 556

[Docket No. FDA–2012–N–0002]

New Animal Drugs; Enrofloxacin; Tylvalosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during July 2012. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable.

DATES: This rule is effective September 10, 2012.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect original and supplemental approval actions during July 2012, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING JULY 2012

NADA/ANADA	Sponsor	New animal drug product name	Action	21 CFR section	FOIA summary	NEPA review
141–336	ECO LLC, 8209 Hollister Ave., Las Vegas, NV 89131.	AIVLOSIN (tylvalosin tartrate) Water Soluble Granules.	Original approval for control of porcine proliferative enteropathy (PPE) associated with *Lawsonia intracellularis* infection in groups of swine in buildings experiencing an outbreak of PPE.	520.2645 556.748	yes	CE [1]
141–068	Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201.	BAYTRIL 100 (enrofloxacin) Injectable Solution.	Supplement adding control of bovine respiratory disease (BRD) in beef and non-lactating dairy cattle at high risk of developing BRD associated with *Mannheimia haemolytica, Pasteurella multocida, Histophilus somni* and *Mycoplasma bovis;* and revising a food safety warning statement.	522.812	yes	CE [1]

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING JULY 2012—Continued

NADA/ANADA	Sponsor	New animal drug product name	Action	21 CFR section	FOIA summary	NEPA review
200–482	Cross VetPharm Group, Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	AMPROMED for Calves (amprolium) 9.6% Oral Solution.	Original approval as a generic copy of NADA 13–149.	520.100	yes	CE [1]

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Parts 520 and 522

Animal drugs.

21 CFR Part 556

Animal drugs, Food.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 522, and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.100, revise paragraph (b)(4) to read as follows:

§ 520.100 Amprolium.

* * * * *

(b) * * *

(4) No. 061623 for use of product described in paragraph (a)(1) of this section as in paragraph (d)(2); and for use of product described in paragraph (a)(2) of this section as in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

■ 3. Add § 520.2645 to read as follows:

§ 520.2645 Tylvalosin.

(a) *Specifications.* Granules containing 62.5 percent tylvalosin (w/w) as tylvalosin tartrate.

(b) *Sponsor.* See No. 066916 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.748 of this chapter.

(d) *Conditions of use in swine*—(1) *Amount.* Administer 50 parts per million tylvalosin in drinking water for 5 consecutive days.

(2) *Indications for use.* For the control of porcine proliferative enteropathy (PPE) associated with *Lawsonia intracellularis* infection in groups of swine in buildings experiencing an outbreak of PPE.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 4. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 5. In 522.812, revise paragraphs (e)(2)(i), (e)(2)(ii)(A), and (e)(2)(iii) to read as follows:

§ 522.812 Enrofloxacin.

* * * * *

(e) * * *

(2) * * *

(i) *Amount*—(A) *Single-dose therapy:* For treatment of bovine respiratory disease (BRD), administer 7.5 to 12.5 mg/kg of body weight (3.4 to 5.7 mL per 100 pounds (/100 lb)) once by subcutaneous injection. For control of BRD, administer 7.5 mg/kg of body weight (3.4 mL/100 lb) once by subcutaneous injection.

(B) *Multiple-day therapy:* For treatment of BRD, administer 2.5 to 5.0 mg/kg of body weight (1.1 to 2.3 mL/100 lb) by subcutaneous injection. Treatment should be repeated at 24-hour intervals for 3 days. Additional treatments may be given on days 4 and 5 to animals that have shown clinical improvement but not total recovery.

(ii) *Indications for use*—(A) *Single-dose therapy:* For the treatment of BRD associated with *Mannheimia haemolytica, Pasteurella multocida, Histophilus somni,* and *Mycoplasma bovis* in beef and non-lactating dairy cattle; for the control of BRD in beef and non-lactating dairy cattle at high risk of developing BRD associated with *M. haemolytica, P. multocida, H. somni* and *M. bovis.*

* * * * *

(iii) *Limitations.* Animals intended for human consumption must not be slaughtered within 28 days from the last treatment. This product is not approved for female dairy cattle 20 months of age or older, including dry dairy cows. Use in these cattle may cause drug residues in milk and/or in calves born to these cows. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

* * * * *

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 6. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 7. Add § 556.748 to read as follows:

§ 556.748 Tylvalosin.

(a) *Acceptable Daily Intake (ADI).* The ADI for total residues of tylvalosin is 47.7 micrograms per kilogram of body weight per day.

(b) *Tolerances.* A tolerance for tylvalosin in edible tissues of swine is not required.

(c) *Related conditions of use.* See § 520.2645 of this chapter.

Dated: September 5, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–22194 Filed 9–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0831]

Drawbridge Operation Regulation; Inside Thoroughfare, New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the US40–322 (Albany Avenue) Bridge, at NJICW mile 70.0, across Inside Thoroughfare, in Atlantic City, NJ. This deviation is necessary to facilitate the free movement of contestants over the bridge during the 2012 Atlantic City Triathlon. This deviation allows the draw span of the bridge to remain closed-to-navigation during the event.

DATES: This deviation is effective from 8 a.m. until 12 p.m. on September 15, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0831 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0831 in the ''Keyword'' box and then clicking ''Search''. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone 757–398–6587, email *Terrance.A.Knowles@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The New Jersey Department of Transportation owns and operates this bascule-type drawbridge and has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.733(f) to facilitate the free movement of contestants over the bridge during the 2012 Atlantic City Triathlon.

The US40–322 (Albany Avenue) Bridge, at NJICW mile 70.0 across Inside Thoroughfare in Atlantic City, NJ has a vertical clearance in the closed position to vessels of 10 feet above mean high water.

Under normal operating conditions the draw would open on signal, except that: Year-round, from 11 p.m. to 7 a.m. and from November 1 through March 31 from 3 p.m. to 11 p.m.; the draw need only open if at least four hours notice is given. From June 1 through September 30, from 9 a.m. to 4 p.m. and from 6 p.m. to 9 p.m., the draw need only open on the hour and half hour and from 4 p.m. to 6 p.m., the draw need not open; and on the third or fourth Wednesday of August the draw will open every two hours on the hour from 10 a.m. until 4 p.m. and need not open from 4 p.m. until 8 p.m. to accommodate the annual Air Show.

Under this temporary deviation to facilitate the free movement of contestants during the 2012 Atlantic City Triathlon, the drawbridge will be closed to vessels requiring an opening from 8 a.m. until 12 p.m. (noon) on Saturday, September 15, 2012.

The drawbridge will be able to open in the event of an emergency. Vessels that can pass under the bridge without a bridge opening may do so at all times. Vessels with heights greater than 10 feet would have to use an alternate route. One alternate route is by way of the Atlantic Ocean.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 28, 2012.

G.D. Case,

Captain, U.S. Coast Guard, Fifth Coast Guard District.

[FR Doc. 2012–22158 Filed 9–7–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0829]

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Loop Parkway Bridge, mile 0.7, across Long Creek, and the Meadowbrook Parkway Bridge, mile 12.8, across Sloop Channel, at Hempstead, New York. This deviation is necessary to facilitate the 2012 March of Dimes Motorcycle Run. The deviation allows the two bridges listed above to remain in the closed position during this public event.

DATES: This deviation is effective from 11 a.m. through 1 p.m. on September 15, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0829 and are available online at *www.regulations.gov,* inserting USCG–2012–0829 in the ''Keyword'' box and then clicking ''Search''. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Loop Parkway Bridge, mile 0.7, across Long Creek has a vertical clearance in the closed position of 21 feet at mean high water and 25 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(f).

The Meadowbrook Parkway Bridge, mile 12.8, across Sloop Channel has a vertical clearance in the closed position

of 22 feet at mean high water and 25 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(h). Long Creek and Sloop Channel both are transited by commercial fishing and recreational vessel traffic.

The owner of the two bridges, the State of New York Department of Transportation, requested bridge closures to facilitate a public event, the 2012 March of Dimes Motorcycle Run.

Under this temporary deviation the Loop Parkway Bridge and the Meadowbrook Parkway Bridge may remain in the closed position between 11 a.m. and 1 p.m. on September 15, 2012, to facilitate a public event, the 2012 March of Dimes Motorcycle Run.

There are no alternate routes for vessel traffic; however, vessels that can pass under the closed draws during this closure may do so at any time. The bridges may be opened in the event of an emergency.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 23, 2012.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2012–22162 Filed 9–7–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

46 CFR Part 162

[Docket No. USCG–2001–10486]

RIN 1625–AA32

Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Rule; information collection approval; Correction.

SUMMARY: On June 13, 2012, the Coast Guard published in the **Federal Register** an announcement of effective date that announced an information collection approval for the Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (BWDS) Final Rule (77 FR 35268). The rulemaking triggered new information collection requirements affecting vessel owners and their potential requests for an extension of the compliance date if they cannot practicably comply with the compliance date otherwise applicable to their vessels. The June 13, 2012, document announced that the request to revise the existing collection of information to add the new request for an extension provision was approved by the Office of Management and Budget (OMB) and may now be enforced. The OMB control number is 1625–0069. The approval for this collection of information expires on May 31, 2015.

In the June 13, 2012, document, the Coast Guard inadvertently failed to indicate that we received public submissions to the BWDS Final Rule (77 FR 17254). The Coast Guard is now publishing a document to advise the public that we received four public submissions to this collection of information. As the four public submissions were not collection of information-related, we did not revise our collection of information estimates. You may view copies of the public submissions and the Coast Guard responses to them in the BWDS docket online by going to *http://www.regulations.gov,* inserting USCG–2001–10486 in the ''Keyword'' box, and then clicking ''Search.'' A corrected information collection request package has been submitted to OMB for their review. The current 1625–0069 approval by OMB is still effective. If OMB decides to amend the current 1625–0069 approval, a copy of that decision will be placed in the docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this document, call or email Mr. John Morris, Project Manager, U.S. Coast Guard; telephone 202–372–1402, email *environmental_standards@uscg.mil.* If you have questions about viewing the docket (USCG–2001–10486), call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

Dated: September 4, 2012.

Kathryn A. Sinniger,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2012–22240 Filed 9–7–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0436; FRL–9725–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This SIP revision addresses the infrastructure program elements specified in Clean Air Act (CAA) section 110(a)(2) necessary to implement, maintain, and enforce the 2008 lead national ambient air quality standards (NAAQS).

DATES: This final rule is effective on October 10, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0436. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

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

I. Background

Section 110(a) of the CAA requires states to submit SIP revisions that

provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. Section 110(a)(2) of the CAA directs all states to develop and maintain an air quality management infrastructure that includes enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling capabilities, and adequate personnel, resources, and legal authority.

On July 3, 2012 (77 FR 39458), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. In the NPR, EPA proposed approval of West Virginia's submittal which provides the basic program elements specified in CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 2008 lead NAAQS. The formal SIP revision was submitted by West Virginia on October 26, 2011.

II. Summary of SIP Revision

The SIP revision addresses the infrastructure elements specified in CAA section 110(a)(2)(A) through (M) for the implementation, maintenance and enforcement of the 2008 lead NAAQS in West Virginia. Specifically, West Virginia's submittal addressed the following infrastructure elements in CAA section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Specific requirements of section 110(a)(2) as well as the rationale supporting EPA's proposed action are explained in the NPR and the technical support document and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving West Virginia's SIP revision regarding the infrastructure program elements specified in CAA section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 2008 lead NAAQS. This action does not include approval of portions of CAA section 110(a)(2)(C), and 110(a)(2)(I) in its entirety, which pertain to the nonattainment requirements of part D, Title I of the CAA. These two elements, and portions thereof, are not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and thus will be addressed in a separate process. Additionally, EPA is taking separate action on the portions of CAA section 110(a)(2) infrastructure elements for the 2008 lead NAAQS as they relate to part C of Title I of the CAA, including section 110(a)(2)(C), (D) and (J) of the CAA. *See* 77 FR 45302 (July 31, 2012).

IV. Statutory and Executive Order Reviews

A. General Requirements

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 action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 9, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, which approves the CAA section 110(a)(2) infrastructure requirements of West Virginia for the 2008 lead NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 23, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding entries at the end of the table for Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* *	*	*	* *	* *
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	Statewide	10/26/11 ..	9/10/12 *[Insert **Federal Register** page number where the document begins and date].*	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

[FR Doc. 2012–22084 Filed 9–7–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0376; FRL–9725–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. The SIP revision addresses the infrastructure elements specified in section 110(a)(2) of the Clean Air Act (CAA), necessary to implement, maintain, and enforce the 2008 lead national ambient air quality standards (NAAQS). EPA is approving this SIP revision in accordance with the requirements of the CAA.

DATES: This final rule is effective on October 10, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0376. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On July 3, 2012 (77 FR 39456), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of Delaware's submittal that provides the basic elements specified in section 110(a)(2) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 lead NAAQS.

II. Summary of SIP Revision

On October 17, 2011, the Delaware Department of Natural Resources and Environmental Control submitted a SIP revision that addresses the infrastructure elements specified in section 110(a)(2) of the CAA, necessary to implement, maintain and enforce the 2008 lead NAAQS. This submittal addressed the following infrastructure elements of section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M).

Specific requirements of section 110(a)(2) of the CAA and the rationale for EPA's proposed action to approve the SIP submittal are explained in the NPR and the technical support document (TSD) and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving Delaware's submittal which provides the basic program elements specified in section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 lead NAAQS, as a revision to the Delaware SIP. This action is being taken under section 110 of the CAA. This action does not include the sections, or portions thereof, of 110(a)(2)(C) and 110(a)(2)(I) of the CAA which pertain to the nonattainment requirements of part D, Title I of the CAA, since these two elements are not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. Additionally, EPA is taking separate action on the portions of CAA section 110(a)(2) infrastructure elements for the 2008 lead NAAQS as they relate to Delaware's Prevention of Significant Deterioration (PSD) program, as required by part C of Title I of the CAA which include the following infrastructure elements: CAA section 110(a)(2)(C), (D) and (J). *See* 77 FR 45527 (August 1, 2012).

IV. Statutory and Executive Order Reviews

A. General Requirements

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 action:

- Is not a ''significant regulatory action'' subject to review by the Office

of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

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

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

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 9, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Delaware's section 110(a)(2) infrastructure elements for the 2008 lead NAAQS, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: August 23, 2012.

W. C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding an entry at the end of the table for Delaware's Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS..	Statewide	10/17/12	9/10/12 [*Insert Federal Register page number where the document begins and date*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) or portions thereof.

[FR Doc. 2012–22086 Filed 9–7–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[L13100000 PP0000 LLWO310000; L1990000 PO0000 LLWO320000]

RIN 1004–AE29

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update some fees that cover the BLM's cost of processing certain documents relating to its minerals programs and some filing fees for mineral-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.

DATES: This final rule is effective October 1, 2012.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street NW., Washington, DC, 20240; Attention: RIN 1004–AE29.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Chief, Division of Fluid Minerals, 202–912–7143, or Faith Bremner, Regulatory Affairs Analyst, 202–912–7441. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The fee recalculations are based on a mathematical formula. The public had an opportunity to comment on this procedure during the comment period on the original cost recovery rule, and this new rule simply administers the procedure set forth in those regulations. Therefore, the BLM has changed the fees in this final rule without providing opportunity for additional notice and comment. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the rule may be effective less than 30 days after publication.

II. Discussion of Final Rule

The BLM publishes a fee update rule each year, which becomes effective on October 1 of that year. The fee updates are based on the change in the IPD–GDP from the 4th Quarter of one calendar year to the 4th Quarter of the following calendar year. This fee update rule is based on the change in the IPD–GDP from the 4th Quarter of 2010 to the 4th Quarter of 2011, thus reflecting the rate of inflation over four calendar quarters.

The fee is calculated by applying the IPD–GDP to the base value from the previous year's rule, also known as the ''existing value.'' This calculation results in an updated base value. The updated base value is then rounded to the closest multiple of $5, or to the nearest cent for fees under $1, to establish the new fee.

Under this rule, 31 fees will remain the same and 17 fees will increase. Seven of the fee increases will amount to $5 each. The largest increase, $65, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, which will increase from $2,875 to $2,940. The fee for adjudicating a patent application containing 10 or fewer claims will increase by $30—from $1,440 to $1,470.

The calculations that resulted in the new fees are included in the table below:

FIXED COST RECOVERY FEES FY13

Document/Action	Existing fee [1]	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5]
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)					
Noncompetitive lease application	$380	$382.32	$8.33	$390.65	$390
Competitive lease application	150	148.37	3.23	151.60	150
Assignment and transfer of record title or operating rights	85	85.59	1.87	87.46	85
Overriding royalty transfer, payment out of production	10	11.41	0.25	11.66	10
Name change, corporate merger or transfer to heir/devisee	200	199.71	4.35	204.06	205
Lease consolidation	420	422.25	9.21	431.46	430
Lease renewal or exchange	380	382.32	8.33	390.65	390
Lease reinstatement, Class I	75	74.17	1.62	75.79	75
Leasing under right-of-way	380	382.32	8.33	390.65	390
Geophysical exploration permit application—Alaska	25				[6] 25
Renewal of exploration permit—Alaska	25				[7] 25
Geothermal (part 3200)					
Noncompetitive lease application	380	382.32	8.33	390.65	390
Competitive lease application	150	148.37	3.23	151.60	150
Assignment and transfer of record title or operating rights	85	85.59	1.87	87.46	85
Name change, corporate merger or transfer to heir/devisee	200	199.71	4.35	204.06	205
Lease consolidation	420	422.25	9.21	431.46	430
Lease reinstatement	75	74.17	1.62	75.79	75
Nomination of lands	105	106.82	2.33	109.15	110
plus per acre nomination fee	0.11	0.10682	0.00233	0.10915	0.11
Site license application	55	57.06	1.24	58.30	60
Assignment or transfer of site license	55	57.06	1.24	58.30	60
Coal (parts 3400, 3470)					
License to mine application	10	11.41	0.25	11.66	10
Exploration license application	315	313.84	6.84	320.68	320

FIXED COST RECOVERY FEES FY13—Continued

Document/Action	Existing fee [1]	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5]
Lease or lease interest transfer	65	62.78	1.37	64.15	65
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)					
Applications other than those listed below	35	34.24	0.75	34.99	35
Prospecting permit application amendment	65	62.78	1.37	64.15	65
Extension of prospecting permit	105	102.71	2.24	104.95	105
Lease modification or fringe acreage lease	30	28.54	0.62	29.16	30
Lease renewal	490	490.74	10.70	501.44	500
Assignment, sublease, or transfer of operating rights	30	28.54	0.62	29.16	30
Transfer of overriding royalty	30	28.54	0.62	29.16	30
Use permit	30	28.54	0.62	29.16	30
Shasta and Trinity hardrock mineral lease	30	28.54	0.62	29.16	30
Renewal of existing sand and gravel lease in Nevada	30	28.54	0.62	29.16	30
Multiple Use; Mining (part 3700)					
Notice of protest of placer mining operations	10	11.41	0.25	11.66	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)					
Application to open lands to location	10	11.41	0.25	11.66	10
Notice of location	15	17.11	0.37	17.48	15
Amendment of location	10	11.41	0.25	11.66	10
Transfer of mining claim/site	10	11.41	0.25	11.66	10
Recording an annual FLPMA filing	10	11.41	0.25	11.66	10
Deferment of assessment work	105	102.71	2.24	104.95	105
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30	28.54	0.62	29.16	30
Mineral patent adjudication					
(more than 10 claims)	2,875	2,875.95	62.70	2,938.65	2,940
(10 or fewer claims)	1,440	1,437.96	31.35	1,469.31	1,470
Adverse claim	105	102.71	2.24	104.95	105
Protest	65	62.78	1.37	64.15	65
Oil Shale Management (parts 3900, 3910, 3930)					
Exploration license application	300	301.02	6.56	307.58	310
Application for assignment or sublease of record title or overriding royalty	60	61.23	1.33	62.56	65

[1] The Existing Fee was established by the 2011 (Fiscal Year 2012) cost recovery fee update rule published September 23, 2011 (76 FR 59058), effective October 1, 2011.

[2] The Existing Value is the figure from the New Value column in the previous year's rule.

[3] From 4th Quarter 2010 to 4th Quarter 2011, the IPD–GDP increased by 2.18 percent. The value in the IPD–GDP Increase column is 2.18 percent of the Existing Value.

[4] The sum of the Existing Value and the IPD–GDP Increase is the New Value.

[5] The New Fee for Fiscal Year 2013 is the New Value rounded to the nearest $5 for values equal to or greater than $1, or to the nearest penny for values under $1.

[6] Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that "the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations." In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854–58855. While the $25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, the BLM interprets the Energy Policy Act provision as prohibiting it from increasing this $25 fee.

[7] The BLM interprets the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting it from increasing this $25 fee, as well.

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis (April 27, 2012).

III. How Fees Are Adjusted

Each year, the figures in the Existing Value column in the table above (not those in the Existing Fee column) are used as the basis for calculating the adjustment to these fees. The Existing Value is the figure from the New Value column in the previous year's rule. In the case of fees that were not in the table the previous year, or that had no figure in the New Value column the previous year, the Existing Value is the same as the Existing Fee. Because the new fees are derived from the new values—rounded to the nearest $5 or the nearest penny for fees under $1—adjustments based on the figures in the Existing Fee column would lead to significantly over- or under-valued fees over time. Accordingly, fee adjustments are made by multiplying the annual change in the IPD–GDP by the figure in the Existing Value column. This calculation defines the New Value for this year, which is then rounded to the nearest $5 or the nearest penny for fees under $1, to establish the New Fee.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and

Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The changes in today's rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule does apply an inflation factor that increases some existing user fees for processing documents associated with the onshore minerals programs. However, most of these fee increases are less than 3 percent and none of the increases materially affect the budgetary impact of user fees.

Finally, this rule will not raise novel legal issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 cost recovery rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The final rule may affect a large number of small entities since 17 fees for activities on public lands will be increased. However, the BLM has concluded that the effects will not be significant. Most of the fixed fee increases will be less than 3 percent as a result of this final rule. The adjustments result in no increase in the fee for the processing of 31 documents relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for adjudications of mineral patent applications involving more than 10 mining claims, which will be increased by $65. For the 2005 final rule, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

Executive Order 13132, Federalism

This final rule 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. In accordance with Executive Order 13132, therefore, we find that the final rule does not have significant federalism effects. A federalism assessment is not required.

The Paperwork Reduction Act of 1995

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the BLM submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The OMB approved the information collection requirements under the following Control Numbers:

Oil and Gas

(1) 1004–0034 which expires July 31, 2015;

(2) 1004–0137 which expires October 31, 2014;

(3) 1004–0162 which expires July 31, 2015;

(4) 1004–0185 which expires November 30, 2012;

Geothermal

(5) 1004–0132 which expires December 31, 2013;

Coal

(6) 1004–0073 which expires June 30, 2013;

Mining Claims

(7) 1004–0025 which expires March 31, 2013;

(8) 1004–0114 which expires August 31, 2013; and

Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121 which expires February 28, 2013.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule is administrative and involves only procedural changes addressing fee requirements. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215.

Pursuant to Council on Environmental Quality (CEQ) regulation and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means categories of actions ''which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of [CEQ] regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.'' 40 CFR 1508.4; *see also* BLM National Environmental Policy Act Handbook H–1790–1, Ch. 4, at 17 (Jan. 2008).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* because it will not result in State, local, private sector, or tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

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

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian tribes. The BLM has not found any substantial direct effects. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this final rule. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Faith Bremner of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

Marcilynn A. Burke,

Acting Assistant Secretary, Land and Minerals Management.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR Chapter II as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.;* 30 U.S.C. 181 *et seq.,* 301–306, 351–359, and 601 *et seq.;* 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.;* 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.;* and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to the BLM for the services listed for Fiscal Year 2013. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM Web site (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

FY 2013 PROCESSING AND FILING FEE TABLE

Document/action	FY 2013 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)	
Noncompetitive lease application	$390
Competitive lease application	150
Assignment and transfer of record title or operating rights	85
Overriding royalty transfer, payment out of production	10
Name change, corporate merger or transfer to heir/devisee	205
Lease consolidation	430
Lease renewal or exchange	390
Lease reinstatement, Class I	75
Leasing under right-of-way	390
Geophysical exploration permit application—Alaska	25
Renewal of exploration permit—Alaska	25

FY 2013 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2013 fee
Geothermal (part 3200)	
Noncompetitive lease application	390
Competitive lease application	150
Assignment and transfer of record title or operating rights	85
Name change, corporate merger or transfer to heir/devisee	205
Lease consolidation	430
Lease reinstatement	75
Nomination of lands	110
plus per acre nomination fee	0.11
Site license application	60
Assignment or transfer of site license	60
Coal (parts 3400, 3470)	
License to mine application	10
Exploration license application	320
Lease or lease interest transfer	65
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)	
Applications other than those listed below	35
Prospecting permit application amendment	65
Extension of prospecting permit	105
Lease modification or fringe acreage lease	30
Lease renewal	500
Assignment, sublease, or transfer of operating rights	30
Transfer of overriding royalty	30
Use permit	30
Shasta and Trinity hardrock mineral lease	30
Renewal of existing sand and gravel lease in Nevada	30
Multiple Use; Mining (part 3730)	
Notice of protest of placer mining operations	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)	
Application to open lands to location	10
Notice of location *	15
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing	10
Deferment of assessment work	105
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30
Mineral patent adjudication	2,940 (more than 10 claims) 1,470 (10 or fewer claims)
Adverse claim	105
Protest	65
Oil Shale Management (parts 3900, 3910, 3930)	
Exploration license application	310
Application for assignment or sublease of record title or overriding royalty	65

* To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833.

* * * * *

[FR Doc. 2012–22217 Filed 9–7–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120424023–1023–01]

RIN 0648–XC121

Fisheries Off West Coast States; Modifications of the West Coast Commercial and Recreational Salmon Fisheries; Inseason Actions #4 through #14

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

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

SUMMARY: NOAA Fisheries announces 11 inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial and recreational fisheries in the area from the U.S./Canada Border to the Oregon/California Border.

DATES: The effective dates for the inseason action are set out in this document under the heading Inseason Actions. Comments will be accepted through September 25, 2012.

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

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

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

SUPPLEMENTARY INFORMATION:

Background

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

NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Prior to taking inseason action, the Regional Administrator (RA) consults with the Chairman of the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)(1)).

Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada Border to Cape Falcon, Oregon) and south of Cape Falcon (Cape Falcon, Oregon to the U.S./Mexico Border).

Inseason Actions

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

Inseason action number	Effective date	Salmon fishery affected
4	June 20, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.
5	July 16, 2012	Recreational fishery from U.S./Canada Border to Cape Alava, Washington (Neah Bay subarea).
6	July 20, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.
7	August 3, 2012	Recreational fishery from Queets River, Washington to Leadbetter Point, Washington (Westport subarea).
8	July 27, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.
9	August 3, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.
10	August 6, 2012	Commercial fishery from Humbug Mountain, Oregon to Oregon/California Border (Oregon Klamath Management Zone—KMZ).
11	August 17, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.
12	August 24, 2012	Commercial fishery from U.S./Canada Border to Cape Falcon, Oregon.
13	August 17, 2012	Recreational fishery from Queets River, Washington to Leadbetter Point, Washington (Westport subarea) and from U.S./Canada Border to Cape Alava (Neah Bay subarea).
14	August 27, 2012	Recreational fishery from Leadbetter Point, Washington to Cape Falcon, Oregon (Columbia River subarea).

Inseason Action #4

The RA consulted with representatives of the Council, Washington Department of Fish and Wildlife (WDFW), and Oregon Department of Fish and Wildlife (ODFW) on June 19, 2012. The information considered during this consultation related to catch and effort to date in the commercial salmon fishery north of Cape Falcon.

Inseason action #4 closed the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon at 11:59 p.m. (midnight) on June 20, 2012 with a requirement that all salmon be landed within 24 hours of the closure. The fishery reopened for the period June 22, 2012 through June 29, 2012, with a landing limit of 35 Chinook salmon per vessel for that period and a

requirement that all salmon be landed within 24 hours of the closure. This action was taken to prevent exceeding the Chinook salmon quota in the commercial fishery north of Cape Falcon for the May/June season. On June 19, 2012, the states recommended this action and the RA concurred; inseason action #4 took effect on June 20, 2012 and remained in effect until July 1, 2012, when the 2012 management measures for the 2012 July through September season took effect. Inseason modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #5

The RA consulted with representatives of WDFW on July, 12, 2012. The information considered during this consultation related to catch and effort to date in the recreational salmon fishery north of Cape Falcon. Council staff were not available to participate in the consultation, but NMFS subsequently consulted with them and they agreed with the action taken. ODFW did not participate in the consultation as the action did not affect Oregon fisheries.

Inseason action #5 adjusted the daily bag limit for the recreational salmon fishery from U.S./Canada Border to Cape Alava (Neah Bay subarea). The daily bag limit, which had been set preseason at two fish per day, was changed to two fish per day only one of which can be a Chinook salmon. This action was taken to conserve available Chinook salmon and to extend the season as planned preseason by slowing the catch rate of Chinook salmon. On July 12, 2012, the state of Washington recommended this action and the RA concurred; inseason action #5 took effect on July 16, 2012, and remained in effect until inseason action #13 took effect on August 17, 2012. Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Actions #6, #8, #9, and #11

The RA consulted with representatives of the Council, WDFW, and ODFW on July 18, July 25, August 1, and August 15, 2012. The information considered during these consultations related to catch and effort to date in the commercial salmon fishery north of Cape Falcon.

These inseason actions made incremental adjustments to the landing limit in the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon for the July 6 through August 17, 2012 season. The landing limit established preseason was 40 Chinook salmon and 35 coho per vessel per open period. The specific landing limit adjustments are shown in the following table:

Inseason action number	Effective dates	Adopted landing limit
6	July 20, 2012 through July 24, 2012	50 Chinook salmon and 35 coho.
8	July 27, 2012 through July 31, 2012	60 Chinook salmon and 35 coho.
9	August 3, 2012 through August 14, 2012	90 Chinook salmon and 35 coho.
11	August 17, 2012 through August 21, 2012	120 Chinook salmon and 40 coho.

These actions were taken to allow access to under-utilized Chinook salmon and coho quotas. At each consultation listed above, the states recommended the action and the RA concurred. Modification of landing limits inseason is authorized by 50 CFR 660.409(b)(1)(ii).

Inseason Action #7

The RA consulted with representatives of the Council, WDFW, and ODFW on July 25, 2012. The information considered during this consultation related to catch and effort to date in the recreational salmon fishery north of Cape Falcon.

Inseason action #7 removed the 5 day per week restriction established preseason for recreational fishing from Queets River, Washington, to Leadbetter Point, Washington (Westport subarea) and opened recreational salmon fishing in this area 7 days per week. This action was taken to allow greater access to available Chinook salmon. On July 25, 2012, the state of Washington recommended this action and the RA concurred; inseason action #7 took effect on August 3, 2012, and remains in effect until subsequent inseason action or the end of the fishing season as described in the annual management measures for 2012. Modification of recreational fishing days per calendar week is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Action #10

The RA consulted with representatives of the Council, ODFW, and California Department of Fish and Game on August 6, 2012. The information considered during this consultation related to catch and effort to date in the commercial salmon fishery south of Cape Falcon.

Inseason action #10 closed the commercial salmon fishery from Humbug Mountain, Oregon to the Oregon/California Border (Oregon KMZ). This action was taken due to projected attainment of the August quota of Chinook salmon within the management area. On August 6, 2012, the state of Oregon recommended this action and the RA concurred; inseason action #10 took effect at 11:59 p.m. (midnight), August 3, 2012, and remains in effect until September 5, 2012. Closure of a fishing season for projected attainment of quota is authorized by 50 CFR 660.409(a)(1).

Inseason Action #12

The RA consulted with representatives of the Council, WDFW, and ODFW on August 15, 2012. The information considered during this consultation related to catch and effort to date in the commercial salmon fishery north of Cape Falcon.

Inseason action #12 modified the landing and possession limit and landing periods for the commercial salmon fishery from the U.S./Canada Border to Cape Falcon, Oregon for the August 24 through September 17, 2012 season. Preseason, this fishery was scheduled to be open Friday through Monday with a landing and possession limit of 20 Chinook salmon and 40 coho per vessel per open period. Inseason action #12 changed the openings to Friday through Tuesday with a landing and possession limit of 120 Chinook salmon and 40 coho per vessel per open period. This action was taken to allow greater access to under-utilized Chinook salmon and coho quota. On August 15, 2012, the state of Washington recommended this action and the RA concurred; inseason action #12 took effect on August 24, 2012, and remains in effect until subsequent inseason action or the end of the fishing season as described in the annual management measures for 2012. Inseason modification of quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Inseason Action #13

The RA consulted with representatives of the Council, WDFW, and ODFW on August 15. The

information considered during this consultation related to catch and effort to date in the recreational salmon fishery north of Cape Falcon.

Inseason action #13 changed the daily bag limit in the recreational salmon fisheries from Queets River, Washington to Leadbetter Point, Washington (Westport subarea) and from the U.S./Canada Border to Cape Alava (Neah Bay subarea). The bag limit in the Westport subarea was set preseason at two fish per day, no more than one of which can be a Chinook. The bag limit in the Neah Bay subarea was set preseason at two fish per day was modified by Inseason action #5 to two fish per day, only one of which can be a Chinook salmon. Inseason action #13 changed the bag limit in Westport and Neah Bay subareas to two fish per day, both of which can be Chinook salmon. This action was taken to allow greater access to available Chinook salmon. On August 15, 2012, the state of Washington recommended this action and the RA concurred; inseason action #13 took effect on August 17, 2012, and remains in effect until subsequent inseason action or the end of the fishing season as described in the annual management measures for 2012. Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

Inseason Action #14

The RA consulted with representatives of the Council, WDFW, and ODFW on August 22. The information considered during this consultation related to catch and effort to date in the recreational salmon fishery north of Cape Falcon.

Inseason action #14 changed the daily bag limit in the recreational salmon fisheries from Leadbetter Point, Washington to Cape Falcon, Oregon (Columbia River subarea). The bag limit in the Columbia River subarea was set preseason at two fish per day, no more than one of which can be a Chinook. Inseason action #14 changed the bag limit in the Columbia River subarea to two fish per day, both of which can be Chinook salmon. This action was taken to allow greater access to available Chinook salmon. On August 22, 2012, the state of Washington recommended this action and the RA concurred; inseason action #14 took effect on August 27, 2012, and remains in effect until subsequent inseason action or the end of the fishing season as described in the annual management measures for 2012. Modification of recreational bag limits is authorized by 50 CFR 660.409(b)(1)(iii).

All other restrictions and regulations remain in effect as announced for the 2012 Ocean Salmon Fisheries and 2013 fisheries opening prior to May 1, 2013 (77 FR 25915, May 2, 2012).

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

Classification

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

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

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

Dated: September 4, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–22236 Filed 9–7–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 175
Monday, September 10, 2012

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[NRC–2009–0090]

RIN 3150–AI58

Fitness-for-Duty Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory basis and preliminary proposed rule language.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) will periodically make publicly available a series of documents related to the ongoing proposed rulemaking effort to amend its regulations regarding Fitness-for-Duty Programs. The NRC does not plan to institute a public comment period for these materials when making them publicly available. This document announces the availability of two rulemaking documents: The regulatory basis and preliminary proposed rule language for requiring personnel performing certain quality control and quality verification (QC/QV) duties to comply with the work hour provisions. The availability of these documents provides increased awareness to interested stakeholders and provides preparatory material for future public meetings.

DATES: At this time, the NRC is not soliciting formal public comments on the materials identified in this document. There will be an opportunity for formal public comment on the proposed rule when it is published in the **Federal Register**.

ADDRESSES: Please refer to Docket ID NRC–2009–0090 when contacting the NRC about the availability of information for this document. You may access information and comment submittals related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0090.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Scott C. Sloan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1619; email: *Scott.Sloan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

As the NRC continues its ongoing proposed rulemaking effort to amend portions of part 26 of Title 10 of the Code of Federal Regulations (10 CFR), ''Fitness-for-Duty Programs,'' subpart I, ''Managing Fatigue,'' the NRC will periodically make preliminary documents publicly available on the Federal rulemaking Web site, *www.regulations.gov,* under Docket ID NRC–2009–0090. By making these documents publicly available, the NRC seeks to inform stakeholders of the current status of the NRC's rulemaking development activities and provide preparatory material for future public meetings. The NRC is not instituting a public comment period on these materials, but the public is encouraged to participate in related public meetings. In addition, the public will be given opportunity to provide comments on the proposed rule upon its publication in the **Federal Register**.

II. Petitions for Rulemaking

A discussion of a September 28, 1999, petition for rulemaking (PRM), PRM–26–2 (64 FR 67205; December 1, 1999), is included in the Regulatory Basis for this proposed rulemaking. This PRM was partially considered in the March 31, 2008 (73 FR 16965), Fitness for Duty Programs final rule. In this proposed rulemaking, the NRC is considering PRM–26–3 (76 FR 28192; May 16, 2011), PRM–26–5 (76 FR 28192; May 16, 2011), and PRM–26–6 (76 FR 28191; May 16, 2011).

III. Publicly Available Documents

The NRC has posted for public availability on *www.regulations.gov,* the regulatory basis for requiring personnel performing certain quality control and quality verification (QC/QV) duties to comply with the work hour provisions of 10 CFR part 26, subpart I. This regulatory basis was completed in 2010 and documents the reasons why the NRC determined rulemaking was the appropriate course of action to remedy a regulatory shortcoming.

When the regulatory basis was completed, the NRC had not yet begun the rulemaking that provides a voluntary alternative to the Minimum Days Off (MDO) requirements found in § 26.205(d)(3). That alternative became effective on August 11, 2011 (76 FR 43534). However, initial technical analysis indicates that the alternative to the MDO requirements does not change the basis for this rulemaking.

In addition, the NRC has posted preliminary proposed rule language related to these QC/QV personnel on www.regulations.gov. This preliminary proposed rule language contains one portion of the NRC's planned proposed changes. This language does not represent a final NRC staff position, nor has it been reviewed by the Commission. Therefore, the preliminary proposed rule language may undergo significant revision during the rulemaking process.

The NRC is not requesting formal public comments on the regulatory basis or the preliminary proposed rule language. The NRC may post additional materials, including other preliminary rule language, to the Federal rulemaking Web site at *https://www.regulations.gov,* under Docket ID NRC–2009–0090. The Federal rulemaking Web site allows you to receive alerts when changes or

additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2009–0090); (2) click the ''Email Alert'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. Although regulations are exempt under the Act, the NRC is applying the same principles to its rulemaking documents. Therefore, the NRC has written this document, including the preliminary proposed rule language, to be consistent with the Plain Writing Act. There will be an opportunity for formal public comment on the use of plain language when the proposed rule is published in the **Federal Register**.

Dated at Rockville, Maryland, this August 22, 2012.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–22185 Filed 9–7–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SATS No. AR–040–FOR; Docket ID OSM–2012–0017]

Arkansas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Arkansas regulatory program (Arkansas program) and the Arkansas abandoned mine land reclamation plan (Arkansas plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Arkansas proposes to revise substantial portions of its regulatory program and abandoned mine land reclamation plan, make grammatical changes, correct punctuation, revise dates, and delete and add citations. The proposed amendment consists of substantive changes to Arkansas's regulations regarding: Subchapter A—General; Subchapter F—Areas Unsuitable for Mining; Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems; Subchapter J—Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; Subchapter K—State Program Performance Standards; Subchapter L—State Program Inspection and Enforcement Procedures; Subchapter M—Training Programs for Blasters and Members of Blasting Crews, and Certification Programs for Blasters; and Subchapter R—Abandoned Mine Land Reclamation.

This document provides the times and locations that the Arkansas program, Arkansas plan, and this proposed amendment are available for your review; the comment period during which you may submit written comments on the amendment; and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., c.d.t., October 10, 2012. If requested, we will hold a public hearing on the amendment on October 5, 2012. We will accept requests to speak at a hearing until 4:00 p.m., c.d.t. on September 25, 2012.

ADDRESSES: You may submit comments, identified by SATS No. AR–040–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Arkansas regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office, or the full text of the program amendment available for you to read at *www.regulations.gov.*

Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629, Telephone: (918) 581–6430 .

In addition, you may review a copy of the amendment during regular business hours at the following location: Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118–5317, Telephone: (501) 682–0744.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. Email: *aclayborne@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Arkansas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Arkansas program effective November 21, 1980. You can find background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program in the November 21, 1980, **Federal Register** (45 FR 77003). You can find later actions on the Arkansas program at 30 CFR 904.10, 904.12, and 904.15.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of

coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Arkansas plan on May 2, 1983. You can find background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 2, 1983, **Federal Register** (48 FR 19710). You can find later actions concerning the Arkansas plan at 30 CFR 904.25 and 904.26.

II. Description of the Proposed Amendment

By letter dated June 25, 2012 (Administrative Record No. AR–572), Arkansas submitted a proposed amendment to its program and plan pursuant to SMCRA. Arkansas submitted the amendment in response to a September 30, 2009, letter (Administrative Record No. AR–571) from OSM in accordance with 30 CFR 732.17(c). Arkansas is also making substantial changes to other sections of its regulatory program and its abandoned mine land reclamation plan on its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Arkansas proposes to revise substantial portions of its regulatory program and abandoned mine land reclamation plan, make grammatical changes, correct punctuation, revise dates, update addresses, and delete and add citations. Arkansas proposes to revise every section title throughout its regulations by replacing ''Section'' with ''Reg.20.'' and by deleting the title dates. Arkansas also proposes to replace the word ''Director'' with ''Department'' and replace the word ''Chapter'' with ''Code'' throughout its entire regulations. The Arkansas regulations that contain substantive changes are listed in the table below.

SUBSTANTIVE CHANGES TABLE

ARKANSAS REG.20. SECTIONS	TITLE
SUBCHAPTER A—GENERAL PART 700—GENERAL	
700.11, 700.12, and 700.16	Rulemaking Initiated by the Commission; Petitions to Initiate Rulemaking; and Employee Protection.
PART 701 STATE PROGRAM	
701.5	Definitions.
PART 702 EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS	
702.13	Public Availability of Information.
PART 705—RESTRICTIONS ON FINANCIAL INTERESTS OF ENFORCEMENT PERSONNEL	
705.1 and 705.13	Scope and When to File.
SUBCHAPTER F—AREAS UNSUITABLE FOR MINING PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS	
762.5	Definitions.
SUBCHAPTER G—SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION PROCEDURES SYSTEMS PART 770—GENERAL	
770.5	Definitions.
PART 771—GENERAL REQUIREMENTS FOR PERMITS AND APPLICATIONS	
771.25	Permit Fees.
PART 776—GENERAL REQUIREMENTS FOR COAL EXPLORATION OPERATIONS	
776.17	Public Availability of Information.
PART 778—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION	
778.1, 778.2, 778.4, 778.6, 778.9, 778.11, 778.12, 778.13, 778.14, 778.15, 778.16, 778.17, 778.20, 778.21, and 778.22.	Scope; Objectives; Responsibility; Applicability, Certifying and Updating Existing Permit Application Information; Applicant and Operator Information; Permit History Information; Property Interest Information; Violation Information; Right of Entry Information; Status of Unsuitability Claims; Permit Term Information; Identification of Location of Public Office for Filing of Application; Newspaper Advertisement and Proof of Publication; and Facilities or Structures Used in Common.

SUBSTANTIVE CHANGES TABLE—Continued

ARKANSAS REG.20. SECTIONS	TITLE
PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES	
779.21	Analysis of Selected Overburden or Topsoil Mixtures.
PART 780—SURFACE MINING PERMIT APPLICATION—MINIMUM REQUIREMENT FOR RECLAMATION AND OPERATION PLAN	
780.11, 780.13, 780.15, 780.16, 780.18, 780.21, 780.23, 780.25, 780.28, 780.29, 780.35, 780.37, and 780.38.	Operation Plan: General Requirements; Operation Plan: Blasting; Air Pollution Control Plan; Fish and Wildlife Plan; Reclamation Plan: General Requirements; Reclamation Plan: Hydrologic Information; Reclamation Plan: Postmining Land Uses; Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments; Activities In or Adjacent to Perennial or Intermittent Streams; Diversions; Disposal of Excess Spoil; Road Systems; and Support Facilities.
PART 782—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION	
782.1–782.21	Scope; Objectives; Responsibilities; Applicability; Identification of Interests; Compliance Information; Right of Entry and Operation Information; Relationship to Areas Designated Unsuitable For Mining; Permit Term Information; Personal Injury and Property Damage Insurance Information; Identification of Other Licenses and Permits; Identification of Location of Public Office for Filing of Application; and Newspaper Advertisement and Proof of Publication.
PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN	
784.14, 784.19, 784.20, and 784.28	Reclamation Plan: Hydrologic Information; Underground Development Waste; Subsidence Control Plan; and Surface Activities in or Adjacent to Perennial or Intermittent Streams.
PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING	
785.13, 785.14, 785.15, 785.16, 785.18, 785.22, and 785.25.	Experimental Practices Mining; Mountaintop Removal Mining; Steep Slope Mining; Permits Incorporating Variances from Approximate Original Contour Restoration Requirements for Steep Slope Mining; Variances for Delay in Contemporaneous Reclamation Requirements in Combined Surface and Underground Mining Operations; In Situ Processing Activities; and Lands Eligible for Remining.
PART 786—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING	
786.1, and 786.3–786.31	Scope; Responsibilities; Pre-Application Conference; Regulatory Coordination with Requirements under Other Laws; Public Participation in Permit Processing; Review of Permit Applications; General Provisions for Review of Permit Application Information and Entry of Information into AVS; Review of Applicant, Operator, and Ownership and Control Information; Review of Permit History; Review of Compliance History; Permit Eligibility Determination; Unanticipated Events or Conditions at Remining Sites; Eligibility for Provisionally Issued Permits; Written Findings for Permit Application Approval; Performance Bond Submittal; Permit Conditions; Permit Issuance and Right of Renewal; Initial Review and Finding Requirements for Improvidently Issued Permits; Notice Requirements for Improvidently Issued Permits; Suspension or Rescission Requirements for Improvidently Issued Permits; Eligibility to Challenge Ownership or Control Listings and Findings; Procedures for Challenging an Ownership or Control Listing or Finding; Burden of Proof for Ownership or Control Challenges; Written Decision on Challenges to Ownership or Control Listings or Findings; Conditions of Permits: Environment, Public Health, and Safety; Improvidently Issued Permits: General Procedures; and Improvidently Issued Permits: Recision Procedures.
PART 787—ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS	
787.12	Judicial Review.
PART 788—REVISION; RENEWAL; TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS; POST–PERMIT ISSUANCE REQUIREMENTS; AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL, AND VIOLATION INFORMATION	
788.5, 788.9, 788.10, 788.11, 788.13, 788.14, 788.15, 788.16, 788.17, 788.18, and 788.19.	Definitions; Post-Permit Issuance Requirements and Other Actions Based on Ownership, Control, and Violation Information; Post-Permit Issuance Requirements for Permittees; Review of Permits; Permit Renewals: General Requirements; Permit Renewals: Completed Applications; Permit Renewals: Terms; Permit Renewals: Approval or Denial; Transfer, Assignment, or Sale of Permit Rights: General Requirements; Transfer, Assignments, or Sale of Permit Rights: Obtaining Approval; and Requirements for New Permits for Persons Succeeding to Rights Granted Under a Permit.

SUBSTANTIVE CHANGES TABLE—Continued

ARKANSAS REG.20. SECTIONS	TITLE
SUBCHAPTER J—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS PART 800—BONDS AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER THE STATE PROGRAM	
800.23 and 800.40	Self-bonding; and Requirement to Release Performance Bonds.
SUBCHAPTER K—STATE PROGRAM PERFORMANCE STANDARDS PART 810—STATE PROGRAM PERFORMANCE STANDARDS GENERAL PROVISIONS	
810.11	Applicability.
PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES	
816.11, 816.13, 816.14, 816.15, 816.22, 816.41, 816.42, 816.43, 816.44, 816.45, 816.46, 816.48, 816.49, 816.50–S, 816.50–U, 816.51–S, 816.52–S, 816.53, 816.54, 816.55, 816.56, 816.57; 816.61–U, 816.64–U, 816.68, 816.71, 816.100, 816.101–S, 816.101–U, 816.102, 816.106, 816.107, 816.113, 816.114, 816.116, 816.121–U, 816.122–U, 816.133, 816.151, 816.180, and 816.181.	Signs and Markers; Casing and Sealing of Drilled Holes: General Requirements; Casing and Sealing of Drilled Holes: Temporary; Casing and Sealing of Drilled Holes: Permanent; Topsoil and Subsoil; Hydrologic Balance: Protection; Hydrologic Balance: Water Quality Standards and Effluent Limitations; Hydrologic Balance: Diversions; Hydrologic Balance: Stream Channel Diversions; Hydrologic Balance: Sediment Control Measures; Hydrologic Balance: Siltation Structures; Hydrologic Balance: Acid-forming and Toxic-forming Spoil; Impoundments, Hydrologic Balance: Ground Water Protection; Hydrologic Balance: Underground Mine Entry and Access Discharges; Hydrologic Balance: Protection of Groundwater Recharge Capacity; Hydrologic Balance: Surface And Groundwater Monitoring; Hydrologic Balance: Transfer Of Wells; Hydrologic Balance: Water Rights and Replacement; Hydrologic Balance: Discharge of Water into an Underground Mine; Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities; Hydrologic Balance: Activities in or Adjacent to Perennial or Intermittent Streams; Use of Explosives: General Requirements; Use of Explosives: Public Notice of Blasting Schedule; Use of Explosives: Records of Blasting Operations; Disposal of Excess Spoil: General Requirements; Contemporaneous Reclamation; Backfilling and Grading: Time and Distance Requirements; Backfilling and Grading: General Requirements; Backfilling and Grading: General Grading Requirements; Backfilling and Grading: Previously Mined Areas; Backfilling and Grading: Steep Slopes; Revegetation: Timing; Revegetation: Mulching and Other Soil Stabilizing Practices; Revegetation: Standards for Success; Subsidence Control: General Requirements; Subsidence Control: Public Notice; Postmining Land Use; Roads: Primary Roads; Utility Installations; and Support Facilities.
PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES	
817.1–817.181	Scope; Objectives; Signs and Markers; Casing and Sealing of Exposed Underground Openings: General Requirements; Casing and Sealing of Underground Openings: Temporary; Casing and Sealing of Underground Openings: Permanent; Topsoil and Subsoil; Hydrologic Balance: Protection; Hydrologic Balance: Water Quality Standards and Effluent Limitations; Hydrologic Balance: Diversions; Hydrologic Balance: Sediment Control Measures; Hydrologic Balance: Siltation Structures; Hydrologic Balance: Discharge Structures; Impoundments; Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities; Hydrologic Balance: Surface Activities in or Adjacent to Perennial or Intermittent Streams; Coal Recovery; Use of Explosives: General Requirements; Use of Explosives: Pre-blasting Survey; Use of Explosives: Public Notice of Blasting Schedule; Use of Explosives: Blasting Signs, Warnings, and Access Control; Use of Explosives: Control of Adverse Effects; Use of Explosives: Seismographic Measurements; Use of Explosives: Records of Blasting Operations; Disposal of Excess Spoil: General Requirements; Disposal of Excess Spoil: Valley Fills/Head-of Hollow Fills; Disposal of Excess Spoil: Durable Rock Fills; Disposal of Excess Spoil: Pre-Existing Benches; Coal Mine Waste: General Requirements; Coal Mine Waste: Refuse Piles; Coal Mine Waste: Impounding Structures; Coal Mine Waste: Burning and Burned Waste Utilization; Disposal of Noncoal Mine Wastes; Stabilization of Surface Areas; Protection of Fish, Wildlife, and Related Environmental Values; Slides and Other Damage; Contemporaneous Reclamation; Backfilling and Grading: General Requirements; Backfilling and Grading: Previously Mined Areas; Backfilling and Grading: Steep Slopes; Revegetation: General Requirements; Revegetation: Timing; Revegetation: Mulching and Other Soil Stabilizing Practices; Revegetation: Standards for Success; Subsidence Control: General Requirements; Subsidence Control: Public Notice; Cessation of Operations: Temporary; Cessation of Operations: Permanent; Postmining Land Use; Roads: General; Roads: Primary Roads; Utility Installations; and Support Facilities.
PART 818—SPECIAL STATE PROGRAM PERFORMANCE STANDARDS—CONCURRENT SURFACE AND UNDERGROUND MINING	
818.1–818.15	Scope; Objective; Responsibilities; Applicability; Compliance with Variance; and Additional Performance Standards.

SUBSTANTIVE CHANGES TABLE—Continued

ARKANSAS REG.20. SECTIONS	TITLE
PART 819—SPECIAL STATE PROGRAM PERFORMANCE STANDARDS—AUGER MINING	
819.11, 819.13, 819.15, 819.17, 819.19, and 819.21.	Auger Mining: General; Auger Mining: Coal Recovery; Auger Mining: Hydrologic Balance; Auger Mining: Subsidence Protection; Auger Mining: Backfilling and Grading; and Auger Mining: Protection of Underground Mining.
PART 823—SPECIAL STATE PROGRAM PERFORMANCE STANDARDS—OPERATIONS ON PRIME FARMLAND	
823.15	Revegetation and Restoration of Soil Productivity.
PART 827—SPECIAL STATE PROGRAM PERFORMANCE STANDARDS COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED AT OR NEAR THE MINE SITE OR NOT WITHIN THE PERMIT AREA FOR A MINE	
827.12	Coal Processing Plants: Performance Standards.
SUBCHAPTER L—STATE PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES PART 842—INSPECTIONS	
842.11 and 842.15	Inspections and Review of Decision Not to Inspect or Enforce.
PART 843—ENFORCEMENT	
843.11, 843.15, and 843.16	Cessation Orders; Informal Public Hearing; and Formal Review of Citations.
PART 845—CIVIL PENALTIES	
845.12, 845.13, 845.14, 845.15, 845.17, 845.18, 845.19, and 845.20.	When Penalty Will Be Assessed; Point System for Penalties; Determination of Amount of Penalty; Assessment of Separate Violations for Each Day; Procedures for Assessment of Civil Penalties; Procedures for Assessment Conference; Request for Adjudicatory Public Hearing; and Final Assessment and Payment of Penalty.
PART 846—INDIVIDUAL CIVIL PENALTIES	
846.5, 846.14, 846.17, and 846.18	Definitions; Amount of Individual Civil Penalty; Procedure for Assessment of Individual Civil Penalty; and Payment of Penalty.
PART 847—ALTERNATIVE ENFORCEMENT	
847.1–847.16	Scope; General Provisions; Criminal Penalties; and Civil Actions for Relief.
SUBCHAPTER M—TRAINING PROGRAMS FOR BLASTERS AND MEMBERS OF BLASTING CREWS, AND CERTIFICATION PROGRAMS FOR BLASTERS PART 850—PROGRAMS	
850.16	Reciprocity.
SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION PART 874—GENERAL RECLAMATION REQUIREMENTS	
874.12, 874.13, and 874.16	Eligible Lands and Water; Reclamation Objectives and Priorities; and Contractor Eligibility.
PART 877—RIGHTS OF ENTRY	
877.11, 877.12, 877.13, and 877.14	Consent to Entry; Entry for Studies or Exploration; Entry and Consent to Reclaim; and Entry for Emergency Reclamation.
PART 879—ACQUISITION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER	
879.11, 879.12, 879.13, and 879.15	Land Eligible for Acquisition; Procedures for Acquisition; Acceptance of Gifts of Land; and Disposition of Reclaimed Lands.
PART 882—RECLAMATION ON PRIVATE LAND	
882.13	Liens.
PART 900—PROCEDURES FOR HEARING AND APPEALS	
900.2, 900.3, 900.4, 900.5, 900.6, 900.7, 900.9, and 900.12.	Filing of Documents; Form of Documents; Service and Proof of Service; Intervention, Voluntary Dismissal; Motions; Advancement of Proceedings, and Other Procedures.

SUBSTANTIVE CHANGES TABLE—Continued

ARKANSAS REG.20. SECTIONS	TITLE
PART—920 ADJUDICATORY HEARINGS	
920.1, 920.2, 920.3, 920.7, and 920.8	Presiding Officers; Powers of Presiding Officers; Notice of Hearing; Initial Orders and Decisions; and Effect of Initial Order or Decision.
PART 930—DISCOVERY	
930.1	Discovery.
PART 940—TEMPORARY AND EXPEDITED REVIEW	
940.3	Procedures for Expedited Review.
PART 960—APPEALS	
960.2–960.7	Appeals: How Taken; Answer; Stay Pending Appeal; Certified Transcript; Record on Appeal; and Extended Time for Appeals.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether Arkansas's proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Arkansas State program.

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Arkansas plan.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on September 25, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 18, 2012.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

[FR Doc. 2012–22233 Filed 9–7–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0714]

RIN 1625–AA08

Special Local Regulation; Partnership in Education, Dragon Boat Race; Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a permanent Special Local Regulation on the Maumee River, Toledo, Ohio. This regulation is intended to regulate vessel movement in portions of the Maumee River during the annual Dragon Boat Races. This special local regulated area is necessary to protect race participants from other vessel traffic.

DATES: Comments and related material must be received by the Coast Guard on or before October 10, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0714 using any one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

Fax: 202–493–2251.

Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email LTJG Benjamin Nessia, Response Department, MSU Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when the comment is successfully transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. 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.

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2. Viewing comments and documents

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Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

On May 11, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation; Partnership in Education Dragon Boat Race, Maumee River Toledo, OH in the **Federal Register** (Docket Number USCG–2011–0211, 76 FR 27284). No public comments were received; a public meeting was not requested, and no public meetings were held. However, the Coast Guard elected not to publish a final rule (FR) following that 2011 NPRM. Given the length of time since the 2011 NPRM comment period ended, the Coast Guard has decided to again solicit public comments for this annual event. In addition to the 2011 NPRM, the Coast Guard established a temporary final rule (TFR) earlier this year to establish Special Local Regulations for the 2012 occurrence of this event (full text not published in the **Federal Register**). Because of the application submission by the sponsoring organization was delayed in 2012, the Coast Guard used the ''Good Cause'' exception to the Notice & Comment requirement of the Administrative Procedure Act.

C. Basis and Purpose

Each year, an organized racing event takes place on the Maumee River in which participants paddle Hong Kong

style Dragon Boats from International Park to Owens Corning on the Maumee River in Toledo, OH. This recurring event is known as the Dragon Boat races. The Captain of the Port Detroit has determined that this dragon boat race in close proximity to other watercraft and in the shipping channel poses a significant risk to public safety and property. Thus, the Captain of the Port Detroit has determined it necessary to establish a permanent Special Local Regulation around the location of the race's course to ensure the safety of persons and property at this annual event and help minimize the associated risks.

D. Discussion of Proposed Rule

As suggested above, this proposed rule is intended to ensure safety of the public and vessels during the Dragon Boat Races. This proposed rule will become effective 30 days after the final rule is published in the **Federal Register**. However, the Special Local Regulation will only be enforced annually on the third or fourth Saturday in July from 6:00 a.m. until 6:00 p.m. Vessel traffic may proceed down the West side of the river at a no wake speed during racing. The races will stop for oncoming freighter or commercial traffic. The on-scene representative may be present on any Coast Guard, state or local law enforcement, or sponsor provided vessel assigned to patrol the event. The on-scene representatives may permit vessels to transit the area when no race activity is occurring. Coast Guard proposes that all vessels transiting the area shall proceed at a no-wake speed and maintain extra vigilance at all times.

This Special Local Regulation will encompass all navigable waters of the United States on the Maumee River, Toledo, OH, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41°39′5.27″ N; 083°31′34.01″ W straight across the river along the Cherry Street bridge to position 41°39′12.83″ N; 083°31′42.58″ W and a line extending from a point of land just south of International Park at position 41°38′ 46.62″ N; 083°31′50.54″ W straight across the river to the shore adjacent to the Owens Corning building at position 41°38′47.37″ N; 083°32′2.05″ W. These coordinates are North American Datum of 1983 (NAD 83).

The Captain of the Port will notify the affected segments of the public of the enforcement of this Special Local Regulation by all appropriate means. Means of notification may include publication of Notice of Enforcement (NOE) in the **Federal Register**, Broadcast Notice to Mariners, and Local Notice to Mariners.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The Special Local Regulation will be relatively small and be enforced for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the area when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the portion of the Maumee River discussed above annually on the third or fourth Saturday of July from 6:00 a.m. until 6:00 p.m.

This proposed Special Local Regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for approximately twelve hours the day of its effective period. In addition, on-scene representatives will allow vessels to transit along the Western side of the river at a slow no wake speed. The race committee will stop the races for any oncoming commercial traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Benjamin Nessia, Response Department, MSU Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places or vessels.

7. 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 proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule will meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination 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 proposed rule involves the establishment of a Special Local Regulation and is therefore categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction. During the annual permitting process for this Dragon Boat Race event an environmental analysis will be conducted, and thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) will be required for this rulemaking action. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.921 to read as follows:

§ 100.921 Special Local Regulations, Partnership in Education, Dragon Boat Festival, Toledo, OH.

(a) Regulated Area. The regulated area includes all U.S. navigable waters of the Maumee river, Toledo, OH, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41°39′5.27″ N; 083°31′34.01″ W straight across the river along the Cherry Street bridge to position 41°39′12.83″ N; 083°31′42.58″ W and a line extending from a point of land just south of International Park at position 41°38′46.62″ N; 083°31′50.54″ W straight across the river to the shore adjacent to the Owens Corning building at position 41°38′47.37″ N; 083°32′2.05″ W. These coordinates are North American Datum of 1983 (DATUM: NAD 83).

(b) Enforcement Period. These Special Local Regulations will be enforced annually on the third or fourth Saturday of July from 6:00 a.m. until 6:00 p.m. The exact dates and times will be determined annually and published annually in the **Federal Register** via a Notice of Enforcement.

(c) Special Local Regulations.

(1) In accordance with the general regulations in section § 100.901 of this part, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for vessels participating in the event. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by the Coast Guard's on-scene representative or by event representatives during the event.

(2) The ''on-scene representative'' of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Detroit to act on his behalf. The on-scene representative of the Captain of the Port, Sector Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated on scene representative may be contacted via VHF Channel 16.

Dated: August 6, 2012.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port, Sector Detroit.

[FR Doc. 2012–22153 Filed 9–7–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 161

[Docket No. USCG–2011–1024]

RIN 1625–AB81

Vessel Traffic Service Updates, Including Establishment of Vessel Traffic Service Requirements for Port Arthur, TX and Expansion of VTS Special Operating Area in Puget Sound

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise and update the Vessel Traffic Service (VTS) regulations in 33 CFR part 161. The revision would require participation in the VTS in Port Arthur, Texas, which is now voluntary; consolidate and expand a VTS Special Area in Puget Sound, Washington; update the designated frequencies for the Maritime Mobile Service Identifiers (MMSI) for Louisville and Los Angeles/Long Beach; and update the definitions and references in Sailing Plan requirements. The changes made by this proposed rule are intended to align regulations with the current operating procedures of the VTSs affected, with the benefit of creating regulatory efficiency.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before December 10, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1024 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Lieutenant Commander Patricia Springer, Office of Shore Forces (CG–7413), Coast Guard; telephone 202–372–2576, email *Patricia.J.Springer@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Public Meeting
II. Abbreviations
III. Background
IV. Discussion of Proposed Rule
A. § 161.12 Vessel Operating Requirements
B. § 161.19 Sailing Plan
C. § 161.55 Vessel Traffic Service Puget Sound and the Cooperative Vessel Traffic Service for the Juan de Fuca Region
D. § 161.70 Vessel Traffic Service Port Arthur
V. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

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methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

AIS Automatic Identification System
CDC Certain Dangerous Cargos
MMSI Maritime Mobile Service Identifier
MTSA Maritime Transportation Security Act of 2002
NDG National Dialogue Group
NPRM Notice of Proposed Rulemaking
PAWSA Port and Waterway Safety Assessment
PAWSS Port and Waterways Safety System
PWSA Ports and Waterways Safety Act
SOLAS International Convention for the Safety of Life at Sea
U.S.C. United States Code
VTM Vessel Traffic Management
VTS Vessel Traffic Service

III. Background

In the late 1990s, the Coast Guard convened a national dialogue group (NDG) comprised of maritime and waterway community stakeholders to identify the needs of waterway users with respect to Vessel Traffic Management (VTM) and Vessel Traffic Service (VTS) systems. Those stakeholders, representing port authorities, pilots, environmental conservationists, the Coast Guard, and all major sectors of the U.S. and foreign-flag shipping industry were tasked to identify the information needs of waterway users to help ensure safe passage, assist in establishing a process to identify candidate waterways for VTM improvements and VTS installations, and identify the basic elements of a VTS. The intent of the NDG was to provide the foundation for an approach to VTM that would meet the stakeholders' shared objective of improving vessel traffic safety in U.S. ports and waterways in a technologically sound and cost-effective way.

The major outcome of the NDG was the development of the Port and Waterways Safety Assessment (PAWSA) process, which the Coast Guard established to open a dialogue with waterway users and port stakeholders to help identify needed VTM improvements and to determine candidate VTS waterways. PAWSA provides a formal structure for identifying risk factors and evaluating potential mitigation measures. The process requires the participation of experienced waterway users having local expertise in navigation, waterway conditions, and port safety. In addition, the Coast Guard includes non-maritime industry stakeholders in the process to ensure that important environmental, public safety, and economic considerations are given appropriate attention as risk-mitigation measures are selected.

The Coast Guard has conducted 47 PAWSA workshops in U.S. ports since the PAWSA process was developed in 1999, including one in Port Arthur, Texas, on September 21–23, 1999 and one in Lake Charles, Louisiana, on April 25–26, 2000. The Port Arthur, TX and Lake Charles, Louisiana PAWSA reports are publicly available on the NAVCEN Web site at *http://www.navcen.uscg.gov/?pageName=pawsaFinalReports* and in the docket for this rulemaking (USCG–2011–1024); see the ''Viewing Comments and Documents'' section of this proposed rule for more information. Based upon the mitigation recommendations contained in these PAWSA reports as well as resource availability and the existence of port infrastructure to support VTS efforts, the Coast Guard determined that Port Arthur, Texas and Lake Charles, Louisiana have a valid need for a Coast Guard-operated VTS.

As a result of the Port Arthur PAWSA workshop, which determined that a VTS would provide the greatest potential to mitigate risk in the port, the Coast Guard added Port Arthur to the Port and Waterways Safety System (PAWSS) acquisition project. The PAWSS project's goal was to install a computer-based VTM system in VTS ports. The installation of the VTS system in Port Arthur began in 2004 with voluntary operations slated to begin in September 2005. Due to disruptions from Hurricane Rita, VTS Port Arthur provided limited services from September 2005 until February 2006 when the VTS attained full operational capability.

Although this proposed rule would change VTS Port Arthur from a voluntary system to a system of mandatory compliance for vessels transiting VTS Port Arthur, the Coast Guard does not believe it would alter vessel operations or impose new costs on industry or the Coast Guard. The Coast Guard makes this determination because, under 33 CFR 164.46(3), all vessels which would be affected by changing VTS Port Arthur to a mandatory VTS system are already equipped with Automatic Identification Systems (AIS). Because AIS carriage requirements are the sole cost item for vessels to comply with VTS requirements, have been in force since December 31, 2004, and currently include the VTS Port Arthur area under 33 CFR Table 161.12(c), we have determined that changing VTS Port Arthur to a mandatory VTS should not alter current vessel operations or impose new costs on either the industry or the Coast Guard.

This proposed rule would also expand the currently voluntary Port Arthur VTS area to include Lake Charles, Louisiana. The 2000 Lake Charles PAWSA study supported the establishment of a VTS in Lake Charles. Coast Guard data pertaining to commercial vessel activities indicate that commercial vessels that transit the proposed expansion area of Lake Charles satisfy the AIS carriage requirements established under 33 CFR 164.46(3). Therefore, the Coast Guard does not believe that expanding Port Arthur VTS to include Lake Charles, LA, would alter current vessel operations or impose new costs on industry or the Coast Guard.

In addition to making participation in the Port Arthur VTS mandatory, this proposed rule would consolidate and expand the two VTS Special Areas in Puget Sound. A VTS Special Area is defined in 33 CFR 161.2 as ''a waterway within a VTS area in which special operating requirements apply.'' The Coast Guard institutes a VTS Special Area when geographic or other conditions, such as concentration of vessels or vessels carrying particular hazards, make a portion of the waterway an inherently dangerous navigational area.

When the federal regulations for vessel traffic systems were first implemented in 1994 (59 FR 36316, July 15, 1994), the Coast Guard instituted two VTS Special Areas within the VTS Puget Sound. These VTS Special Areas serve to avoid having large vessels impeding, meeting, overtaking or crossing with each other's intended track in the constricted waters between the San Juan Islands in Puget Sound.

In addition to the two existing VTS Special Areas in Puget Sound, special operating requirements have traditionally been issued in the proposed expansion area by VTS Puget Sound due to the relatively restricted nature of these waters. The proposed rule would incorporate into a single consolidated VTS Special Area the waters of the two existing VTS Special Areas and the waters currently covered by these special operating requirements. Because this rule would simply consolidate existing vessel operating procedures within VTS Puget Sound, the Coast Guard does not anticipate that the expansion of this VTS Special Area would alter current vessel operations or impose new regulatory costs on industry. This codification simplifies

compliance with these traffic management requirements.

Finally, this proposed rule would make two minor updates to the VTS regulations. The first change adds Maritime Mobile Service Identifier (MMSI) numbers, which are required for any AIS equipment installation, to the table in 33 CFR 161.12 as a result of the installment of Automatic Identification System (AIS) base stations in the Louisville, KY, VTS Area and Los Angeles/Long Beach Vessel Movement Reporting System area. The second change removes an outdated reference to Dangerous Cargo, and adds an updated reference to Certain Dangerous Cargo in 33 CFR 160.204.

IV. Discussion of Proposed Rule

This proposed rule would revise regulations in 33 CFR part 161 as follows:

A. § 161.12 Vessel Operating Requirements

We propose to revise Table 161.12(c) in order to include the MMSI information for two ports and to include updated information pertaining to VTS Port Arthur. First, this rulemaking would update the entry for Louisville and Los Angeles/Long Beach by adding each VTS's MMSI to the table. Second, this rulemaking would update the entry for Port Arthur by adding the designated frequencies and updating its monitoring areas. Finally, this rulemaking would change the entry for Port Arthur from ''Sabine Traffic'' to ''Port Arthur Traffic'' to more accurately reflect the nature of the VTS and add a note to the table that the third monitoring sector for Port Arthur will have limited services until the Coast Guard has the capability to provide full services. This rulemaking would not make any other changes to table 161.12(c).

B. § 161.19 Sailing Plan

This rulemaking would amend 33 CFR 161.19(f) by changing the reference from ''Dangerous Cargo as defined in 33 CFR 160.203'' to ''Certain Dangerous Cargo (CDC) as defined in 33 CFR 160.204.'' In 2003, 33 CFR Subpart C was revised and the definitions were moved from 33 CFR 160.203 to 33 CFR 160.204 (68 FR 9544, February 28, 2003). This rulemaking would also remove the references to § 160.211 and § 160.213 because these sections no longer exist in the CFR. These are administrative changes with no cost impact.

C. § 161.55 Vessel Traffic Service Puget Sound and the Cooperative Vessel Traffic Service for the Juan de Fuca Region

This rulemaking would modify 33 CFR 161.55 by consolidating the two existing VTS Special Areas that are located within the Vessel Traffic Service Puget Sound Area. In addition to consolidating two VTS Special Areas into one, this rulemaking would expand the consolidated VTS Special Area to encompass an additional area of navigational concern that has traditionally been subject to special operating requirements. The existing VTS Special Areas include the waters of Rosario Strait and Guemes Channel. The consolidated VTS Special Area would be slightly expanded to add the nearby waters of Bellingham Bay, western Padilla Bay and the Saddlebag route that is located east of Guemes Island, in the vicinity of Vendovi Island. This single consolidated VTS Special Area would promote maritime safety by applying the VTS Special Operating requirements of 33 CFR 161.13 to certain classes of vessels, defined in 33 CFR 161.16 and 161.55, while transiting the VTS Special Area and by prohibiting those classes of vessels from impeding, meeting, overtaking, crossing, or operating within 2,000 yards of each other (except when crossing astern) while transiting within this VTS Special Area. This proposed rulemaking is in line with current practice and should not result in changes to scheduling, queueing or transit times. Additionally, this proposed rulemaking would make permanent the special operating requirements that VTS Puget Sound has imposed within these areas since the original rules in 33 CFR 161.55 were established in 1994.

D. § 161.70 Vessel Traffic Service Port Arthur

We propose to add a new section that describes the Port Arthur Vessel Traffic Service area. The VTS area consists of the navigable waters south of 30°10′ N, east of 94°20′ W, west of 93°22′ W, and, north of 29°10′ N. This proposed change would establish mandatory participation in the VTS for all applicable vessels.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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 (including potential economic, environmental, public health and safety effects, distributive 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 notice of proposed rulemaking (NPRM) has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

A draft Regulatory Assessment follows:

This proposed rule would establish mandatory participation for the VTS area in Port Arthur, Texas and would consolidate and expand the VTS Special Areas in the Puget Sound Area to include Bellingham Channel, western Padilla Bay and the Saddlebag route east of Guemes Island.

The VTS system in Port Arthur was installed in 2004 and became fully operational in February 2006. Currently Port Arthur operates as a voluntary system. The proposed rule would make participation in the VTS mandatory for all vessels that are required to carry AIS equipment.

In 2003, the Coast Guard published a final rule (68 FR 60569, October 22, 2003) that harmonized the AIS carriage and standardization requirements contained in MTSA with the requirements of SOLAS. That prior rule established AIS carriage requirements for commercial vessels (33 CFR 164.46). As a result of this prior regulation, all U.S.-flagged commercial vessels that are required to carry AIS equipment for operation in the VTS under this rule have been in compliance since 2004. Similarly, foreign-flagged vessels have been required to carry AIS equipment under the SOLAS Convention since 2004. Because AIS carriage is required by regulation under 33 CFR 164.46 for commercial vessels, including those vessels that would be affected by this rule, we expect that there would not be additional costs to either industry or government resulting from this rule. A list of the categories of commercial vessels and the dates of compliance for AIS carriage are shown in Table 1.

TABLE 1—COMMERCIAL VESSELS: AIS CARRIAGE REQUIREMENTS

Class of vessel	AIS currently required	Compliance date
Self-propelled vessels 65 feet or more in length in commercial service and on an international voyage (excludes passenger and fishing vessels).	Yes	December 31, 2004.
Passenger vessels of 150 gross tons or more on an international voyage	Yes	July 1, 2003.
Tankers on international voyages, regardless of tonnage	Yes	July 1, 2003.
Vessels of 50,000 gross tons or more, other than tankers or passenger ships, on international voyages.	Yes	July 1, 2004.
Vessels of 300 gross tons or more but less than 50,000 gross tons, other than tankers or passenger ships.	Yes	December 31, 2004.
Self-propelled vessels of 65 feet or more in length in commercial service (excludes fishing vessels and passenger vessels certificated to carry less than 151 passengers for hire).	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Towing vessels 26 feet or more in length and more than 600 horsepower in commercial service.	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Passenger vessels certificated to carry more than 150 passengers for hire	Yes, when operating in a VTS or VMRS.	December 31, 2004.
Fishing vessels	No.	

The principal benefits of changing VTS participation from voluntary to mandatory would be to codify current practices and to provide VTS Port Arthur with full VTS authorities to direct and manage traffic in order to better prevent maritime accidents.

The proposed rule would also consolidate and slightly expand the current VTS Special Area in the VTS Puget Sound area. This requirement expands the zone in which entry into and movement within the special area is controlled by the VTS. These controls, designed principally for collision avoidance, are expected to expedite traffic movement within the special area. The VTS has put operating conditions in place in the proposed consolidated VTS Special Area since the VTS national regulations were established in 1994. The proposed rule would align the regulations with current practices already in place in the consolidated VTS Special Area and would not result in additional requirements placed upon vessels.

Due to the constricted waters within the San Juan Islands, special operating requirements have been instituted since the National VTS Regulations were first implemented in 1994 to avoid the risk of large vessels meeting, overtaking or crossing in this inherently dangerous navigational area. Vessel Traffic Service Puget Sound has consistently issued measures or directions to enhance navigation and vessel safety by imposing special operating requirements for vessels operating in Bellingham Channel, western Padilla Bay, and the Saddlebag route east of Guemes Island and in the vicinity of Vendovi Island due to the comparable restricted nature of these waters. Therefore, it is not anticipated that the expansion of this VTS Special Area would alter vessel operations.

Other minor administrative changes include updating the MMSI for Louisville and Los Angeles/Long Beach in Table 33 CFR 161.12(c). The proposed rule would amend 33 CFR 161.19(f) by changing the reference from ''Dangerous Cargo as defined in 33 CFR 160.203'' to ''Certain Dangerous Cargo (CDC) as defined in 33 CFR 160.204.'' This rulemaking would also remove the references to § 160.211 and § 160.213 because these sections no longer exist in the CFR. We expect these administrative changes to result in no additional costs to the public or industry.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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.

As previously discussed, the AIS carriage requirements were implemented by a prior regulation in 33 CFR 164.46, and all vessels which would be required to participate in the VTS are currently equipped to follow the regulations of their individual VTS areas. In addition, the consolidation and slight expansion of the VTS Special Area in Puget Sound merely codifies current operational practices, and would result in no additional equipment requirements. As a result, we expect that this proposed rule would not impose additional costs on vessel owners and operators transiting within either the Port Arthur or Puget Sound VTS areas.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LCDR Patricia Springer at 202–372–2576, email *Patricia.J.Springer@uscg.mil*. 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.

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).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Vessels affected by this rule would already be covered under OMB collection of information 1625–0112.

E. Federalism

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 proposed rule under that Order and have determined that it has implications for federalism. A summary of the impact of federalism in this rule follows.

Title I of the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221 *et. seq.*) authorizes the Secretary to issue regulations to establish and maintain vessel traffic services consisting of measures for controlling or supervising vessel traffic to protect the marine environment. In enacting the PWSA in 1972, Congress declared that advance planning and consultation with the affected States and other stakeholders is necessary when developing measures for the control or supervision of vessel traffic or for protecting navigation or the marine environment. Throughout the development of each of the subject VTSs the Coast Guard has consulted with the pertinent state and/or local government entities as well as the affected pilot's associations, vessel operators, VTS users, and all affected stakeholders. This interaction is more fully described elsewhere in this document.

The Coast Guard has determined, after considering the factors developed by the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000), that by enacting Chapter 25 of the Ports and Waterways Safety Act, Congress intended to preempt the field of vessel traffic services in United States ports and waterways. Therefore, the regulations proposed in this rulemaking have preemptive impact over any State laws or regulations that may be enacted on the same subject matter. The preemptive impact of this rule is codified in 33 CFR 161.6.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard will provide elected officials of affected State and local governments and their representative national organizations, notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process.

Therefore, the Coast Guard invites affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this NPRM. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document: (1) The extent of the Coast Guard's consultation with State and local officials who submit comments to this proposed rule; (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon; and (3) a statement of the extent to which the concerns of State and local officials have been met. We will also report to the Office of Management and Budget any written communications with the States.

F. 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01

and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule is categorically excluded under section 2.B.2., figure 2–1, paragraphs 34(a) and (i) of the Instruction. This rule involves administrative changes, changing regulations in aid of navigation, and updating vessel traffic services. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 161 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70119; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 161.12, revise Table 161.12(c) to read as follows:

§ 161.12 Vessel operating requirements.

* * * * *

TABLE 161.12(c)—VTS AND VMRS CENTERS, CALL SIGNS/MMSI, DESIGNATED FREQUENCIES, AND MONITORING AREAS

Center MMSI [1] call sign	Designated frequency (channel designation)—purpose [2]	Monitoring area [3,4]
Berwick Bay—003669950:		
Berwick Traffic	156.550 MHz (Ch. 11)	The waters south of 29°45′ N., west of 91°10′ W., north of 29°37′ N., and east of 91°18′ W.
Buzzards Bay:		
Buzzards Bay Control [5]	156.600 MHz (Ch. 12)	The waters east and north of a line drawn from the southern tangent of Sakonnet Point, Rhode Island, in approximate position latitude 41°27.2′ N., longitude 70°11.7′ W., to the Buzzards Bay Entrance Light in approximate position latitude 41°23.5′ N., longitude 71°02.0′ W., and then to the southwestern tangent of Cuttyhunk Island, Massachusetts, at approximate position latitude 41°24.6′ N., longitude 70°57.0′ W., and including all of the Cape Cod Canal to its eastern entrance, except that the area of New Bedford harbor within the confines (north of) the hurricane barrier, and the passages through the Elizabeth Islands, is not considered to be ''Buzzards Bay''.
Houston-Galveston—003669954.		The navigable waters north of 29° N., west of 94°20′ W., south of 29°49′ N., and east of 95°20′ W.
Houston Traffic	156.550 MHz (Ch. 11) 156.250 MHz (Ch. 5A)—For Sailing Plans only	The navigable waters north of a line extending due west from the southernmost end of Exxon Dock #1 (20°43.37′ N., 95°01.27′ W.).
Houston Traffic	156.600 MHz (Ch. 12) 156.250 MHz (Ch. 5A)—For Sailing Plans only	The navigable waters south of a line extending due west from the southernmost end of Exxon Dock #1 (29°43.37′ N., 95°01.27′ W.).
Los Angeles-Long Beach—03660465:		
San Pedro Traffic	156.700 MHz (Ch. 14)	*Vessel Movement Reporting System Area:* The navigable waters within a 25 nautical mile radius of Point Fermin Light (33°42.3′ N., 118°17.6′ W.).
Louisville—003669732:		
Louisville Traffic	156.650 MHz (Ch. 13)	The waters of the Ohio River between McAlpine Locks (Mile 606) and Twelve Mile Island (Mile 593), only when the McAlpine upper pool gauge is at approximately 13.0 feet or above.
Lower Mississippi River—0036699952:		
New Orleans Traffic	156.550 MHz (Ch. 11)	The navigable waters of the Lower Mississippi River below 29°55.3′ N., 089°55.6′ W. (Saxonholm Light) at 86.0 miles Above Head of Passes (AHP), extending down river to Southwest Pass, and, within a 12 nautical mile radius around 28°54.3′ N. 089°25.7′ W. (Southwest Pass Entrance Light at 20.1 miles Below Head of Passes.
New Orleans Traffic	156.600 MHz (Ch.12)	The navigable waters of the Lower Mississippi River bounded on the north by a line drawn perpendicular on the river at 29°55′30″ N., and 090°12′46″ W. (Upper Twelve Mile Point) at 109.0 miles AHP and on the south by a line drawn perpendicularly at 29°55.3′ N. 089°55.6′ W. (Saxonholm Light) at 86.0 miles AHP.
New Orleans Traffic	156.250 MHz (Ch. 05A)	The navigable waters of the Lower Mississippi River below 30°38.7′ N. 091°17.5′ W. (Port Hudson Light) at 254.5 miles AHP bounded on the south by a line drawn perpendicular on the river at 29°55′30″ N., and 090°12′46″ W., (Upper Twelve Mile Point) at 109.0 miles AHP.
New York—003669951:		

TABLE 161.12(c)—VTS AND VMRS CENTERS, CALL SIGNS/MMSI, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

Center MMSI [1] call sign	Designated frequency (channel designation)—purpose [2]	Monitoring area [3,4]
New York Traffic	156.550 MHz (Ch. 11) —For Sailing Plans only 156.600 MHz (Ch. 12) —For vessels at anchor	The area consists of the navigable waters of the Lower New York Bay bounded on the east by a line drawn from Norton Point to Breezy Point; on the south by a line connecting the entrance buoys at the Ambrose Channel, Swash Channel, and Sandy Hook Channel to Sandy Hook Point; and on the southeast including the waters of Sandy Hook Bay south to a line drawn at latitude 40°25′ N.; then west in the Raritan Bay to the Raritan River Railroad Bridge, then north into waters of the Arthur Kill and Newark Bay to the Lehigh Valley Draw Bridge at latitude 40°41.9′ N.; and then east including the waters of the Kill Van Kull and the Upper New York Bay north to a line drawn east-west from the Holland Tunnel ventilator shaft at latitude 40°43.7′ N., longitude 74°01.6′ W., in the Hudson River; and then continuing east including the waters of the East River to the Throgs Neck Bridge, excluding the Harlem River.
New York Traffic	156.700 MHz (Ch. 14)	The navigable waters of the Lower New York Bay west of a line drawn from Norton Point to Breezy Point; and north of a line connecting the entrance buoys of Ambrose Channel, Swash Channel, and Sandy Hook Channel, to Sandy Hook Point; on the southeast including the waters of the Sandy Hook Bay south to a line drawn at latitude 40°25′ N.; then west into the waters of Raritan Bay East Reach to a line drawn from Great Kills Light south through Raritan Bay East Reach LGB #14 to Comfort PT, NJ; then north including the waters of the Upper New York Bay south of 40°42.40′ N. (Brooklyn Bridge) and 40°43.70′ N. (Holland Tunnel Ventilator Shaft); west through the KVK into the Arthur Kill north of 40°38.25′ N. (Arthur Kill Railroad Bridge); then north into the waters of the Newark Bay, south of 40°41.95′ N. (Lehigh Valley Draw Bridge).
New York Traffic	156.600 MHz (Ch. 12)	The navigable waters of the Raritan Bay south to a line drawn at latitude 40°26′ N.; then west of a line drawn from Great Kills Light south through the Raritan Bay East Reach LGB #14 to Point Comfort, NJ; then west to the Raritan River Railroad Bridge; and north including the waters of the Arthur Kill to 40°28.25′ N. (Arthur Kill Railroad Bridge); including the waters of the East River north of 40°42.40′ N. (Brooklyn Bridge) to the Throgs Neck Bridge, excluding the Harlem River.
Port Arthur—003669955:		
Port Arthur Traffic	156.050 MHz (Ch. 01A)	The navigable waters of the Sabine-Neches Canal south of 29°52.7′ N.; Port Arthur Canal; Sabine Pass Channel; Sabine Bank Channel; Sabine Outer Bar Channel; the offshore safety fairway; and the ICW from High Island to its intersection with the Sabine-Neches Canal.
Port Arthur Traffic	156.275 MHz (Ch. 65A)	The navigable waters of the Neches River; Sabine River; and Sabine-Neches Waterway north of 29°52.7′ N.; and the ICW from its intersection with the Sabine River to MM 260.
Port Arthur Traffic	156.675 MHz (Ch. 73) [6]	The navigable waters of the Calcasieu Channel; Calcasieu River Channel; and the ICW from MM 260 to MM 191.
Prince William Sound—003669958:		
Valdez Traffic	156.650 MHz (CH. 13)	The navigable waters south of 61°05′ N., east of 147°20′ W., north of 60° N., and west of 146°30′ W.; and, all navigable waters in Port Valdez.
Puget Sound: [7]		
Seattle Traffic—003669957.	156.700 MHz (Ch. 14)	The waters of Puget Sound, Hood Canal and adjacent waters south of a line connecting Nodule Point and Bush Point in Admiralty Inlet and south of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
Seattle Traffic—003669957.	156.250 MHz (Ch. 5A)	The waters of the Strait of Juan de Fuca east of 124°40′ W. excluding the waters in the central portion of the Strait of Juan de Fuca north and east of Race Rocks; the navigable waters of the Strait of Georgia east of 122°52′ W.; the San Juan Island Archipelago, Rosario Strait, Bellingham Bay; Admiralty Inlet north of a line connecting Nodule Point and Bush Point and all waters east of Whidbey Island North of a line drawn due east from the southernmost tip of Possession Point on Whidbey Island to the shoreline.
Tofino Traffic—003160012.	156.725 MHz (Ch. 74)	The waters west of 124°40′ W. within 50 nautical miles of the coast of Vancouver Island including the waters north of 48° N., and east of 127° W.
Victoria Traffic—003160010.	156.550 MHz (Ch. 11)	The waters of the Strait of Georgia west of 122°52′ W., the navigable waters of the central Strait of Juan de Fuca north and east of Race Rocks, including the Gulf Island Archipelago, Boundary Pass and Haro Strait.
San Francisco—003669956:		
San Francisco Traffic	156.700 MHz (Ch. 14)	The navigable waters of the San Francisco Offshore Precautionary Area, the navigable waters shoreward of the San Francisco Offshore Precautionary Area east of 122°42.0′ W. and north of 37°40.0′ N. extending eastward through the Golden Gate, and the navigable waters of San Francisco Bay and as far east as the port of Stockton on the San Joaquin River, as far north as the port of Sacramento on the Sacramento River.

TABLE 161.12(c)—VTS AND VMRS CENTERS, CALL SIGNS/MMSI, DESIGNATED FREQUENCIES, AND MONITORING AREAS—Continued

Center MMSI [1] call sign	Designated frequency (channel designation)—purpose [2]	Monitoring area [3,4]
San Francisco Traffic	156.600 MHz (Ch. 12)	The navigable waters within a 38 nautical mile radius of Mount Tamalpais (37°55.8′ N., 122°34.6′ W.) west of 122°42.0′ W. and south of 37°40.0′ N. and excluding the San Francisco Offshore Precautionary Area.
St. Marys River—003669953: *Soo Traffic*	156.600 MHz (Ch. 12)	The waters of the St. Marys River between 45°57′ N. (De Tour Reef Light) and 46°38.7′ N. (Ile Parisienne Light), except the St. Marys Falls Canal and those navigable waters east of a line from 46°04.16′ N. and 46°01.57′ N. (La Pointe to Sims Point in Potagannissing Bay and Worsley Bay).

Notes:

[1] Maritime Mobile Service Identifier (MMSI) is a unique nine-digit number assigned that identifies ship stations, ship earth stations, coast stations, coast earth stations, and group calls for use by a digital selective calling (DSC) radio, an INMARSAT ship earth station or AIS. AIS requirements are set forth in §§ 161.21 and 164.46 of this subchapter. The requirements set forth in §§ 161.21 and 164.46 of this subchapter apply in those areas denoted with an MMSI number.

[2] In the event of a communication failure, difficulties or other safety factors, the Center may direct or permit a user to monitor and report on any other designated monitoring frequency or the bridge-to-bridge navigational frequency, 156.650 MHz (Channel 13) or 156.375 MHz (Channel 67), to the extent that doing so provides a level of safety beyond that provided by other means. The bridge-to-bridge navigational frequency, 156.650 MHz (Ch. 13) is used in certain monitoring areas where the level of reporting does not warrant a designated frequency.

[3] All geographic coordinates (latitude and longitude) are expressed in North American Datum of 1983 (NAD 83).

[4] Some monitoring areas extend beyond navigable waters. Although not required, users are strongly encouraged to maintain a listening watch on the designated monitoring frequency in these areas. Otherwise, they are required to maintain watch as stated in 47 CFR 80.148.

[5] In addition to the vessels denoted in Section 161.16 of this chapter, requirements set forth in subpart B of 33 CFR part 161 also apply to any vessel transiting VMRS Buzzards Bay required to carry a bridge-to-bridge radiotelephone by part 26 of this chapter.

[6] Until otherwise directed, full VTS services will not be available in the Calcasieu Channel, Calcasieu River Channel, and the ICW from MM 260 to MM 191. Vessels may contact Port Arthur Traffic on the designated VTS frequency to request advisories, but are not required to monitor the VTS frequency in this sector.

[7] A Cooperative Vessel Traffic Service was established by the United States and Canada within adjoining waters. The appropriate Center administers the rules issued by both nations; however, enforces only its own set of rules within its jurisdiction. Note, the bridge-to-bridge navigational frequency, 156.650 MHz (Ch. 13), is not so designated in Canadian waters, therefore users are encouraged and permitted to make passing arrangements on the designated monitoring frequencies.

* * * * *

3. In § 161.19, revise paragraph (f) to read as follows:

§ 161.19 Sailing Plan (SP).

* * * * *

(f) Certain dangerous cargo on board or in its tow, as defined in § 160.204 of this chapter.

4. In § 161.55, revise paragraph (b) and paragraph (c) introductory text to read as follows:

§ 161.55 Vessel Traffic Service Puget Sound and the Cooperative Vessel Traffic Service for the Juan de Fuca Region.

* * * * *

(b) VTS Special Area: The Eastern San Juan Island Archipelago VTS Special Area consists of all waters of the eastern San Juan Island Archipelago including: Rosario Strait bounded to the south by latitude 48°26′24″ N. (the center of the Precautionary Area ''RB'') extending from Lopez Island to Fidalgo Island, and to the north by latitude 48°40′34″ N. (the center of the Precautionary Area ''C'') extending from Orcas Island to Lummi Island; Guemes Channel; Bellingham Channel; Padilla Bay and southern Bellingham Bay (Samish Bay) south of latitude 48°38′25″ N.

Note: The center of precautionary area ''R.B.'' is not marked by a buoy. All precautionary areas are depicted on National Oceanic and Atmospheric Administration (NOAA) nautical charts.

(c) Additional VTS Special Area Operating Requirements. The following additional requirements are applicable in the Eastern San Juan Island Archipelago VTS Special Area:

* * * * *

5. Add § 161.70 to read as follows:

§ 161.70 Vessel Traffic Service Port Arthur.

(a) The VTS area consists of the navigable waters of the U.S. to the limits of the territorial seas bound by the following points: 30°10′ N. 92°37′ W., then south to 29°10′ N. 92°37′ W., then west to 29°10 N. 93°52′15″ W., then northwest to 29°33′42″ N. 94°21′15″ W., then north to 30°10′ N. 94°21′15″ W. then east along the 30°10′ E. latitude to the origination point.

Note: Although mandatory participation in VTS Port Arthur is limited to the area within the navigable waters of the United States, prospective users are encouraged to report at the safe water marks in order to facilitate vessel traffic management in the VTS Area and to receive advisories or navigational assistance.

(b) Precautionary areas.

TABLE 161.70(b)—VTS PORT ARTHUR PRECAUTIONARY AREAS

Precautionary area name	Radius	Center point latitude	Center point longitude
Petco Bend [1]	2,000	30°00.80′ N.	093°57.60′ W.
Black Bayou [1]	2,000	30°00.00′ N.	093°46.20′ W.
Orange Cut [1]	2,000	30°03.25′ N.	093°43.20′ W.
Neches River Intersection [1]	2,000	29°58.10′ N.	093°51.25′ W.
Texaco Island Intersection [1]	2,000	29°49.40′ N.	094°57.55′ W.

TABLE 161.70(b)—VTS PORT ARTHUR PRECAUTIONARY AREAS—Continued

Precautionary area name	Radius	Center point latitude	Center point longitude
Sabine-Neches Waterway	N/A	All waters of the Sabine-Neches Waterway between the Texaco Island Precautionary Area and the Humble Island Precautionary Area.	

[1] Precautionary Area encompasses a circular area of the radius denoted around the center point with the exception of the Sabine-Neches Waterway.

(c) Reporting points (Inbound).

TABLE 161.70(c)—INBOUND

Designator	Geographic name	Geographic description	Latitude/Longitude	Notes
1	Sabine Bank Channel "SB" Buoy	Sabine Bank Sea Buoy	29°25.00′ N., 093°40.00′ W.	Sailing Plan Report.
2	Sabine Pass Buoys "29/30"	Sabine Pass Buoys "29/30"	29°35.90′ N., 093°48.20′ W.	
3	Port Arthur Canal Light "43"	Keith Lake	29°46.50′ N., 093°56.47′ W.	
4	North Forty GIWW Mile 279	North Forty	29°56.40′ N., 093°52.10′ W.	
5	FINA Highline Neches River Light "19".	FINA Highline	29°59.10′ N., 093°54.30′ W.	
6	Ready Reserve Fleet Highline	Channel at Cove Mid-Point	30°00.80′ N., 093°59.90′ W.	
7	Sabine River MM 268	268 Highline	30°02.20′ N., 093°44.30′ W.	

(d) Reporting points (Outbound).

TABLE 161.70(d)—OUTBOUND

Designator	Geographic name	Geographic description	Latitude/Longitude	Notes
1	Sabine River Light "2"	Black Bayou	30°00.00′ N., 093°46.25′ W.	
2	Ready Reserve Fleet Highline	Channel at Cove Mid-Point	30°00.80′ N., 093°59.90′ W.	
3	FINA Highline Neches River Light "19".	FINA Highline	29°59.09′ N., 093°54.30′ W.	
4	GIWW Mile 285	The School House	29°52.70′ N., 093°55.55′ W.	*Sector Shift.*
5	Port Arthur Canal Light "43"	Keith Lake	29°46.50′ N., 093°56.47′ W.	
6	Sabine Pass Buoys "29/30"	Sabine Pass Buoys "29/30"	29°35.90′ N., 093°48.20′ W.	
7	Sabine Bank Channel "SB" Buoy	Sabine Bank Sea Buoy	29°25.00′ N., 093°40.00′ W.	Final Report.

(e) Reporting points (Eastbound).

TABLE 161.70(e)—EASTBOUND (ICW)

Designator	Geographic name	Geographic description	Latitude/Longitude	Notes
1	GIWW Mile 295	ICW MM 295	29°47.25′ N., 094°01.10′ W.	Sailing Plan Report.
2	North Forty GIWW Mile 279	North Forty	29°56.40′ N., 093°52.10′ W.	
3	Sabine River MM 268	268 Highline	30°02.20′ N., 093°44.30′ W.	
4	GIWW Mile 260	260 Highline	30°03.50′ N., 093°37.50′ W.	Final Report.

(f) Reporting points (Westbound).

TABLE 161.70(f)—WESTBOUND (ICW)

Designator	Geographic name	Geographic description	Latitude/Longitude	Notes
1	GIWW Mile 260	260 Highline	30°03.50′ N., 093°37.50′ W.	Sailing Plan Report.
2	Sabine River Light "2"	Black Bayou	30°00.03′ N., 093°46.18′ W.	
3	GIWW Mile 285	The School House	29°52.71′ N., 093°55.55′ W.	*Sector Shift.*
4	GIWW Mile 295	ICW MM 295	29°46.20′ N., 094°02.60′ W.	Final Report.

(g) Reporting points (Offshore Safety Fairway).

TABLE 161.70(g)—OFFSHORE SAFETY FAIRWAY

Designator	Geographic name	Geographic description	Latitude/Longitude	Notes
1	Sabine Pass Safety Fairway—East ..	East Dogleg	29°35.00′ N., 093°28.00′ W.	
2	Sabine Pass Safety Fairway—West	West Dogleg	29°28.00′ N., 093°58.00′ W.	

Dated: September 4, 2012.

Mark E. Butt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Capability.

[FR Doc. 2012–22164 Filed 9–7–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120718253–2367–01]

RIN 0648–BC30

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Transferability of Black Sea Bass Pot Endorsements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement a revision of a disapproved action from Amendment 18A (the Resubmittal) to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 18A), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this rule would allow black sea bass pot endorsements to be transferred under specific conditions. The intent of this rule is to implement the transferability action originally submitted in Amendment 18A, as clarified in the Resubmittal.

DATES: Written comments must be received on or before September 25, 2012.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2012–0128'' by any of the following methods:

- *Electronic Submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter ''NOAA–NMFS–2012–0128'' in the search field and click on ''search''. After you located the proposed rule, click on ''Submit a Comment'' link in that row. This will display the comment web form. You can enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

For further assistance with submitting a comment, see the ''Commenting'' section at *http://www.regulations.gov/#!faqs* or the Help section at *http://www.regulations.gov.*

Electronic copies of Amendment 18A and the Resubmittal may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm.* Amendment 18A includes an Environmental Impact Statement (EIS), an Initial Regulatory Flexibility Act Analysis (IRFA), a Regulatory Impact Review, and a Fishery Impact Statement. The Resubmittal includes a RIR and a FIS.

FOR FURTHER INFORMATION CONTACT: Kate Michie, 727–824–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR Part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Amendment 18A, implemented through final rulemaking on July 1, 2012, (77 FR 32408, June 1, 2012), includes a provision to limit participation in the black sea bass pot segment of the snapper-grouper fishery through the establishment of an endorsement program. In order to qualify for a black sea bass pot endorsement, an entity must have held a valid South Atlantic snapper-grouper unlimited permit on the effective date of the final rule implementing Amendment 18A (or July 1, 2012). In addition to this requirement, qualifying permit holders must have had average annual black sea bass landings of at least 2,500 lb (1,134 kg), round weight, using black sea bass pot gear between January 1, 1999 and December 31, 2010. Those permit holders with no reported commercial landings of black sea bass using black sea bass pot gear between January 1, 2008, and December 31, 2010, did not qualify for an endorsement. The number of South Atlantic snapper-grouper unlimited permit holders that meet these criteria as of September 10, 2012 is 32, and more endorsements could be issued after the appeals process finalizes. Only those vessels associated with a valid endorsement can legally fish for black sea bass in the South Atlantic using black sea bass pot gear.

Amendment 18A also contained an action to allow for the transfer of black sea bass pot endorsements. However, NMFS disapproved this action because Amendment 18A and the supporting EIS incorrectly described the preferred alternative as allowing transfer of landings history without transfer of the permit. However, the following analysis of alternatives applied a correct understanding of what the preferred alternative was, i.e. that landings history would not be transferred independently of the permit. Therefore, NMFS disapproved that measure, and the Council revised and resubmitted the action addressing transferability of black sea bass pot endorsements in an amendment (the Resubmittal). All reasonable alternatives for the transferability action were correctly characterized in the supporting analysis in Amendment 18A pursuant to the National Environmental Policy Act, including biological, economic, social,

administrative, and cumulative impacts of the action, and that analysis was incorporated by reference in the Resubmittal. The only possible impact not discussed was any economic impact that could result from assigning landings history to the endorsement or to the permit. However, the only condition under which the assignment of landings history would make a difference is if permit/endorsement holders and potential buyers of endorsements/permits expect the endorsement system to be converted to a catch share program. Amendment 18A did not consider a catch share program and it is too speculative to consider the economic effects of a catch share program at this time.

This rule would allow transfer of a black sea bass pot endorsement to an individual or entity that holds or simultaneously obtains a valid South Atlantic snapper-grouper unlimited permit. In order to be transferred, a black sea bass pot endorsement must be valid or renewable. Black sea bass pot endorsements may be transferred independently from the South Atlantic snapper-grouper unlimited permit with which it is associated. Landings history would not be transferred with the endorsement. NMFS will attribute black sea bass landings to the associated South Atlantic snapper-grouper unlimited permit regardless of whether the landings occurred before or after the endorsement was issued. Black sea bass pot endorsements would not be renewed automatically with the South Atlantic snapper-grouper permit with which it is associated. The endorsement must be renewed separately from the permit on the Federal Permit Application for Vessels Fishing in the Exclusive Economic Zone (EEZ).

Other Changes to Codified Text

This rule also proposes to revise codified text in § 622.40, regarding issuance of the identification tags for black sea bass pots. In the final rule for Amendment 18A (77 FR 32408, June 1, 2012), the regulations incorrectly stated that NMFS would issue the identification tags for black sea bass pots and new identification tags would be issued each year. Endorsement holders order identification tags through NMFS, however, a supplier actually issues the identification tags. Endorsement holders must apply for new tags each permit year at the same time they renew their permit and endorsement. The regulations would be revised to clarify these points.

This rule would also remove and reserve paragraph (a)(2) in § 622.43, because this paragraph was inadvertently not removed in the final rule implementing the Comprehensive Ecosystem-Based Amendment 2 for the South Atlantic (76 FR 82183, December 30, 2011). That rule established an annual catch limit of zero for South Atlantic octocorals, thereby, eliminating the quota from the regulations and the need for quota closure provisions. The quota closure provisions, however, were inadvertently not removed in that final rule; therefore, this rule removes the obsolete quota closure provisions.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, the Resubmitted Amendment 18A Action Amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to allow black sea bass pot endorsements, created through Amendment 18A, to be transferred among South Atlantic snapper-grouper unlimited permit holders. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

NMFS expects this rule, if implemented, to directly affect commercial vessels that landed black sea bass because snapper-grouper permit holders that have fished for black sea bass in the past are the most likely candidates to have an endorsement transferred to them. During 2005–2010, an annual average of 247 vessels with valid South Atlantic commercial snapper-grouper unlimited permits landed black sea bass, generating dockside revenues of approximately $1.103 million (2010 dollars). Each vessel, therefore, generated an average of approximately $4,465 in gross revenues from black sea bass. Vessels that operate in the black sea bass segment of the snapper-grouper fishery may also operate in other segments of the snapper-grouper fishery, the revenues of which are not reflected in these totals.

No other small entities that would be expected to be directly affected by this proposed rule have been identified.

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Based on the average revenue estimates provided above, all commercial vessels expected to be directly affected by this proposed rule are determined, for the purpose of this analysis, to be small business entities.

The proposed action is expected to increase individual profitability of those owning the endorsement because of the increased value of an endorsement once it becomes transferable. Also, industry profitability is expected to increase as more efficient operators enter the black sea bass commercial harvesting sector. Thirty-two endorsements have been issued as of September 10, 2012. Although more could be issued after the appeals process finalizes, there will be a limited number of endorsements. Thus, the overall profit increase would not be significant relative to the size of the black sea bass commercial sector and the entire commercial sector of the snapper-grouper fishery.

Because this proposed rule, if implemented, would not be expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 5, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.4, the introductory paragraph in paragraph (a)(2)(xv) is revised, paragraph (a)(2)(xv)(D) is added, and the first sentence in paragraph (g)(1) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(xv) *South Atlantic black sea bass pot endorsement.* For a person aboard a vessel, for which a commercial vessel permit for South Atlantic snapper-grouper unlimited has been issued, to use a black sea bass pot in the South Atlantic EEZ, a South Atlantic black sea bass pot endorsement must have been issued to the vessel and it must be valid and on board the vessel, and the commercial vessel permit for South Atlantic snapper-grouper unlimited must be valid and on board the vessel. A permit or endorsement that has expired is not valid. This endorsement must be renewed annually and may only be renewed if the associated vessel has a valid commercial vessel permit for South Atlantic snapper-grouper unlimited or if the endorsement and associated permit are being concurrently renewed. The RA will not reissue this endorsement if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

* * * * *

(D) *Transferability.* A valid or renewable black sea bass pot endorsement may be transferred between any two entities that hold, or simultaneously obtain a valid South Atlantic snapper-grouper unlimited permit. Endorsements may be transferred independently from the South Atlantic snapper-grouper unlimited permit. NMFS will attribute black sea bass landings to the associated South Atlantic snapper-grouper unlimited permit regardless of whether the landings occurred before or after the endorsement was issued. Only legal landings reported in compliance with applicable state and Federal regulations are acceptable.

* * * * *

(g) * * *

(1) * * * A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(b) for a commercial vessel permit for South Atlantic snapper-grouper, in § 622.19(b) for a commercial vessel permit for South Atlantic rock shrimp, in § 622.4(a)(2)(xiv)(D) for an eastern Gulf reef fish bottom longline endorsement, and in § 622.4(a)(2)(xv)(D) for a South Atlantic black sea bass pot endorsement. * * *

* * * * *

3. In § 622.40, paragraph (d)(1)(i)(D) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(D) A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper and a South Atlantic black sea bass pot endorsement that fishes in the South Atlantic EEZ on a trip with black sea bass pots, may possess only 35 black sea bass pots per vessel per permit year. Each black sea bass pot in the water or onboard a vessel in the South Atlantic EEZ, must have a valid identification tag attached. Endorsement holders must apply for new tags each permit year through NMFS to replace the tags from the previous year.

* * * * *

§ 622.43 [Amended]

4. In § 622.43, paragraph (a)(2) is removed and reserved.

[FR Doc. 2012–22221 Filed 9–7–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 175
Monday, September 10, 2012

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Total Amounts of Fiscal Year 2013 Tariff-Rate Quotas for Raw Cane Sugar and Certain Sugars, Syrups and Molasses; and the Fiscal Year 2013 Overall Allotment Quantity Under the Sugar Marketing Allotment Program

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Office of the Secretary of the Department of Agriculture announces the establishment of the Fiscal Year (FY) 2013 (October 1, 2012–September 30, 2013) in-quota aggregate quantity of the raw, as well as, refined and specialty sugar Tariff-Rate Quotas (TRQ). The FY 2013 raw cane sugar TRQ is established at 1,117,195 metric tons raw value (MTRV). In addition, the in-quota aggregate quantity of the refined and specialty sugar TRQ is established at 117,254 MTRV for certain sugars, syrups, and molasses (collectively referred to as refined sugar) that may be entered during FY 2013.

The Office of the Secretary of the Department of Agriculture also announces the establishment of the FY 2013 Overall Allotment Quantity (OAQ) at 9,711,250 short tons, raw value (STRV). As required by the Agricultural Adjustment Act of 1938, as amended, the sugar beet sector was allotted 5,278,064 STRV (54.35 percent of the OAQ), and the cane sugar sector was allotted 4,433,186 STRV (45.65 percent of the OAQ). CCC will distribute the sector allotments among domestic sugar beet and sugarcane processors according to the regulations in 7 CFR part 1435 in a press release before September 30, 2012.

DATES: *Effective Date:* September 10, 2012.

FOR FURTHER INFORMATION CONTACT: Souleymane Diaby, Import Policies and Export Reporting Division, Foreign Agricultural Service, Department of Agriculture, 1400 Independence Avenue SW., AgStop 1021, Washington, DC 20250–1021; by telephone (202) 720–2916; by fax (202) 720–0876; or by email *souleymane.diaby@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The provisions of paragraph (a)(i) of the Additional U.S. Note 5, Chapter 17 in the HTS authorize the Secretary of Agriculture to establish the in-quota TRQ amounts (expressed in terms of raw value) for imports of raw cane sugar and certain sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties of the TRQs for entry during each fiscal year. The Office of the U.S. Trade Representative (USTR) is responsible for the allocation of these quantities among supplying countries and areas.

Section 359(k) of the Agricultural Adjustment Act of 1938, as amended, requires that at the beginning of the quota year the Secretary of Agriculture establish the TRQs for raw cane sugar and refined sugars at the minimum levels necessary to comply with obligations under international trade agreements, with the exception of specialty sugar.

Notice is hereby given that I have determined, in accordance with paragraph (a)(i) of the Additional U.S. Note 5, Chapter 17 in the HTS and section 359(k) of the 1938 Act, that an aggregate quantity of up to 1,117,195 MTRV of raw cane sugar may be entered or withdrawn from warehouse for consumption during FY 2013. This is the minimum amount to which the United States is committed under the WTO Uruguay Round Agreements. I have further determined that an aggregate quantity of 117,254 MTRV of sugars, syrups, and molasses may be entered or withdrawn from warehouse for consumption during FY 2013. Of this quantity of 117,254 MTRV, the quantity of 96,910 MTRV is reserved for the importation of specialty sugars as defined by the USTR. The total of 117,254 MTRV includes the 22,000 MTRV minimum level necessary to comply with U.S. WTO Uruguay Round commitments, of which 1,656 MTRV is reserved for specialty sugar. Because the specialty sugar TRQ is first-come, first-served, tranches are needed to allow for orderly marketing throughout the year. The FY 2013 specialty sugar TRQ will be opened in five tranches. The first tranche, totaling 1,656 MTRV, will open October 12, 2012. All specialty sugars are eligible for entry under this tranche. The second tranche will open on October 26, 2012, and be equal to 35,245 MTRV. The remaining tranches will each be equal to 20,003 MTRV, with the third opening on January 11, 2013; the fourth, on April 11, 2013; and the fifth, on July 11, 2013. The second, third, fourth, and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

Section 359c of the Agricultural Adjustment Act of 1938, as amended, requires that the OAQ be established at not less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year, and that fixed percentages of the OAQ be assigned to the beet sector and cane sector. The OAQ for FY 2013 is being established at the minimum quantity of 9,711,250 STRV. Based on the required beet sector and cane sector percentages of 54.35 and 46.65 respectively, the sugar beet sector is allotted 5,278,064 STRV and cane sector is allotted 4,433,186 STRV for FY 2013.

The cane sector allotment is allocated to the sugarcane States according to provisions in the sugar program, as follows: Hawaii—245,499 STRV; Florida—2,250,786 STRV; Louisiana—1,741,236 and Texas—195,665 STRV. Company allocations will be announced in a press release before September 30, 2012.

* Conversion factor: 1 metric ton = 1.10231125 short tons.

Dated: August 24, 2012.

Michael T. Scuse,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2012–22134 Filed 9–7–12; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Research Service's (ARS) intention to request an extension of a currently approved information collection, Form AD–761, USDA Patent License Application for Government Invention that expires February 28, 2013.

DATES: Comments must be received on or before November 9, 2012.

ADDRESSES: Comments may be sent to June Blalock, USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131; Telephone Number 301–504–5989.

FOR FURTHER INFORMATION CONTACT: June Blalock, USDA, ARS, Office of Technology Transfer, 301–504–5989.

SUPPLEMENTARY INFORMATION:

Title: USDA Patent License Application for Government Invention.

OMB Number: 0518–0003.

Expiration Date of Approval: February 28, 2013.

Type of Request: To extend a currently approved information collection.

Abstract: The USDA patent licensing program grants patent licenses to qualified businesses and individuals who wish to commercialize inventions arising from federally supported research. The objective of the program is to use the patent system to promote the utilization of inventions arising from such research. The licensing of federally owned inventions must be done in accordance with the terms, conditions and procedures prescribed under 37 CFR part 404. Application for a license must be addressed to the Federal agency having custody of the invention. Licenses may be granted only if the license applicant has supplied the Federal agency with a satisfactory plan for the development and marketing of the invention and with information about the applicant's capability to fulfill the plan. 37 CFR 404.8 sets forth the information which must be provided by a license applicant. For the convenience of the applicant, USDA has itemized the information needed on Form AD–761, and instructions for completing the form are provided to the applicant. The information submitted is used to determine whether the applicant has both a complete and sufficient plan for developing and marketing the invention and the necessary manufacturing, marketing, technical, and financial resources to carry out the submitted plan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Description of Respondents: Businesses or other for profit individuals.

Estimated Number of Respondents: 75.

Frequency of Responses: One time per invention.

Estimated Total Annual Burden on Respondents: 225 hours.

This data will be collected under the authority of 44 U.S.C. 3506(c)(2)(A).

Copies of this information collection and related instructions can be obtained without charge from June Blalock, USDA, ARS, Office of Technology Transfer by calling 301–504–5989.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as 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.

Comments may be sent to USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2012–22201 Filed 9–7–12; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lynn Canal-Icy Strait Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lynn Canal-Icy Strait Resource Advisory Committee (LC–IS RAC) will meet in Juneau, AK. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend project proposals that will meet the purposes of improving or maintaining existing infrastructure (roads & trails), implementing stewardship objectives that enhance forested ecosystems, and/or restoring and improving land health and water quality on National Forest System lands.

DATES: The meeting will be held September 20, 2012, 9 a.m.

ADDRESSES: The meeting will be held in the upper conference room, Admirality National Monument Office, 8510 Mendenhall Loop Road, Juneau, AK 99801. The public may attend the meeting via Video Teleconference (VTC) at the Hoonah Ranger District office, 430A Airport Road, Hoonah, AK 99829. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Admirality National Monument Office, 8510 Mendenhall Loop Road, Juneau, AK 99801. Please call ahead to (907) 586–8800 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Shane King, RAC Coordinator, 8510 Mendenhall Loop Road, Juneau, AK 99801; (907) 789–6286; email *shaneking@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review and status updates on Title II projects, review the status of funds to be allocated, discuss acquisition management instruments for implementation of projects, review monitoring report, review and approve administrative costs, provide opportunity for proponents to present proposals (5 minutes each), provide LC–IS RAC members an opportunity to ask questions about proposals (3 minutes each), review the proposal

recommendation process, review and rank project proposals by Category Groups, provide recommendations for funding to the Designated Federal Official and provide for public comment. Further information can be found at *http://goo.gl/tnSEV.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 19, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Shane King, RAC Coordinator, 8510 Mendenhall Loop Road, Juneau, AK 99801, or by email to *shaneking@fs.fed.us,* or via facsimile to (907) 586–8808. A summary of the meeting will be posted at *http://goo.gl/tnSEV* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 17, 2012.

Chad VanOrmer,

Monument Ranger.

[FR Doc. 2012–22011 Filed 9–7–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Juneau Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Juneau Resource Advisory Committee will meet in Juneau, AK. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend project proposals that will meet the purposes of improving or maintaining existing infrastructure (roads & trails), implementing stewardship objectives that enhance forested ecosystems, and/or restoring and improving land health and water quality on National Forest System lands.

DATES: The meeting will be held September 25, 2012, 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at Juneau Ranger District, 8510 Mendenhall Loop Road, Juneau, AK 99801.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Juneau Ranger District. Please call ahead to (907) 586–8800 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Marti Marshall, Designated Federal Official, Juneau Ranger District, (907) 586–8800, *mmarshall01@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: (1) Review of project proposals for recommendation to Forest Supervisor. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 10, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 8510 Mendenhall Loop Road, Juneau, AK 99801, or by email to *mmarshall01@fs.fed.us,* or via facsimile to (907) 586–8808. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Juneau?OpenDocument* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 28, 2012.

Marti M. Marshall,

Designated Federal Official.

[FR Doc. 2012–22032 Filed 9–7–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Butte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Butte County Resource Advisory Committee will meet in Oroville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 26, 2012 from 5:30–9:30 p.m.

ADDRESSES: The meeting will be held at the Feather River Ranger District Conference Room at 875 Mitchell Avenue, Oroville, CA 95965. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Plumas National Forest Supervisors Office, 159 Lawrence Street, Quincy, CA 95971. Please call ahead to Lee Anne Schramel Taylor at (530) 283–7850 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, RAC Coordinator, Plumas National Forest, (530) 283–7850, TTY 711, *eataylor@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review and recommend projects

authorized under title II of the Act. An agenda will be posted at *http://www.fs.fed.us/srs* at least one week prior to the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. A summary of the meeting will be posted at *http://www.fs.usda.gov/srs* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring resonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under For **FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 31, 2012.

Earl Ford,

Forest Supervisor.

[FR Doc. 2012–22177 Filed 9–7–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Plumas County Resource Advisory Committee will meet in Quincy, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 21, 2012 from 9:00 a.m.–2:00 p.m.

ADDRESSES: The meeting will be held at the Plumas Sierra County Fair Mineral Building at 207 Fairgrounds Road in Quincy, CA.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Plumas National Forest Supervisors Office, 159 Lawrence Street, Quincy, CA 95971. Please call ahead to Lee Anne Schramel Taylor at (530) 283–7850 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lee Anne Schramel Taylor, RAC Coordinator, Plumas National Forest, (530) 283–7850, TTY 711, *eataylor@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review and recommend projects authorized under title II of the Act. An agenda will be posted at *http://www.fs.fed.us/srs* at least one week prior to the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. A summary of the meeting will be posted at *http://www.fs.usda.gov/srs* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring resonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 31, 2012.

Earl Ford,

Forest Supervisor.

[FR Doc. 2012–22182 Filed 9–7–12; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, and the Federal Advisory Committee Act (FACA), that a Briefing and Listening Meeting of the North Dakota Advisory Committee to the Commission will convene at 9 a.m. (CDT) on Monday, September 24, 2012, at the City Commission Room, City of Fargo, 200 N. 3rd Street, Fargo, ND 58102.

The purpose of the briefing and listening meeting is to hear civil and human rights issues of concern by citizens of the state and a briefing by a state human rights coalition.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days of the meeting. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 999 18th Street, Suite 1380 South, Denver, CO 80202. They may be faxed to (303) 866–1050 or emailed to *ebohor@usccr.gov.* Persons who desire additional information may contact Malee V. Craft, Regional Director, Rocky Mountain Regional Office at (303) 866–1040.

Records generated from this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above email, street address, or telephone number.

Deaf or hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Rocky Mountain Regional Office at least ten (10) working days before the scheduled date of the meeting.

To ensure that the Commission secures an appropriate number of telephone lines for the public, persons are asked to contact the Rocky Mountain Regional Office 10 days before the meeting date either by email at *ebohor@usccr.gov* or by phone.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on September 5, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–22193 Filed 9–7–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1849]

Approval for Manufacturing Authority Foreign-Trade Zone 72, Brevini Wind USA, Inc., (Wind Turbine Gear Boxes), Yorktown, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, has requested manufacturing authority on behalf of Brevini Wind USA, Inc., within FTZ 72 in Yorktown, Indiana (FTZ Docket 54–2011, filed 8–11–2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 51349–51350, 8–18–2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 72 on behalf of Brevini Wind USA, Inc., as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 29th day of August 2012.

Paul Piquado,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–22249 Filed 9–7–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–31–2012]

Foreign-Trade Zone 235—Lakewood, NJ, Authorization of Production Activity, Cosmetic Essence Innovations, LLC, (Fragrance Bottling), Holmdel, NJ

Cosmetic Essence Innovations, LLC (CEI) submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for their facility located in Holmdel, New Jersey, within Site 8 of FTZ 235.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 26737, 5/7/2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: September 4, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–22248 Filed 9–7–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On June 6, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Turkey.[1] The review covers one producer/exporter, Noksel Celik Boru Sanayi A.S., (Noksel). The period of review (POR) is May 1, 2010, through April 30, 2011. We invited interested parties to comment on our *Preliminary Results.* Noksel submitted comments on July 6, 2012, but withdrew them on July 9, 2012. Therefore, our final results remain unchanged from our *Preliminary Results.* The final results are listed in the section entitled ''Final Results of Review'' below.

DATES: Effective September 10, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2012, the Department published the preliminary results of this review in the **Federal Register**. *See Preliminary Results.* We invited parties to comment on the *Preliminary Results.* As stated above, Noksel submitted comments on July 6, 2012, but withdrew them on July 9, 2012. No party requested a hearing.

Scope of the Order

The merchandise subject to this order is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope.

The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the order is dispositive.

Final Results of Review

As noted above, the Department has no comments concerning the

[1] *See Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 33395 (June 6, 2012) (*Preliminary Results*).

Preliminary Results on the record of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results* on the record, there is no decision memorandum accompanying this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see Preliminary Results.* The final weighted-average dumping margin for the period May 1, 2010, through April 30, 2011, is as follows:

Producer/Exporter	Weighted-average margin (percentage)
Noksel Celik Boru Sanayi A.S.	0.00

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department intends to issue appropriate assessment instructions for the companies subject to this review to CBP 15 days after the date of publication of these final results.

Noksel reported that it was the importer of record for all of its U.S. sales of subject merchandise. Pursuant to 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

To determine whether the duty assessment rates were *de minimis* (*i.e.,* less than 0.50 percent) in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on reported and estimated entered values (when no entered value was reported). Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis.*

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[2] This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company(ies) involved in the transaction. *See Assessment Policy Notice.*

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of light-walled rectangular pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For companies covered by this review, the cash deposit rate will be the rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 27.04 percent *ad valorem,* the ''all others'' rate established in the LTFV investigation.[3] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

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

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–22238 Filed 9–7–12; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[3] *See Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube From Turkey,* 73 FR 31065 (May 30, 2008).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC210

Marine Mammals; File No. 17410

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game (ADF&G; Responsible Party: Robert Small), 1255 West 8th Street, Juneau, AK 99811, has applied in due form for a permit to import, export, collect, and receive marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before October 10, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 17410 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

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

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at

the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on these applications would be appropriate.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The objectives of the proposed research are to obtain information on population status and distribution, stock structure, age distribution, mortality rates, productivity, feeding habits, and health status of twenty-six species of pinnipeds (excluding walrus) and cetaceans found in Alaskan waters; such data would be used for conservation and management purposes. The applicant is requesting authorization to collect, receive, import, and export marine mammal parts from legal foreign (Russia and Canada) and domestic subsistence-hunts; scientists in academic, federal, and state institutions involved in legally authorized marine mammal research; dead beach-cast species; and incidental commercial fisheries bycatch. Import/export activities would occur world-wide. No live animal takes are being requested under this permit. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding a copy of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 4, 2012.

P. Michael Payne,

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

[FR Doc. 2012–22214 Filed 9–7–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC220

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crabs; Application for Exempted Fishing Permit, 2012

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

ACTION: Notification of a proposal to conduct exempted fishing; request for comments.

SUMMARY: The Deputy Director, Office of Sustainable Fisheries, has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by Limuli Laboratories of Cape May Court House, NJ, contains all the required information and warrants further consideration. The proposed EFP would allow the harvest of up to 10,000 horseshoe crabs from the Carl N. Shuster Jr. Horseshoe Crab Reserve (Reserve) for biomedical purposes and require, as a condition of the EFP, the collection of data related to the status of horseshoe crabs within the reserve. The Deputy Director has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic States Marine Fisheries Commission's (Commission) Horseshoe Crab Interstate Fisheries Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Deputy Director proposes to recommend that an EFP be issued that would allow up to two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations promulgated under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The EFP would allow for an exemption from the Reserve.

Regulations under the Atlantic Coastal Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Written comments on this action must be received on or before September 25, 2012.

ADDRESSES: Written comments should be sent to Emily Menashes, Deputy Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope ''Comments on Horseshoe Crab EFP Proposal.'' Comments may also be sent via fax to (301) 713–0596. Comments on this notice may also be submitted by email to: *derek.orner@noaa.gov.* Include in the subject line of the email comment the following document identifier: ''Horseshoe Crab EFP Proposal Comments.''

FOR FURTHER INFORMATION CONTACT: Derek Orner, Office of Sustainable Fisheries, (301) 427–8567.

SUPPLEMENTARY INFORMATION:

Background

Limuli Laboratories submitted an application for an EFP on June 19, 2012, to collect up to 10,000 horseshoe crabs for biomedical and data collection purposes from the Reserve. The applicant has applied for, and received, a similar EFP every year from 2001–2011. The current EFP application specifies that: (1) The same methods would be used in 2012 that were used in years 2001–2011, (2) at least 15 percent of the bled horseshoe crabs would be tagged, and (3) there had not been any sighting or capture of marine mammals or endangered species in the trawling nets of fishing vessels engaged in the collection of horseshoe crabs since 1993. The project submitted by Limuli Laboratories would provide morphological data on horseshoe crab catch, would tag a portion of the caught horseshoe crabs, and would use the blood from the caught horseshoe crabs to manufacture Limulus Amebocyte Lysate (LAL), an important health and safety product used for the detection of endotoxins. The LAL assay is used by medical professionals, drug companies, and pharmacies to detect endotoxins in intravenous pharmaceuticals and medical devices that come into contact with human blood or spinal fluid.

Results of 2011 EFP

During the 2011 season, a total of 3,500 horseshoe crabs were gathered over a period of seven days, from the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve) for the manufacture of LAL. After transportation to the laboratory, the horseshoe crabs were

inspected for size, injuries, and responsiveness. The injured horseshoe crabs numbered 310, or 8.86% of the total, while 71, or 2.03%, were noted as slow moving. An additional 16, or 4.06% were deemed mortal. In addition, six horseshoe crabs were rejected due to small size. Overall, 3,097 horseshoe crabs were used (bled) in the manufacture of a LAL.

Two hundred of the bled horseshoe crabs were randomly selected for activity, morphometric and aging studies. The activity level for all 200 animals was categorized as ''active''. Morphometric studies noted that average inter-ocular distances, prosoma widths and weights of these 200 horseshoe crabs were comparable to previous years (2001–2010). Of the 200 horseshoe crabs examined in 2011, a little more than half (52%) were categorized as medium aged followed by young (31%). Older animals were greater in number (17%) than most of the other years with the exception of the 2004 year (19%) and the 2010 year (26%).

The 200 studied horseshoe crabs and 325 additional bled horseshoe crabs were tagged and released into the Delaware Bay. To date, the tagging of 4,938 horseshoe crabs during 2001–2011 have resulted in 104 live recaptures. The observed horseshoe crabs were found 1 to 8 years after release, primarily along the Delaware Bay shores during their spawning season.

Proposed 2012 EFP

Limuli Laboratories proposes to conduct an exempted fishery operation using the same means, methods, and seasons proposed/utilized during the EFPs in 2001–2011. Limuli proposes to continue to tag at least 15 percent of the bled horseshoe crabs as they did in 2011. NMFS would require that the following terms and conditions be met for issuance and continuation of the EFP for 2012:

1. Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 crabs per day and to a total of no more than 10,000 crabs per year;
2. Requiring collections to take place over a total of approximately 20 days during the months of July, August, September, October, and November. (Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve from July through November.);
3. Requiring that a 5½ inch (14.0 cm) flounder net be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;
4. Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;
5. Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into the Lower Delaware Bay; and
6. Requiring that any turtle take be reported to NMFS, Northeast Region, Assistant Regional Administrator of Protected Resources Division, within 24 hours of returning from the trip in which the incidental take occurred.

As part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS would require that the EFP holder provide data on sex ratio and daily harvest. Also, the EFP holder would be required to examine at least 200 horseshoe crabs for morphometric data. Terms and conditions may be added or amended prior to the issuance of the EFP.

The proposed EFP would exempt two commercial vessels from regulations at 50 CFR 697.7(e) and 697.23(f), which prohibit the harvest and possession of horseshoe crabs from the Reserve on a vessel with a trawl or dredge gear aboard.

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

Dated: September 5, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–22223 Filed 9–7–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 120807314–2314–01]

RIN 0648–XC155

Endangered and Threatened Species; 90-Day Finding on Petition To Delist the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to delist the Southern Oregon/Northern California Coast (SONCC) Evolutionarily Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*) under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Copies of the petition are available at: *http://www.nmfs.noaa.gov/pr/or* upon request from the Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Regional Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Craig Wingert, NMFS, Southwest Region Office, (562) 980–4021; or Dwayne Meadows, Office of Protected Resources (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA (16 U.S.C. 1533) contains provisions allowing interested persons to petition the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife, and to designate critical habitat for any endangered or threatened species. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

On July 3, 2012, we received a petition from the Siskiyou County Water Users Association and Dr. Richard Gierak (the petitioners) requesting that we delist the SONCC ESU of coho salmon under the ESA. The petitioners previously submitted four petitions requesting that we delist coho salmon. We analyzed those petitions and found that they did not present substantial scientific or commercial information indicating the petitioned action may be warranted. One negative 90-day finding notice for three of these petitions was published on October 7, 2011 (76 FR 62375) and a second negative 90-day finding for the fourth petition was published on January 11, 2012 (77 FR 1668). The new petition largely reiterates the petitioners' previous arguments, including that the species is not native to northern California watersheds, including the Klamath River, the species abundance has increased since the early 1960s and is in good condition overall, and that non-man-made factors (e.g., ocean conditions, floods, fires, and drought) rather than man-made factors are responsible for the decline in coho salmon abundance. These arguments

were addressed in our responses to the previous petitions and therefore not repeated here.

In the current petition, the petitioners have specified their request to delist the SONCC coho salmon ESU, reiterated many of their previous arguments, and presented some additional information regarding coho and Chinook salmon fishing seasons in Oregon streams, Yukon River salmon run predictions, changes in salmon landings over the past 1–2 decades, and increases in Pacific Ocean water temperature. We carefully analyzed this additional information and found that it is: Not relevant to the petitioned action (e.g., the Oregon and Yukon fisheries are different ESUs from the petitioned species); not supported by literature citations or other references in the petition (e.g., historical landings and ocean temperature information), and therefore constitutes unsupported assertions; or it simply does not support the petitioned action (e.g., information about coho and Chinook salmon fishing seasons in Oregon streams that are not within the range of this ESU). As a result of these deficiencies, the petition does not present any additional substantial scientific or commercial information that indicates the petitioned action may be warranted. Moreover, none of this additional information modifies the underlying scientific basis for our original determination to list the SONCC coho salmon ESU or causes us to re-evaluate our analysis of delisting petitions that were previously submitted by the petitioners.

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. ESA implementing regulations define ''substantial information'' as the ''amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)(1)). In determining whether a petition presents substantial scientific or commercial information to list or delist a species, we take into account information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, followed by prompt publication in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). ESA implementing regulations state that a species may be delisted only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened for one or more of the following reasons: The species is extinct; the species is recovered; or subsequent investigations show the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

Petition Finding

As discussed above, this subject petition does not present any additional substantial scientific or commercial information related to whether the SONCC ESU of coho salmon is recovered, extinct, or that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error. Therefore, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

References Cited

A complete list of the references used in this finding is available upon request (see **ADDRESSES**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 4, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–22209 Filed 9–7–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC107

Takes of Marine Mammals Incidental to Specified Activities; Piling and Fill Removal in Woodard Bay Natural Resources Conservation Area, Washington

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the Washington State Department of Natural Resources (DNR) to incidentally harass, by Level B harassment only, harbor seals during restoration activities within the Woodard Bay Natural Resources Conservation Area (NRCA).

DATES: This authorization is effective from November 1, 2012, through March 15, 2013.

ADDRESSES: A copy of the IHA and related documents are available by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the application, including references used in this document, may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* For those members of the public unable to view these documents on the Internet, a copy may be obtained by writing to the address specified above or telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**). Associated documents prepared pursuant to the National Environmental Policy Act (NEPA) are also available at the same site. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is published in the **Federal Register** to provide public notice and initiate a 30-day comment period.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has

defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by Level B harassment as defined below. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. If authorized, the IHA may be effective for a period of one year.

Except with respect to certain activities not pertinent here, the MMPA defines 'harassment' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On May 18, 2012, we received an application from the DNR for an IHA for the taking, by Level B harassment only, of small numbers of harbor seals (*Phoca vitulina*) incidental to activities conducted in association with an ongoing habitat restoration project within the Woodard Bay NRCA, Washington. DNR was first issued an IHA that was valid from November 1, 2010, through February 28, 2011 (75 FR 67951), and was subsequently issued a second IHA that was valid from November 1, 2011, through February 28, 2012 (76 FR 67419). Restoration activity planned for 2012–13 includes removal of fill and associated materials in Woodard Bay and Chapman Bay and removal of creosote pilings and structure in Chapman Bay. Pilings will be removed by vibratory hammer extraction methods or by direct pull with cables. The superstructure materials will be removed by excavator and/or cables suspended from a barge-mounted crane. The specified activities will occur only between November 1 through March 15 (2012–13), and are expected to require a maximum total of approximately 70 days.

Description of the Specified Activity

In accordance with regulations implementing the MMPA, we published notice of the proposed IHA in the **Federal Register** on July 30, 2012 (77 FR 44583). A complete description of the action was included in that notice and will not be reproduced here.

The restoration activities planned under the IHA include all or part of the following:

1. Fill Removal

- Remove 13,000 yd^3 of fill from Woodard Bay
- Remove 325 yd^3 of fill from Chapman Bay
- Remove associated creosoted timber, pilings, metal scraps and concrete abutment

2. Piling and Structure Removal

- Remove 10,000 ft^2 of pier superstructure and 470 pilings from Chapman Bay Pier
- Remove 30 anchor piles from Chapman Bay

Fill removal from Woodard and Chapman Bays will be accomplished from the uplands by heavy equipment and haul trucks. The creosoted pilings in the fill will be removed from the uplands by a crane-mounted vibratory hammer. This portion of the project is estimated to take approximately 12–14 weeks to complete. The majority of fill removal work is located in Woodard Bay, which is separated from the harbor seal haul-out areas (located in Chapman Bay) by land. This work will likely result in less disturbance of harbor seals than will the work located in Chapman Bay. In addition, the material to be removed will be hauled offsite by the contractor via Whitham Road, which is the main road into the NRCA and which leads away from the haul-out area (see Figure 4 of DNR's application). Fill removal will largely occur above the Ordinary High Water Mark. Fill removal activities may occur between November 1 and March 15. Chapman Bay fill removal is roughly 250 m from the south haul-out and 975 m from the north haul-out.

Piling and structure removal work will be accomplished by barge and skiffs. The pilings will be removed by vibratory hammer or by direct pull with cables; both methods are suspended from a barge-mounted crane. The vibratory hammer is a large steel device lowered on top of the pile, which then grips and vibrates the pile until it is loosened from the sediment. The pile is then pulled up by the hammer and placed on a barge. For direct pull, a cable is set around the piling to grip and lift the pile from the sediment. The superstructure materials will be removed by excavator and/or cables suspended from a barge-mounted crane.

Approximately 500 12- to 24-in diameter pilings, along with associated pier superstructure, will be removed near but not directly adjacent to haul-outs. After vibration, a choker is used to lift the pile out of the water where it is placed on the barge for transport to an approved disposal site. Pilings that cannot be removed by hammer or cable, or that break during extraction, will be recorded via GPS for divers to relocate at the final phase of project activities. The divers will then cut the pilings at or below the mudline using underwater chainsaws. Operations will begin on the pilings and structures that are furthest from the seal haul-out so that there is an opportunity for the seals to adjust to the presence of the contractors and their equipment. Vibratory extraction operations may occur between November 1 and January 15 and are expected to occur for approximately 20 days over the course of this work window. Other work days will be spent removing pier superstructure, which does not involve vibratory extraction, but has the potential to result in behavioral harassment due to the proximity to working crew. The portion of the Chapman Bay Pier that will be removed is approximately 100 m from the south haul-out area and 250 m from the north haul out.

Comments and Responses

On July 30, 2012, we published a notice of proposed IHA (77 FR 44583) in response to DNR's request to take marine mammals incidental to restoration activities and requested comments and information concerning that request. During the 30-day public comment period, we received comments from the Marine Mammal Commission (Commission) on the proposed IHA. No other comments were received from the public.

The Commission provided two recommendations that it has provided for each of the past two IHAs issued to DNR for substantially similar work. The Commission recommends that we (1) require the DNR to monitor for the presence of and to characterize behavior of marine mammals during all proposed in-water activities; and (2) that we require monitoring before, during, and after all soft starts of pile removal activities to gather the data needed to determine the effectiveness of this technique as a mitigation measure. We disagree with these recommendations,

and the Commission has not provided any information that would lead us to offer different responses from those offered in the past. Therefore, those responses, which may be found in past **Federal Register** notices (75 FR 67951, 76 FR 67419), are not repeated here.

Description of Marine Mammals in the Area of the Specified Activity

The only marine mammal species that may be harassed incidental to DNR's restoration activities is the harbor seal. Harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. We presented a more detailed discussion of the status of the Washington inland waters stock of harbor seals and its occurrence in the action area in the notice of the proposed IHA (77 FR 44583; July 30, 2012).

Potential Effects on Marine Mammals

Potential effects of DNR's activities are likely to be limited to behavioral disturbance of seals at the two log boom haul-outs located in the action area. Other potential disturbance could result from the introduction of sound into the environment as a result of pile removal activities; however, this is unlikely to cause an appreciably greater amount of harassment in either numbers or degree, in part because it is anticipated that most seals will be disturbed initially by physical presence of crews and vessels or by sound from vessels.

There is a general paucity of data on sound levels produced by vibratory extraction of timber piles; however, it is reasonable to assume that extraction will not result in higher sound pressure levels (SPLs) than vibratory installation of piles. As such, we assume that source levels from the specified activity will not be as high as average source levels for vibratory installation of 12–24 in steel piles (155–165 dB; Caltrans, 2009). Our general in-water harassment thresholds for pinnipeds exposed to continuous noise, such as that produced by vibratory pile extraction, are 190 dB root mean square (rms) re: 1 μPa as the potential onset of Level A (injurious) harassment and 120 dB RMS re: 1 μPa as the potential onset of Level B (behavioral) harassment.

Vibratory extraction will not result in sound levels near 190 dB; therefore, injury will not occur. However, noise from vibratory extraction will likely exceed 120 dB near the source and may induce responses in-water such as avoidance or other alteration of behavior at time of exposure. However, seals flushing from haul-outs in response to small vessel activity and the presence of work crews would already be considered as 'harassed'; therefore, any harassment resulting from exposure to sound pressure levels above the 120 dB criterion for behavioral harassment would not be considered additional.

The airborne sound disturbance criteria currently used for Level B harassment is 90 dB rms re: 20 μPa for harbor seals. Based on information on airborne source levels measured for pile driving with vibratory hammer, removal of wood piles is unlikely to exceed 90 dB; further, the vibratory hammer will be outfitted with a muffling device ensuring that airborne SPLs are no higher than 80 dB.

Potential effects of sound produced by the action on harbor seals were detailed in the notice of the proposed IHA (77 FR 44583; July 30, 2012). In short, while it may be inferred that temporary hearing impairment (temporary threshold shift; TTS) could theoretically result from the DNR project, it is highly unlikely, due to the source levels and duration of exposure possible. It is expected that elevated sound will have only a negligible probability of causing TTS in individual seals. Further, seals are likely to be disturbed via the approach of work crews and vessels long before the beginning of any pile removal operations and would be apprised of the advent of increased underwater sound via the soft start of the vibratory hammer. It is not expected that airborne sound levels will induce any form of behavioral harassment, much less TTS in individual pinnipeds.

The DNR and other organizations, such as the Cascadia Research Collective, have been monitoring the behavior of harbor seals present within the NRCA since 1977. Past disturbance observations at Woodard Bay NRCA have shown that seal harassment results from the presence of non-motorized vessels (e.g., recreational kayaks and canoes), motorized vessels (e.g., fishing boats), and people (Calambokidis and Leathery, 1991; Buettner *et al.,* 2008). Results of these studies are described in the proposed IHA notice for this action. Based on these studies, we anticipate that the presence of work crews and vessels will result in behavioral harassment, primarily by flushing seals off log booms, or by causing short-term avoidance of the area or similar short-term behavioral disturbance.

In summary, based on the preceding discussion and on observations of harbor seals during past management activities in Woodard Bay, we have determined that impacts to harbor seals during restoration activities will be limited to behavioral harassment of limited duration and limited intensity (i.e., temporary flushing at most) resulting from physical disturbance. It is anticipated that seals would be initially disturbed by the presence of crew and vessels associated with the habitat restoration project. Seals entering the water following such disturbance could also be exposed to underwater SPLs greater than 120 dB (i.e., constituting harassment); however, given the short duration and low energy of vibratory extraction of 12–24 in timber piles, PTS will not occur and TTS is not likely. Alternatively, the presence of work crews and vessels, or the introduction of sound into the water, could result in short-term avoidance of the area by seals seeking to use the haul-out. Abandonment of any portion of the haul-out is not expected, as harbor seals have been documented as quickly becoming accustomed to the presence of work crews. During similar activities carried out under the previous IHAs, seals showed no signs of abandonment or of using the haul-outs to a lesser degree.

Anticipated Effects on Habitat

We provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (77 FR 44583; July 30, 2012). While marine mammal habitat will be temporarily ensonified by low sound levels resulting from habitat restoration effort, no impacts to the physical availability of haul-out habitat will occur. It is expected that, at most, temporary disturbance of habitat potentially utilized by harbor seal prey species may occur as piles are removed. The DNR's restoration activities will result in a long-term net positive gain for marine mammal habitat, compared with minimal short-term, temporary impacts.

Summary of Previous Monitoring

Please see the notice of the proposed IHA (77 FR 44583; July 30, 2012) for a summary of previous monitoring.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The DNR will continue certain mitigation measures stipulated in the previous IHAs, designed to minimize disturbance to harbor seals within the

action area in consideration of timing, location, and equipment use. Foremost, pile, structure, and fill removal will only occur between November and March, outside of harbor seal pupping and molting seasons. Therefore, no impacts to pups from the specified activity during these sensitive time periods will occur. In addition, the following measures will be implemented:

- The DNR will approach the action area slowly to alert seals to their presence from a distance and will begin pulling piles at the farthest location from the log booms used as harbor seal haul-out areas;
- No piles within 30 yd (27 m) of the two main haul-out locations identified in the IHA application will be removed;
- The contractor or observer will survey the operational area for seals before initiating activities and wait until the seals are at a sufficient distance (i.e., 50 ft [15 m]) from the activity so as to minimize the risk of direct injury from the equipment or from a piling or structure breaking free;
- The DNR will require the contractor to initiate a vibratory hammer soft start at the beginning of each work day; and
- The vibratory hammer power pack will be outfitted with a muffler to reduce in-air noise levels to a maximum of 80 dB.

The soft start method involves a reduced energy vibration from the hammer for the first 15 seconds and then a 30-second waiting period. This method will be repeated twice before commencing with operations at full power.

We have carefully evaluated the applicant's mitigation measures as proposed and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Injury, serious injury, or mortality to pinnipeds could likely only result from startling animals inhabiting the haul-out into a stampede reaction. Even in the event that such a reaction occurred, it is unlikely that it will result in injury, serious injury, or mortality, as the activities will occur outside of the pupping season, and access to the water from the haul-outs is relatively easy and unimpeded. However, DNR will approach haul-outs gradually from a distance, and will begin daily work at the farthest distance from the haul-out in order to eliminate the possibility of such events. During the previous years of work under our authorization, implementation of similar mitigation measures has resulted in no known injury, serious injury, or mortality (other than one event considered atypical and outside the scope of the mitigation measures considered in relation to disturbing seals from the haul-outs). Based upon the DNR's record of management in the NRCA, as well as information from monitoring DNR's implementation of the improved mitigation measures as prescribed under the previous IHAs, we have determined that the planned mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

DNR's monitoring plan adheres to protocols already established for Woodard Bay to the maximum extent practical for the specified activity. Monitoring of both the north and south haul-outs will occur for a total of 15 work days, during the first 5 days of project activities, when the contractors are mobilizing and starting use of the vibratory hammer; during 5 days when activities are occurring closest to the haul-out areas; and during 5 additional days, to include days when fill removal is occurring in Woodard Bay. It is not expected that Woodard Bay fill removal will result in seal disturbance; however, the stipulation that monitoring be conducted while this activity occurs is intended to ensure that such is the case. Monitoring of both haul-outs will be performed by at least one observer. The observer will (1) be on-site prior to crew and vessel arrival to determine the number of seals present pre-disturbance; (2) maintain a low profile during this time to minimize disturbance from monitoring; and (3) conduct monitoring beginning 30 minutes prior to crew arrival, during pile removal activities, and for 30 minutes after crew leave the site.

The observer will record incidental takes (i.e., numbers of seals flushed from the haul-out). This information will be determined by recording the number of seals using the haul-out on each monitoring day prior to the start of restoration activities and recording the number of seals that flush from the haul-out or, for animals already in the water, display adverse behavioral reactions to vibratory extraction. A description of the disturbance source, the proximity in meters of the disturbance source to the disturbed animals, and observable behavioral reactions to specific disturbances will also be noted. In addition, the observer will record:

- The number of seals using the haul-out on each monitoring day prior to the start of restoration activities for that day;
- Seal behavior before, during and after pile and structure removal;
- Monitoring dates, times and conditions;
- Dates of all pile and structure removal activities; and
- After correcting for observation effort, the number of seals taken over the duration of the habitat restoration project.

Within 30 days of the completion of the project, DNR will submit a monitoring report that will include a summary of findings and copies of field data sheets and relevant daily logs from the contractor.

Estimated Take by Incidental Harassment

We are authorizing DNR to take harbor seals, by Level B harassment only, incidental to specified restoration activities. These activities, involving extraction of creosoted timber piles and removal of derelict pier superstructure and fill, are expected to harass marine mammals present in the vicinity of the project site through behavioral disturbance only. Estimates of the number of marine mammals that may be harassed by the activities are based upon actual counts of harbor seals harassed during days monitored under the previous IHAs, and the estimated total number of working days. Methodology of take estimation was discussed in detail in our notice of proposed IHA (77 FR 44583; July 30, 2012).

DNR considers that 40 total work days (as opposed to the total work window, and not including days spent removing fill from the Woodard Bay area) may occur, potentially resulting in incidental harassment of harbor seals. Using the average count from monitoring under the previous IHAs, the result is an estimated incidental take of 1,680 harbor seals (40 days × 42 seals per day). We consider this to be a highly conservative estimate in comparison with the estimated actual take of 875 seals from 2010 and 231 seals from 2011, which is nonetheless based upon the best available information.

Negligible Impact and Small Numbers Analysis and Determination

We have defined 'negligible impact' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In determining whether or not authorized incidental take will have a negligible impact on affected species stocks, we consider a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. Although DNR's restoration activities may harass pinnipeds hauled out in Woodard Bay, impacts are occurring to a small, localized group of animals. No mortality or injury is anticipated or authorized, and the specified activity is not expected to result in long-term impacts such as permanent abandonment of the haul-out. Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment. However, seals have been observed as becoming habituated to physical presence of work crews, and quickly re-inhabit haul-outs upon cessation of stimulus. In addition, the specified restoration actions may provide improved habitat function for seals, both indirectly through a healthier prey base and directly through restoration and maintenance of man-made haul-out habitat. No impacts are expected at the population or stock level.

No pinniped stocks known from the action area are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity.

Although the estimated take of 1,680 is 11 percent of the estimated population of 14,612 for the Washington Inland Waters stock of harbor seals, the number of individual seals harassed will be lower, with individual seals likely harassed multiple times. In addition, although the estimated take is based upon the best information available, we consider the estimate to be highly conservative. For similar restoration activities in 2010–11, estimated actual take was much lower (875 seals over 35 work days in 2010 and 231 seals over 21 work days in 2011).

Mitigation measures will minimize onset of sudden and potentially dangerous reactions and overall disturbance. In addition, restoration work is not likely to affect seals at both haul-outs simultaneously, based on location of the crew and barge. Further, although seals may initially flush into the water, based on previous disturbance studies and maintenance activity at the haul-outs, the DNR expects seals will quickly habituate to piling and structure removal operations. For these reasons no long term or permanent abandonment of the haul-out is anticipated. Much of the work planned for 2012–13 consists of fill removal, which does not require in-water work or vessel support, and is largely located in Woodard Bay, which is shielded from the haul-out locations by land. The specified activity is not anticipated to result in injury, serious injury, or mortality to any harbor seal. The DNR will not conduct habitat restoration operations during the pupping and molting season; therefore, no pups will be affected by the specified activity and no impacts to any seals will occur as a result of the specified activity during these sensitive time periods.

Based on the foregoing analysis, behavioral disturbance to pinnipeds in Woodard Bay will be of low intensity and limited duration. To ensure minimal disturbance, DNR will implement the mitigation measures described previously, which we have determined will serve as the means for effecting the least practicable adverse effect on marine mammal stocks or populations and their habitat. We find that DNR's restoration activities will result in the incidental take of small numbers of marine mammals, and that the requested number of takes will have no more than a negligible impact on the affected species and stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are no ESA-listed marine mammals found in the action area; therefore, no consultation under the ESA is required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, we prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of an IHA to DNR. We signed a Finding of No Significant Impact on October 27, 2010. We have reviewed the application and determined that there are no substantial changes to the action or new environmental impacts or concerns. Therefore, we have determined that a new or supplemental EA or Environmental Impact Statement is unnecessary. The EA referenced above is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Determinations

We have determined that the impact of conducting the specific activities described in this notice and in the IHA request in Woodard Bay, Washington may result, at worst, in temporary modifications in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected stock of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, we have issued an IHA to DNR to conduct habitat restoration activities in Woodard Bay during the period of November 1, 2012, through March 15, 2013, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 4, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–22211 Filed 9–7–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC174

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in October, November, and December of 2012. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2013 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held October 11, November 15, and December 12, 2012.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on October 10, October 17, November 7, November 15, December 5, and December 12, 2012.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Somerville, MA; Mount Pleasant, SC; and Clearwater, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Wilmington, NC; Key Largo, FL; Kenner, LA; Boston, MA; Daytona Beach, FL; and Ronkonkoma, NY.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for three years. Approximately 77 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location which first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. October 11, 2012, 12 p.m.—4 p.m., LaQuinta Inn & Suites, 23 Cummings Street, Somerville, MA 02145.
2. November 15, 2012, 12 p.m.—4 p.m., Hampton Inn & Suites, 1104 Isle of Palms Connector, Mount Pleasant, SC 29464.
3. December 12, 2012, 12 p.m.—4 p.m., LaQuinta Inn & Suites, 5000 Lake Boulevard, Clearwater, FL 33760.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *esander@peoplepc.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for three years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 136 free Protected Species Safe Handling,

Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. October 10, 2012, 9 a.m.–5 p.m., Hilton Garden Inn, 6745 Rock Spring Road, Wilmington, NC 28405.
2. October 17, 2012, 9 a.m.–5 p.m., Holiday Inn, 99701 Overseas Highway, Key Largo, FL 33037.
3. November 7, 2012, 9 a.m.–5 p.m., Hilton, 901 Airline Drive, Kenner, LA 70062.
4. November 15, 2012, 9 a.m.–5 p.m., Hilton, 1 Hotel Drive, Boston, MA 02128.
5. December 5, 2012, 9 a.m.–5 p.m., Holiday Inn Express, 2620 West International Speedway Boulevard, Daytona Beach, FL 32114.
6. December 12, 2012, 9 a.m.–5 p.m., Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

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

Dated: September 4, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–22224 Filed 9–7–12; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 20 September 2012, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *staff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: August 30, 2012 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2012–21938 Filed 9–7–12; 8:45 am]

BILLING CODE 6331–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

The following notice of a scheduled meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission has scheduled a meeting for the following date: September 12, 2012 at 9:30 a.m.

PLACE: Three Lafayette Center, 1155 21st St. NW., Washington, DC, Lobby Level Hearing Room (Room 1300).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled this meeting to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. The agenda for this meeting is available to the public and posted on the Commission's Web site at *http://www.cftc.gov.* In the event that the time or date of the meeting changes, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, Assistant Secretary of the Commission, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–22250 Filed 9–6–12; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

US Air Force Exclusive Patent License

AGENCY: Air Force Research Laboratory Information Directorate, Rome, New York, Department of the Air Force, DOD.

ACTION: Notice of Intent to Issue an Exclusive Patent License.

SUMMARY: Pursuant to the provisions of part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces

its intention to grant Trident Systems, Inc., a corporation of Virginia, having a place of business at 10201 Fairfax Blvd., Suite 300, Fairfax, VA, an exclusive license in any right, title and interest the United States Air Force has in: U.S. Patent No. 8,051,475, filed on March 27, 2007 and issued on November 1, 2011, entitled ''Collaboration Gateway.''

FOR FURTHER INFORMATION CONTACT: An exclusive license for this patent will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objections should be sent to: Air Force Research Laboratory, Office of the Staff Judge Advocate, AFRL/RIJ, 26 Electronic Parkway, Rome, New York 13441–4514. Telephone: (315) 330–2087; Facsimile (315) 330–7583.

Henry Williams Jr,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2012–22186 Filed 9–7–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Impact Statement for Short Range-Projects and Update of the Real Property Master Plan for Fort Belvoir, VA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The Department of the Army announces its intent to conduct public scoping under the National Environmental Policy Act (NEPA) to gather information to prepare an Environmental Impact Statement (EIS) for proposed short-range improvement projects and the proposed update of the Real Property Master Plan (RPMP) for Fort Belvoir, VA. The EIS will analyze environmental impacts associated with the proposed short-range projects and anticipated land uses designated in a revised RPMP. The revised RPMP will incorporate a short-range component and a long-range component. The short-range component projects are proposed for the next five years, and the long-range component looks at land uses and potential development through 2030. The EIS will assess potential environmental impacts associated with future development and management of land, facilities, resources and infrastructure based on the population capacity identified in the revised RPMP. Additional site-specific NEPA analyses will be prepared for future development projects identified in the long-range component of the revised RPMP. The revised RPMP will incorporate adjustments to the land use plan in the RPMP that were made in the Final Environmental Impact Statement for Implementation of Base Realignment and Closure (BRAC) Recommendations and Related Army Actions at Fort Belvoir, VA (2007) and BRAC-related changes made since 2007.

ADDRESSES: Please send written comments to: Fort Belvoir Directorate of Public Works, Environmental and Natural Resources Division (RPMP EIS), 9430 Jackson Loop, Suite 200, Fort Belvoir, VA 22060–5116; or by email to *imcom.fortbelvoir.dpw.environmental@us.army.mil*.

FOR FURTHER INFORMATION CONTACT: Fort Belvoir Directorate of Public Works, Environmental and Natural Resources Division at (703) 806–4007 or (703) 806–3193, during normal working business hours Monday–Friday, 8 a.m. to 4:00 p.m.; or by email to *imcom.fortbelvoir.dpw.environmental@us.army.mil*.

SUPPLEMENTARY INFORMATION: The analysis will focus on Fort Belvoir's Main Post (7,700 acres) and the Fort Belvoir North Area (800 acres, formerly called the Engineer Proving Ground). The update will not include Fort Belvoir property at Rivanna Station in Charlottesville, VA; the Mark Center in Alexandria, VA; or the Humphreys Engineer Center.

The EIS will analyze environmental impacts of the short-range projects currently programmed for construction in fiscal years 2013–2017. These projects include new office buildings; community and recreational facilities; a Fisher House; industrial and maintenance facilities; privatization of utilities; long-term lease of additional land to the privatized housing partner; the National Museum of the U.S. Army; and roads. If and when these projects are completed, approximately 4,800 additional employees would be expected to work at Fort Belvoir.

The Army is also updating its RPMP for Fort Belvoir by analyzing the on-post and off-post environmental impacts of reasonably foreseeable future development and management of real property (land uses, facilities, resources, infrastructure, and population capacity. The EIS will assess the potential direct, indirect, and cumulative environmental impacts associated with updating the RPMP to meet the Army's current and future planning needs.

A range of reasonable alternatives will be analyzed in the EIS. Alternatives will reflect various scenarios for implementation of the short-range projects, combined with various scenarios for land use designations on the installation for longer range planning. The EIS will also consider a No Action alternative, under which the approved 1993 Master Plan (as amended in the 2007 BRAC EIS) would remain in effect. Other reasonable alternatives identified during the scoping process will be considered for evaluation in the EIS.

The proposed short-range projects at Fort Belvoir could have significant impacts to traffic, air quality, and natural, cultural, and other resources. Long-range development could have significant impacts to the same resources. Mitigation measures will be identified for adverse impacts.

Scoping and public comments: Federally-recognized Indian tribes, federal, state, and local agencies, organizations, and the public are invited to be involved in the scoping process for the preparation of this EIS by participating in meetings and/or submitting written comments. The scoping process will help identify possible alternatives, potential environmental impacts, and key issues of concern to be analyzed in the EIS. Written comments will be accepted within 30 days of publication of the NOI in the **Federal Register**. Meetings will be held in Alexandria, VA. Notification of the times and locations for the scoping meetings will be published locally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–22225 Filed 9–7–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13022–003]

Barren River Lake Hydro LLC; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–13022–003.

c. *Date filed:* December 9, 2011 and amended on June 21, 2012.

d. *Applicant:* Barren River Lake Hydro LLC (Barren River Hydro).

e. *Name of Project:* Barren River Lake Dam Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) Barren River Lake Dam on the Barren River, in Barren and Allen counties, Kentucky. The project

would occupy 29.4 acres of United States lands administered by the Corps' Louisville District.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Brent Smith, Symbiotics LLC, 371 Upper Terrace, Suite 2, Bend, OR 97702; (541) 330–8779; or email at *brent.smith@symbioticsenergy.com.*

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or via email at *allan.creamer@ferc.gov.*

j. *Deadline for filing scoping comments:* October 4, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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 is not ready for environmental analysis at this time.

l. The proposed project would utilize the Corps' existing Barren River Lake Dam, and would consist of the following new facilities: (1) An upper intake structure with a center elevation of 533 feet mean sea level (msl) and a lower intake structure with a center elevation of 507.5 feet msl, each equipped with trashracks having 2-inch clear spacing; (2) two 220-foot-long penstocks, connecting the intakes to a 50-foot-diameter, 100-foot-long gate shaft; (3) a 50-by-60-foot gate house; (4) a 850-foot-long power tunnel and a 14-foot-diameter, 950-foot-long penstock, leading to; (5) a 100-foot-long, 65-foot-wide powerhouse containing one vertical Kaplan turbine unit with a total capacity of 6.8 megawatts (MW); (6) a 12-foot-diameter regulating bypass valve connected to the west side of the powerhouse; (7) a 110-foot-long, 80-foot-wide tailrace; (8) a tailwater aeration system; (9) a proposed 0.6-mile-long, 12.5 kilovolt (kV) transmission line; (10) a switchyard; (11) two access roads leading to the gatehouse and powerhouse; and (12) appurtenant facilities. The proposed project would have an average annual generation of 25.8 GWh, and operate in a run-of-release mode utilizing surplus water from the Barren River Lake Dam, as directed by the Corps.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''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. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:*

The Commission staff intends to prepare a single Environmental Assessment (EA) for the Barren River Lake Dam Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on August 31, 2012.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: September 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22180 Filed 9–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14444–000]

Placer County Water Agency; Notice of Application Accepted for Filing And Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14444–000.

c. *Date filed:* August 8, 2012.

d. *Applicant:* Placer County Water Agency.

e. *Name of Project:* Lincoln Metering Station Small Conduit Hydroelectric Project.

f. *Location:* The proposed Lincoln Metering Station Small Conduit Hydroelectric Project would be located at the applicant's Lincoln Metering Station in the town of Lincoln, Placer County, California. The Lincoln Metering Station is part of the applicant's municipal water supply system. The land on which all the project structures exist is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brian C. Martin, Director of Technical Services, Placer County Water Agency, P.O. Box 6570, Auburn, CA 95604, phone (530) 823–4886.

i. *FERC Contact:* Kelly Houff, (202) 502–6393, *Kelly.Houff@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is

shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp*. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure 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, it must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Lincoln Metering Station Small Conduit Hydroelectric Project would consist of: (1) A new powerhouse, approximately 800 square feet, adjacent to the existing metering facility, containing two generating units with a total installed capacity of 380 kilowatts; (2) a new discharge pipe approximately 18 feet in length; and (3) appurtenant facilities. The applicant estimates the project would have an average annual generation of 1.77 megawatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, P–14444, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''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. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. 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.

Dated: September 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22181 Filed 9–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13005–003]

Oliver Hydro LLC; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–13005–003.

c. *Date filed:* December 14, 2011.

d. *Applicant:* Oliver Hydro LLC.

e. *Name of Project:* William Bacon Oliver Lock and Dam Hydroelectric Project

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) William Bacon Oliver Lock and Dam on the Black Warrior River, in Tuscaloosa County, Alabama. The project would occupy 8.7 acres of United States lands administered by the Corps' Mobile District.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Brent Smith, Symbiotics LLC, 371 Upper Terrace, Suite 2, Bend, OR 97702; (541) 330–8779; or email at *brent.smith@symbioticsenergy.com*.

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or via email at *allan.creamer@ferc.gov*.

j. *Deadline for filing scoping comments:* October 4, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be

paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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 is not ready for environmental analysis at this time.

l. The proposed project would utilize the Corps' existing William Bacon Oliver Lock and Dam, and would consist of the following new facilities: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 11.72 megawatts (MW); (4) a 150-foot-long, 68-foot-wide tailrace; (5) a proposed 1.7-mile-long, 25 kilovolt (kV) transmission line; (6) a switchyard; and (7) appurtenant facilities. The proposed project would have an average annual generation of 42.6 GWh, and operate in a run-of-river mode utilizing surplus water from the William Bacon Oliver Lock and Dam, as directed by the Corps.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''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. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process

The Commission staff intends to prepare a single Environmental Assessment (EA) for the William Oliver Bacon Lock and Dam Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on August 31, 2012.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: September 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22184 Filed 9–7–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–33–002]

Kinder Morgan Border Pipeline LLC; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on August 30, 2012, Kinder Morgan Border Pipeline LLC (KM Border) filed a motion requesting an extension consistent with the Federal Energy Regulatory Commission's (Commission) revised policy of periodic review from a triennial to a five year period. The Commission, in Order No. 735, modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, KM Border requests that the date for its next rate filing be extended to September 29, 2014, which is five years from the date of KM Border's most recent rate filing with this Commission.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, September 10, 2012.

Dated: September 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22183 Filed 9–7–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications

Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Communication date	Presenter or requester
Prohibited:		
1. CP08–6–000	8–20–12	Richard Kinder
2. CP11–161–000	8–23–12	Jolie DeFeis [1]
Exempt:		
1. CP11–515–000	8–24–12	U.S. Fish & Wildlife Staff [2]

[1] Email record.
[2] Email record.

Dated: September 4, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–22179 Filed 9–7–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9725–8; EPA–HQ–OAR–2003–0039]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements of the HCFC Allowance System; EPA ICR No. 2014.04

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the U.S. Environmental Protection Agency (EPA) is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR will expire on 02/28/2013. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 9, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0039 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket # EPA–HQ–OAR–2003–0039, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Docket # EPA–HQ–OAR–2003–0039, Air and Radiation Docket and Information Center at EPA West, 1301 Constitution Avenue NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0039. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Burchard, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9126; fax number: (202) 343–2338; email address: *burchard.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2003–0039, which is available for online viewing at *www.regulations.gov,* or in person at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

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

(iv) 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., electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No.: EPA–HQ–OAR–2003–0039.

Affected entities: Entities potentially affected by this action are producers, importers, exporters, transformers, and destroyers of HCFCs.

Title: Reporting and Recordkeeping Requirements of the HCFC Allowance System ICR numbers: EPA ICR No. 2014.04, OMB Control No. 2060–0498.

ICR status: This ICR will expire on 02/28/2013. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The international treaty *The Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol) and Title VI of the Clean Air Act Amendments (CAAA) established limits on total U.S. production, import, and export of class I and class II controlled ozone depleting substances (referred to hereinafter as ''controlled substances'').

Under its Protocol commitments, the United States was obligated to cease production and import of class I controlled substances (e.g., chlorofluorocarbons or CFCs) with exemptions for essential uses, critical uses, previously-used material, and material that is transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of class II controlled substances (i.e., hydrochlorofluorocarbons or HCFCs).

The U.S. is obligated to limit HCFC consumption (defined by the Protocol as production plus imports, minus exports). The schedule called for a 35 percent reduction on January 1, 2004, followed by a 75 percent reduction on January 1, 2010, a 90 percent reduction on January 1, 2015, a 99.5 percent reduction on January 1, 2020, and a total phaseout on January 1, 2030. EPA is responsible for administering the phaseout.

To ensure U.S. compliance with these limits and restrictions, EPA established an allowance system to control U.S. production and import of HCFCs by granting control measures referred to as baseline and calendar-year allowances. Baseline allowances are based on the historical activity of individual companies. Calendar-year allowances allow holders to produce and/or import controlled substances in a given year and are allocated as a percentage of baseline. There are two types of baseline and calendar-year allowances: consumption and production allowances. Since each allowance is equal to 1 kilogram of HCFC, EPA is able to monitor the quantity of HCFCs being produced, imported and exported. Transfers of production and consumption allowances among producers and importers are allowed and are tracked by EPA.

The above-described limits and restrictions are monitored by EPA through the recordkeeping and reporting requirements established in the regulations in 40 CFR part 82, subpart A. To submit required information, regulated entities can download reporting forms from EPA's Web site (*http://www.epa.gov/ozone/record*), complete them, and send them to EPA electronically, via mail, courier, or fax.

Upon receipt of the reports, the data is entered into the ODS Tracking System. The ODS Tracking System is a secure database that maintains the data submitted to EPA and helps the agency: (1) Maintain oversight over total production and consumption of controlled substances; (2) monitor compliance with limits and restrictions on production, imports, and trades and specific exemptions from the phaseout for individual U.S. companies; and (3)

assess, and report on, compliance with U.S. obligations under the Montreal Protocol.

EPA has implemented an electronic reporting system that allows regulated entities to prepare and submit data electronically. Coupled with the widespread use of the standardized forms, electronic reporting has improved data quality and made the reporting process efficient for both reporting companies and EPA. Most reporting is done electronically.

Pursuant to regulations in 40 CFR part 2, subpart B, reporting businesses are entitled to assert a business confidentiality claim covering any part of the submitted business information as defined in 40 CFR 2.201(c). EPA's practice is to manage the reported information as confidential business information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,601 hours and $161,793. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 49.

Frequency of response: Annually, quarterly, or as needed (depending on the report).

Estimated total average number of responses for each respondent: 7.

Estimated total annual burden hours: 1,601.

Estimated total annual costs: $161,793. This includes an estimated burden cost of $160,428 and an estimated cost of $1,365 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is a decrease of 259 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects the expansion of the electronic reporting program.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact Robert Burchard at *burchard.robert@epa.gov.*

Dated: September 4, 2012.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 2012–22206 Filed 9–7–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank).

TIME AND PLACE: September 25, 2012 from 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 326, 811 Vermont Avenue NW., Washington, DC 20571.

SUMMARY: The Advisory Committee was established November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

AGENDA: Presentations by Export-Import Bank staff on its priority congressional mandates on Sub-Saharan Africa, renewable energy and small business; an update by the Export Import Bank on its fiscal year-end business portfolio; and discussion led by the Advisory Committee on its recommendations for the Export-Import Bank's programs.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 25, 2012, Richard Thelen, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 565–3515 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Richard Thelen, 811 Vermont Avenue NW., Washington, DC 20571, (202) 565–3515.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–22349 Filed 9–6–12; 4:15 pm]

BILLING CODE 6690–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

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

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 13, 2012, from 9 a.m. until such time as the Board concludes its business.

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

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

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- August 9, 2012.

B. New Business

- Senior Officer Compensation Disclosures and Related Topics—Final Rule.
- System Audit Committee—Final Rule.

C. Reports

- Quarterly Report on Farm Credit System Condition.

Closed Session *

• Office of Examination Supervisory and Oversight Activities Report.

Dated: September 6, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–22342 Filed 9–6–12; 4:15 pm]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–1372]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's (Committee or EAAC) next meeting. The September meeting will receive reports from seven subcommittees continuing work from 2011, and will consider activities for 2012. The seven subcommittees cover: Text-to-911 Solutions, Interim to NG911; Interoperability Testing; PSAP Sign Language and other Communication Assistance; Detailed Report Sections from 2011; NENA i3 compared to EAAC Recommendations; TTY Transition/Roadmap; and, Timeline Alignment for Phasing into NG911 PSAPs.

DATES: The Committee's next meeting will take place on Friday, September 14, 2012, 10:30 a.m. to 3:30 p.m. (EST), at the headquarters of the Federal Communications Commission (FCC).

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer and Governmental Affairs Bureau, (202) 418–2284 (voice) or (202) 418–0416 (TTY), email: *Cheryl.King@fcc.gov* and/or Patrick Donovan, Public Safety and Homeland Security Bureau, (202) 418–2413, email: *Patrick.Donovan@fcc.gov*.

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment and appointment of members and Co-Chairpersons of the EAAC, an advisory committee required by the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 11–260, for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system (NG9–1–1). The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to Next Generation 911 (NG 9–1–1) emergency services by individuals with disabilities, and to make recommendations to the Commission on how to achieve those effective and efficient technologies and methods. During the spring of 2011, the EAAC conducted a nationwide survey of individuals with disabilities and released a report on that survey on June 21, 2011. Following release of the survey report, the EAAC developed recommendations, which it submitted to the Commission on December 7, 2011, as required by the CVAA. At the September 2012 EAAC meeting, the seven subcommittees of the EAAC will present reports and consider activities for 2012.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

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).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–22133 Filed 9–7–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Renewal of a Currently Approved Collection; Comment Request; Basel II Recordkeeping and Disclosures

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comments.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). The FDIC is soliciting comments concerning the currently approved Basel II—Recordkeeping and Disclosures information collection, which is being renewed without change pending OMB review and action on proposed changes to the collection arising from proposed rules published in the **Federal Register** on August 30, 2012, and entitled *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action* (77 FR 52792); *Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements* (77 FR 52888); *Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule* (77 FR 52978).

DATES: Comments must be submitted on or before November 9, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html*

• *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NY–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC:

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

Title: Basel II: Disclosures and Recordkeeping.

OMB Number: 3064–0153.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks and state savings institutions.

Estimated Number of Respondents: 8.

Estimated Average Time per Response: implementation—330 hours; systems maintenance—27.9 hours; disclosures—5.79 hours; control, oversight and verification—11.05 hours; documentation—19 hours; and supervisory approvals—16.82 hours.

Total Annual Burden: 3,284 hours.

General Description of Collection: On December 7, 2007, the FDIC, the Office of the Comptroller, and the Federal Reserve Board (collectively, the ''Agencies'') issued the joint final rule titled *Risk-Based Capital Standards: Advanced Capital Adequacy Framework* (final rule) implementing a new risk-based regulatory capital framework for institutions in the United States. The final rule requires certain large or internationally active banks and bank holding companies (BHCs) to (1) adopt a written implementation plan, (2) update that plan for any mergers, (3) obtain prior written approvals for the use of certain approaches for determining risk-weighted assets, and (4) make certain public disclosures regarding their capital ratios, their components, and information on implicit support provided to a securitization. There are no required reporting forms associated with this information collection.

The Agencies, on August 30, 2012, proposed three rules that would amend this collection:

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action (77 FR 52792); *Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements* (77 FR 52888); and *Regulatory Capital Rules: Advanced Approaches Risk-based Capital Rules; Market Risk Capital Rule* (77 FR 52978). An information collection request to revise and rename the collection on the basis of the three rules has been submitted to OMB for review. However, since the FDIC's collection expires on January 31, 2013, the FDIC is proceeding with the renewal process to ensure continuation of the collection in the event that OMB does not act on the FDIC's request to revise the collection prior to its expiration date.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 4th day of September, 2012.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2012–22191 Filed 9–7–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10233, Access Bank, Champlin, MN

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Access Bank, (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Access Bank on May 7, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

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

Federal Deposit Insurance Corporation.

Dated: August 29, 2012.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2012–22192 Filed 9–7–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: September 12, 2012—2:00 p.m.

PLACE: 800 North Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: The meeting will be held in Open and Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Briefing on Logistica De Las Americas Conference.

2. Docket No. 11–05: Amendments to the Commission's Rules of Practice and Procedure.

3. Docket No. 11–16: Passenger Vessel Operator Financial Responsibility Requirements for Nonperformance of Transportation.

4. Docket No. 12–07: Solicitation of Views on Requests to Develop and Release Container Freight Rate Indices for U.S. Agricultural Exports based on a Sampling of Service Contracts filed with the FMC.

Closed Session

1. Rate and Surcharge Trends in the Trans Pacific Trade.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–22200 Filed 9–6–12; 11:15 am]

BILLING CODE 6730–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 39; OMB Control No. 9000–0053]

Federal Acquisition Regulation; Information Collection; Permits, Authorities, or Franchises

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

ACTION: Notice of request for public comments regarding an extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning permits, authorities, or franchises for regulated transportation.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 9, 2012.

ADDRESSES: Submit comments identified by *Information Collection 9000–0053, Permits, Authorities, or Franchises,* by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0053, Permits, Authorities, or Franchises''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0053, Permits, Authorities, or Franchises'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0053, Permits, Authorities, or Franchises.

Instructions: Please submit comments only and cite Information Collection 9000–0053, Permits, Authorities, or Franchises, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA (202) 208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires insertion of clause 52.247–2, Permits, Authorities, or Franchises, when regulated transportation is involved. The clause requires the contractor to indicate whether it has the proper authorization from the Federal Highway Administration (or other cognizant regulatory body) to move material. The contractor may be required to provide copies of the authorization before moving material under the contract. The clause also requires the contractor, at its expense, to obtain and maintain any permits, franchises, licenses, and other authorities issued by State and local governments. The Government may request to review the documents to ensure that the contractor has complied with all regulatory requirements.

B. Annual Reporting Burden

The estimated annual reporting burden has decreased from what was published in the **Federal Register** at 74 FR 56640, on November 2, 2009. The decrease is based on a revised estimate of the number of respondents, responses per year and response time per response. According to Fiscal Year 2011 Federal Procurement Data System (FPDS) data, 3,877 contracts were awarded to 1021 unique vendors under the North American Industry Classification System (NAICS) code 484 for trucking, where the requirements for this collection would apply. It is estimated that a maximum of 25%, or 255 of these vendors would be required to provide the information required by the clause. The information need only be gathered and submitted on an exception basis. We estimate that any respondent will be required to submit supporting information only one time annually. In addition, we think that it will take the contractor only half an hour to pull existing franchises or permits from the files.

Respondents: 255.
Responses per Respondent: 1.
Annual Responses: 255.
Hours Per Response: 0.5.
Total Burden Hours: 128.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises, in all correspondence.

Dated: August 28, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–22202 Filed 9–7–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''A Prototype Consumer Reporting System for Patient Safety Events.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by November 9, 2012.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.* Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRO.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

A Prototype Consumer Reporting System for Patient Safety Events

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for a Prototype Consumer Reporting System for Patient Safety Events. This project aims to design and test a system for collecting information from patients about health care safety events following standard definitions and formats.

There is a growing body of evidence that many adverse medical events go unreported in current systems (Weissman et al., 2008). A primary reason for this reporting gap is that most reporting systems do not presently accept or elicit reports from patients and their families (RTI 2010). AHRQ recognizes that the unique perspective of health care consumers could reveal important information that is not reported by health care providers. Patient reports could complement and enhance reports from providers and thus produce a more complete and accurate understanding of the prevalence and characteristics of medical adverse events (RTI, 2010).

In an effort to realize untapped potential of health care consumers to provide important information about patient safety events, AHRQ has funded the development of a prototype Consumer Reporting System for Patient Safety (CRSPS), designed to collect information from medical patients about medical errors that resulted or nearly resulted in harm or injury. The purpose of this project is to test the prototype for its ability to record data from consumers about patient safety events defined as an incident or near miss by the AHRQ Common Formats (AHRQ, 2010, details at: *www.pso.ahrq.gov/formats/commonfmt.htm*).

Currently there is no mechanism for consumers to report information about patient safety events defined as an incident or near miss by the AHRQ Common Formats. Such information is necessary for research on how to improve the quality of health care, promote patient safety and reduce medical errors. There is a need to collect this information from consumers and match these consumer reports to the information collected by providers, because the two sources may differ. Examining data from both sources allows the project to determine to what extent patients are able to provide more complete or more detailed information.

This research has the following goals:

1. To develop and design a prototype system to collect information about patient safety events.
2. To develop and test Web and telephone modes of a prototype questionnaire.
3. To develop and test protocols for a follow-up survey of health care providers.

This demonstration project is being conducted by AHRQ through its contractor, RAND Corporation with Brigham and Women's Hospital, Dana Farber Cancer Institute, and ECRI Institute, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goal of this project the following data collections will be implemented:

1. Safety event intake form and follow up. The safety event intake form asks about a medical error or mistake, harm or injury as well as near misses. Medical patients, consumers, family members and other caregivers voluntarily report safety events through a Web site or by telephone. The questions ask what happened, details of the event, when, where, whether there was harm, the type of harm, contributing factors, disclosure, and whether the patient reported the event and to whom. Information is also collected regarding whether the respondent is willing to have CRSPS staff follow up to clarify information. If a respondent consents, CRSPS staff will follow up by phone and ask questions about any information that was not clear in the initial report and annotate the report with this information.

2. Health care provider follow up. For the subset of consumers that consent, patient safety officers at health care provider organizations who maintain the adverse event reporting system will contribute supplemental information about the consumer-reported incident which occurred at their facility. CRSPS staff will contact the health care organization to share the consumer report with the patient safety officer or other appointed liaison. The liaison will determine if the consumer-reported incident matches an event in the provider's Incident Reporting System, and if so, provide additional information.

Data collected will be analyzed to produce estimates and basic descriptive statistics on the quantity and type of consumer-reported patient safety events, examine the variability of responses to questions, examine the mode of data collection by event types, and conduct correlations, cross tabulations of responses and other statistical analysis.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for respondents' time to participate in this information collection based on the expected number of respondents, 840 to the intake form and 84 to the provider follow up. The number of respondents is based on the size of the selected community, estimates of health care utilization, rates of adverse events, and response rates in similar investigations. The intake form is expected to maximally require 25 minutes via the Web or telephone including the optional 10 minutes of follow-up questions, resulting in a total burden of 490 hours. The health care provider follow up is expected to take 20 minutes and only occurs for the estimated 10% of patients consenting; this form carries a total burden of 28 hours. The total burden is 518 hours annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Safety event intake form and follow up	840	1	35/60	490
Health care provider follow up	84	1	20/60	28

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Total	924	NA	NA	518

Exhibit 2 shows the estimated annualized cost burden for patients, $10,652, and for the health care organization, $885, for a total annualized cost burden of $11,537. Respondents will not incur any other costs beyond those associated with their time to participate.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Safety event intake form and follow up	840	490	$21.74 *	$10,652
Health care provider follow up	84	28	31.61 **	885
Total	924	518	NA	11,537

* Based upon the mean of the average Wages, National Compensation Survey: Occupational Wages in the United States, May 2011, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#00–0000*

** Based upon the mean of the average wages, National Compensation Survey: Occupational Wages in the United States, May 2011: Occupational Health and Safety Specialists (General Medical and Surgical Hospitals). U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes299011.htm*

Estimated Annual Cost to the Government

AHRQ is supporting the conduct of this project as part of a contract with the RAND Corporation and the ECRI Institute. The estimated cost for this work is $899,827.

EXHIBIT 3—ESTIMATED ANNUALIZED COST

Cost component	Total cost	Annualized cost
Intake Form Development	$364,375	$242,917
System Development	413,860	275,907
Project Management	35,325	23,550
Overhead	86,267	57,511
Total	899,827	599,885

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 30, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–22028 Filed 9–7–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research And Quality

Special Emphasis Panel Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of SEP meeting.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Special Emphasis Panel (SEP) meeting on ''Partnerships for Sustainable Research and Dissemination of Evidence-Based Medicine (R24)''.

DATES: September 20–21, 2012 (Open on September 20 from 8:00 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

This notice is being published less than 15 days prior to the September 20–21 meeting, due to the time constraints of reviews and funding cycles.

ADDRESSES: Hyatt Regency Hotel Bethesda, One Metro Center, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting

should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for ''Partnerships for Sustainable Research and Dissemination of Evidence-Based Medicine (R24)'' are to be reviewed and discussed at this meeting. 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.

Dated: August 30, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–22027 Filed 9–7–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day 12–0237]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES)—(0920–0237, Expiration 11/30/2012)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States.

The National Health and Nutrition Examination Survey (NHANES) has, to date, been authorized as a generic clearance under OMB Number 0920–0237. A change in accounting practices, however, requires a shift to a newly-assigned clearance number for future full cycles of the survey. This extension requests generic clearance for all activities needed to successfully complete the current 2011–2012 NHANES survey cycle, which ends in early 2013. There are no changes to any information collection forms. A nine month clearance is requested.

The National Health and Nutrition Examination Survey (NHANES) was conducted periodically between 1970 and 1994, and continuously since 1999 by the National Center for Health Statistics, CDC.

Approximately one-quarter year of data collection is needed to complete the 2011–2012 cycle. Approximately 3,850 respondents participate in some aspect of the full survey. Of these, some complete the screening portion and are then screened out of the sample. Some additional respondents complete the screener and the household interview sections, but decline to be examined. The remaining approximately 1,300 participate in the screener, household interview and physical examination and followups. Averaging the burden across all respondents, at these varying levels of participation, results in an average burden of 2.4 hours. The burden for this activity is 9,240 hours.

The completion of the special study, National Youth Fitness Study, will have approximately 1,037 respondents in this quarter for a total burden of 1,037 hours. In addition, up to 1,000 additional persons (non-NHANES respondents) might participate in tests of procedures or other special studies. The average burden for these special study/pretest respondents is 3 hours for a total of 3,000 hours of burden. The burden for these studies is a total of 4,037 hours.

Participation in NHANES is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as arthritis, asthma, osteoporosis, infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, physical activity, environmental exposures, and diet. NHANES data are used to produce national reference data on height, weight, and nutrient levels in the blood. Results from more recent NHANES can be compared to findings reported from previous surveys to monitor changes in the health of the U.S. population over time. NHANES continues to collect genetic material on a national probability sample for future genetic research aimed at understanding disease susceptibility in the U.S. population. NCHS collects personal identification information. Participant level data items will include basic demographic information, name, address, social security number, Medicare number and participant health information to allow for linkages to other data sources such as the National Death Index and data from the Centers for Medicare and Medicaid Services (CMS).

NHANES data users include the U.S. Congress; numerous Federal agencies such as other branches of the Centers for Disease Control and Prevention, the National Institutes of Health, and the United States Department of Agriculture; private groups such as the American Heart Association; schools of public health; and private businesses. There is no cost to respondents other than their time. The total estimate of annualized burden is 13,277 hours.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
1. NHANES Respondents	3,850	1	2.4
2. Special study/pretest participants	2,037	1	2

Dated: August 30, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Directors, Centers for Disease Control and Prevention.

[FR Doc. 2012–22188 Filed 9–7–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Medicare, Medicaid, and CHIP Programs: Research and Analysis on Impact of CMS Programs on the Indian Health Care System

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Single Source Award.

SUMMARY: This notice supports expansion of research on the impact of CMS programs on the Indian health care system through a single source award. The Indian Health Service (IHS), Tribes and Tribal Organizations and Urban programs, deliver health care services to American Indian/Alaska Native (AI/AN) people through a network of hospitals, clinics and other providers. This award expands research on the impact of CMS programs and the delivery of health care to AI/AN beneficiaries.

FOR FURTHER INFORMATION CONTACT: Rodger Goodacre, Centers for Medicare & Medicaid Services, Office of Public Affairs/Tribal Affairs Group, 7500 Security Boulevard, M/S S1–05–13, Baltimore, MD 21244–1850, (410) 786–3209.

Intended Recipient: National Indian Health Board (NIHB).

Purpose of Award

The IHS and Tribal health programs have had long standing authority to bill Medicare and Medicaid for services provided at their facilities. These participating and billing authorities were expanded by the American Recovery and Reinvestment Act of 2009 (ARRA), the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), and the Affordable Care Act in 2010 (ACA). AI/AN people have traditionally been medically underserved and have health disparities significantly above those of the population as a whole. In order to ensure that AI/AN people have full knowledge of these new changes and the fullest access to CMS programs, this award will study the adoption and impact of these new authorities on the Indian health care system.

Amount of the Award

The total amount of funding available over a five year period is $3,175,000.00. The initial award will be awarded at $635,000.00. The subsequent years will be awarded on a non-competing continuation basis at approximately $635,000.00 per year for 5 total years, and will be subject to the availability of funds and satisfactory performance by the recipient.

Justification for Single Source Award

For the past five years through Cooperative Agreements with IHS, NIHB has provided analysis and research of the potential and actual impact of CMS programs on AI/AN beneficiaries and the health care system serving these beneficiaries. This work has included extensive analysis and research on Medicare and Medicaid data enrollment of AI/AN beneficiaries to understand utilization of the AI/AN population in the context of CMS programs. In addition, the NIHB has been instrumental in tracking CMS regulations and providing analysis and research to better understand the implications of CMS regulatory guidance on the Indian health programs. Based on this experience, NIHB is the only entity capable of carrying out the scope of activities because the scope of work builds on past experience and knowledge. Any other source would not have all of the knowledge and experience gained in the last five years. The NIHB provides research on health program issues impacting AI/ANs to over 565 Federally-recognized Tribes and has historically provided these services for several decades in conjunction with the HIS. The NIHB program has a national focus relevant to its AI/AN constituency who need to know through substantive research about the changes and updates in the latest health care services and access through CMS programs.

Project Period

The anticipated period of performance is for this cooperative agreement is August 31, 2012 through August 30, 2017 with funding awarded in 12-month budget increments subject to the availability of funds and satisfactory performance.

Provisions of the Notice

CMS has solicited a proposal from the NIHB to undertake analysis, research and studies to address the impact of CMS programs and AI/AN beneficiaries and the health care system serving those beneficiaries. The project consists of four principal research objectives:

- Study the ongoing impact of CMS programs on the Indian health system through analysis of, response to, and implementation of CMS regulations by Indian health providers.
- Study AI/AN demographic, enrollment, and utilization data and propose strategies to increase CMS data system capabilities to create more Indian specific reporting capacity.
- Provide ongoing study of CMS efforts to increase AI/AN knowledge of CMS programs and CMS responsiveness to Indian health system.
- Provide research support on the use and effectiveness of the CMS Tribal Consultation Policy. CMS requested that the NIHB submit an application which includes:

1. Cover Letter.
2. SF–424 Application for Federal Assistance.
3. SF–424A Budget Information—Non-Construction Programs.
4. A budget narrative (not to exceed three single spaced pages).
5. Abstract of Project.
6. A research project narrative that describes each of the four separate objectives (the entire narrative not to exceed 12 single space pages).
7. SF–424B Assurances.
8. Health Board Resolution.
9. 501(c)(3) Non-Profit certification.
10. Resumes of all key personnel.
11. Position descriptions.

12. Disclosure of Lobbying Activities, if applicable.

13. Copy of approved indirect cost rate agreement, if applicable.

14. Documentation of current OMB A–133 required financial audit, if applicable.

Evaluation criteria for review of the application will be comprised of three principal areas:

a. Program information which includes current organizational capabilities and operations.

b. Program planning and evaluation which includes identification of measurable goals, products, personnel and workplanning.

c. Program reporting which includes organizational capabilities and qualifications and categorical budget and justification.

Authority: Section 1110 of the Social Security Act, codified at 42 U.S.C. 1310.

Dated: August 16, 2012.

Daniel F. Kane,

Chief Grants Management Officer, Office of Acquisition and Grants Management, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–22189 Filed 9–7–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0755]

Draft Compliance Policy Guide Sec. 690.150 on Labeling and Marketing of Nutritional Products Intended for Use To Diagnose, Cure, Mitigate, Treat, or Prevent Disease in Dogs and Cats; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft compliance policy guide (CPG) entitled ''Compliance Policy Guide Sec. 690.150 Labeling and Marketing of Nutritional Products Intended for Use to Diagnose, Cure, Mitigate, Treat, or Prevent Disease in Dogs and Cats.'' This draft CPG is intended to provide guidance to FDA staff and industry on how FDA intends to use its enforcement discretion with regard to the labeling and marketing of dog and cat food products that are labeled and/or marketed as intending to diagnose, cure, mitigate, treat, or prevent diseases and to provide nutrients in support of meeting the animal's total daily nutrient requirements.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft CPG before it begins work on the final version of the CPG, submit either electronic or written comments on the draft CPG by November 9, 2012.

ADDRESSES: Submit written requests for single copies of the draft CPG to the Director, Division of Compliance Policy, Office of Enforcement, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., rm. 4044, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–827–0482. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft CPG. Submit electronic comments to *http://www.regulations.gov*.

Submit written comments on the draft CPG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: William J. Burkholder, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6865, *William.Burkholder@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft CPG entitled ''Labeling and Marketing of Nutritional Products Intended for Use to Diagnose, Cure, Mitigate, Treat, or Prevent Disease in Dogs and Cats.'' The purpose of this CPG is to communicate FDA's strategy for enforcing the new animal drug provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) with respect to dog and cat food products that make labeling or marketing claims to diagnose, cure, mitigate, treat, or prevent disease. Since 1988, the Center for Veterinary Medicine (CVM) has observed an increase in the number of dog and cat food products making such claims that are sold with, or without, the direction of a licensed veterinarian. Because of this increase, and to help ensure animal safety, CVM is issuing this draft CPG to set out its current thinking with respect to factors it will consider before determining whether to take regulatory action against dog and cat food products intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

FDA does not generally intend to recommend or initiate regulatory actions against dog and cat food products that are labeled and/or marketed as intended for use to diagnose, cure, mitigate, treat, or prevent diseases and to provide nutrients in support of meeting the animal's total daily nutrient requirements when all the following factors are present. Specifically: (1) Manufacturers make the products available to the public only through licensed veterinarians or through retail or Internet sales to individuals purchasing the product under the direction of a veterinarian; (2) manufacturers do not market such products as alternatives to approved new animal drugs; (3) the manufacturer is registered under section 415 of the FD&C Act (21 U.S.C. 350(d)); (4) manufacturers comply with all food labeling requirements for such products (see 21 CFR part 501); (5) manufacturers do not include indications for a disease claim (e.g., obesity, renal failure) on the label of such products; (6) manufacturers limit distribution of material with any disease claims for such products only to veterinary professionals; (7) manufacturers secure electronic resources for the dissemination of labeling information and promotional materials such that they are available only to veterinary professionals; (8) manufacturers include only ingredients that are general regarded as safe (GRAS) ingredients, approved food additives, or feed ingredients defined in the 2012 *Official Publication* of the Association of American Feed Control Officials (AAFCO) for the intended uses in such products; [1] and (9) the label and labeling for such products are not false and misleading in other respects.[2]

II. Significance of Guidance

This level 1 draft CPG is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft CPG, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the

[1] Although food containing these unapproved food additives is adulterated within the meaning of section 402(a)(2)(c)(i), FDA is unlikely to initiate enforcement action solely on this basis if the food additive in question is included in the 2012 edition of the *Official Publication* of AAFCO. As part of its efforts to work with State partners, FDA has reviewed safety information related to many of these listed products, and those listed in the 2012 *Official Publication* generally do not fall within our current enforcement priorities.

[2] A therapeutic claim that is not scientifically substantiated would be considered false or misleading, thus making the product misbranded.

requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506 (c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we are publishing a notice of the proposed collection of information set forth below.

With respect to the following collection of information, we invite comments on: (1) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Compliance Policy Guide on Labeling and Marketing of Nutritional Products Intended for Use to Diagnose, Cure, Mitigate, Treat, or Prevent Disease in Dogs and Cats.

Description: The purpose of this CPG is to communicate FDA's strategy with respect to dog and cat food products that are labeled and/or marketed as intending to diagnose, cure, mitigate, treat, or prevent diseases and to provide nutrients in support of meeting the animal's total daily nutrient requirements.

Description of Respondents: Manufacturers of dog and cat foods that are labeled and/or marketed as intending to diagnose, cure, mitigate, treat, or prevent diseases and to provide nutrients in support of meeting the animal's total daily nutrient requirements.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Sections 402 and 403 of the FD&C Act	5	75	375	.25	94

[1] There are no operating costs or maintenance costs associated with this collection of information.

CVM estimates from its experience that approximately 5 manufacturers will be affected by the draft CPG, times 75 products produced annually equals 375 total annual responses. The hours per response are based on approximately .25 hour per response for respondents to look up the ingredient names in the AFFCO *Official Publication*.

This draft CPG also refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 571 (Food Additive Petitions and FAP Labeling) have been approved under OMB control number 0910–0546. The collection of information in 21 CFR 570.35 (GRAS) has been approved under OMB control number 0910–0342. The requirement for food facility registration has been approved under OMB control number 0910–0502.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. It is only necessary to send one set of comments. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Copies of the CPG may be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs home pages include this draft CPG and may be accessed at *http://www.fda.gov/ICECI/ComplianceManuals/* under ''Compliance Policy Guides.''

Dated: August 24, 2012.

Dara A. Corrigan,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 2012–22231 Filed 9–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0902]

Withdrawal of Approval of New Animal Drug Applications; Chorionic Gonadotropin; Naloxone; Oxymorphone; Oxytocin

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of four new animal drug applications (NADAs) at the sponsor's request because the products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective September 20, 2012.

FOR FURTHER INFORMATION CONTACT: David Alterman, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6843, email: *david.alterman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The sponsors in table 1 of this document have requested that FDA withdraw approval of the four NADAs listed

because the products are no longer manufactured or marketed.

TABLE 1—WITHDRAWAL OF APPROVAL REQUESTS

NADA No.	Trade name (drug)	Applicant
030–525	NUMORPHAN (oxymorphone hydrochloride) Injection	Endo Pharmaceuticals Inc., 100 Painters Dr., Chadds Ford, PA 19317.
035–825	NARCAN (naloxone hydrochloride) Injection	Endo Pharmaceuticals Inc., 100 Painters Dr., Chadds Ford, PA 19317.
046–822	VETOCIN (oxytocin) Injection	United Vaccines, A Harlan Sprague Dawley, Inc., Co., P.O. Box 4220, Madison, WI 53711.
103–090	CHORTROPIN (chorionic gonadotropin) Injection	United Vaccines, A Harlan Sprague Dawley, Inc., Co., P.O. Box 4220, Madison, WI 53711.

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 030–525, 035–825, 046–822, and 103–090, and all supplements and amendments thereto, is hereby withdrawn, effective September 20, 2012.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of these applications.

Dated: September 5, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–22195 Filed 9–7–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) will meet on September 24, 2012 from 9 a.m. to 5 p.m. and September 25, 2012 from 9 a.m. to 2 p.m. E.D.T.

The Board will discuss proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Therefore, this meeting is closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees' Web site, *http://www.nac.samhsa.gov/DTAB/meetings.aspx,* or by contacting Dr. Cook.

Committee Name: Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Dates/Time/Type: September 24, 2012 from 9 a.m. to 5 p.m. E.D.T.: CLOSED, September 25, 2012 from 9 a.m. to 2 p.m. E.D.T.: CLOSED.

Place: Sugarloaf Conference Room, SAMHSA Office Building, 1 Choke Cherry Road, Rockville, Maryland 20857.

Contact: Janine Denis Cook, Ph.D., Designated Federal Official, CSAP Drug Testing Advisory Board, 1 Choke Cherry Road, Room 7–1043, Rockville, Maryland 20857, Telephone: 240–276–2600, Fax: 240–276–2610, Email: *janine.cook@samhsa.hhs.gov.*

Janine Denis Cook,

Designated Federal Official, DTAB, Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2012–22167 Filed 9–7–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0782]

Public Workshop on Marine Technology and Standards

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The American Society of Mechanical Engineers (ASME), in coordination with the United States Coast Guard (USCG), is sponsoring a two-day public workshop on marine technology and standards in Arlington, VA. This public workshop will provide a unique opportunity for classification societies, industry groups, standards development organizations, government organizations, and other interested members of the public to come together for a professional exchange of information on topics ranging from technological impacts on the marine industry, corresponding coverage in related codes and standards, and government regulations.

DATES: The two-day workshop will be held on Wednesday, July 24, 2013, and Thursday, July 25, 2013. The deadline for advance registration is Monday, July, 1, 2013. If you are interested in presenting a paper at the workshop, you must submit a 100 word abstract by email to *workshop@uscg.mil.* Abstracts are due on or before November 2, 2012.

See **SUPPLEMENTARY INFORMATION** below for other dates related to submission of abstracts, draft papers, and presentations, as well as more information on how to register for the workshop.

ADDRESSES: The workshop will be held at The Double Tree by Hilton Hotel, in the Crystal City neighborhood of Arlington VA. The hotel is located at 300 Army Navy Drive, Arlington, VA; the hotel phone number is (703) 416–4100. The hotel is located approximately three miles from Ronald Reagan Washington National Airport (DCA) and approximately four blocks from the Pentagon City Metro station. For registration information or to obtain further information about this workshop, visit the USCG Web site at *http://www.uscg.mil/marine_event.* The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2012–0782 in the ''Search'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice you may contact a USCG/ASME representative via email at *workshop@uscg.mil.* You may also contact Lieutenant Commander Ken Hettler, Office of Design and Engineering Standards, USCG, by telephone at (202) 372–1367; or Mr. Joseph S. Brzuszkiewicz, Project Engineering Manager, ASME, by telephone at (212) 591–8533.

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The ASME/USCG Workshop on Marine Technology and Standards provides a unique opportunity for classification societies, industry groups, standards development organizations, government agencies, and interested members of the public to come together for a professional exchange of information on topics ranging from technological impacts on the marine industry, corresponding coverage in related codes and standards, and government regulations.

Held once every two to three years, the public workshop is sponsored by the American Society of Mechanical Engineers (ASME), in coordination with the USCG Office of Design and Engineering Standards. ASME is a standards setting organization with wide-ranging volunteer committee membership, which includes USCG supported personnel who serve as members of various ASME committees in support of USCG missions in maritime safety and environmental protection. The USCG Office of Design and Engineering Standards is responsible for developing and promulgating national regulations and standards that govern the safe design and construction of ships and shipboard equipment, including hull structure, stability, electrical and mechanical systems, lifesaving and fire safety equipment, and related equipment approval and laboratory acceptance.

This workshop is an opportunity for the public to provide expertise on technical matters affecting the marine industry, to leverage new technologies, and to improve future policymaking, standards development, and rulemaking. The most recent workshop was held in Washington, DC, on July 29–30, 2010 (75 FR 8099, February 23, 2010). Public engagement on regulations and design standards enhances both the effectiveness and the quality of policy development. As an example, dialogue from the previous workshop on the safe and economical use of natural gas as a marine fuel provided valuable insight for the development of CG–521 Policy Letter No. 01–12,[1] which sets forth national policy regarding acceptable design criteria for shipboard natural gas fuel systems.

Topics for the 2013 workshop are listed below and include application of various marine technologies to promote safe and environmentally conscious operation of ships and offshore vessels and platforms.

The next workshop will be held in Arlington, VA, over a two-day period on Wednesday, July 24, 2013, and Thursday, July 25, 2013. See **ADDRESSES** above for event location information.

Topics of Meeting

This workshop comprises a series of panel sessions over a two-day period covering a variety of topics. Proposed topics include:

Emerging Technologies

- Selective Catalytic Reduction (SCR)/ Exhaust Gas Cleaning (EGC) Technologies
- Alternative propulsion systems and fuel (other than Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG))
- Retrofit of legacy engines
- Wastewater treatment system (ballast water, sewage, graywater, bilgewater)

CNG/LNG Technology

- LNG fuel tank and piping design
- Location of fuel tank on ship re: fire safety, venting, etc.
- Portable LNG/CNG fuel tanks (Tanktainers)
- Codes and standards for CNG/LNG technology
- Fitness for service/in-service inspection.
- LNG fuel barges (bunkering, or other purposes)

Equipment & Material Selection for the Marine Environment, Including Polar Environment

- Loading considerations for pressure vessels on ships and platforms
- Piping design for marine environment
- Naval vessel requirements for piping & pressure vessels
- Non-metallic materials for pressure applications
- Fire testing
- Resiliently Seated Valves (RSVs)
- Operating vessels in low air temperature, low sea temperature, and under ice conditions
- Materials selection for low temperature applications
- Technology and equipment performance issues

Risk/Hazard Mitigation

- Dynamic Positioning (DP) operational watch circle
- Emergency disconnect scenarios
- Reliability centered maintenance & risk based inspection
- Condition-based monitoring

Controls & Safety Devices

- Hybrid control technology of DP systems
- Computer based control system, software validation
- Gas detection and emergency shutdown (ESD) systems
- Remotely operated valves within a high pressure or high temperature environment (e.g. subsea exploration)
- Overpressure protection (e.g. fuel tanks on gas fuelled ships (GFS) or cargo tanks on CNG/LNG carriers)
- Boiler and power plant controls

Human Element

- Human factors engineering
- Safety management systems
- Human and controls interface
- Acoustic noise limits in vessel design
- Training

Regulatory, Classification, and Government Issues

- Novel design, concept review and design basis agreement
- Fabrication testing, validation
- Testing and approval of ballast water treatment systems
- Regulatory and classification society updates and other ''hot topics''

Call for Papers

Abstracts

If you are interested in presenting a paper on one or more topics listed above, submit a 100 word abstract via email to: workshop@uscg.mil. Abstracts are due on or before November 2, 2012, and should also contain the title of your paper, name of each author/co-author, name of each presenter and affiliation to author/co-author, as well as the title, address, phone number, facsimile number, and email address for each named individual.

Draft Papers & Presentations

If you receive notification that your abstract is accepted, you may then submit a draft paper and presentation via email to: workshop@uscg.mil. Draft papers are due on or before February 8,

[1] CG–521 Policy Letter No. 01–12, ''Equivalency Determination—Design Criteria for Natural Gas Fuel Systems,'' is available for viewing at *http://www.uscg.mil/hq/cg5/cg521/docs/CG–521.PolicyLetter.01–12.pdf.*

2013; final papers (formatted and ready for publication) are due on or before May 1, 2013. Presentations are due on or before June 1, 2013.

Web Sites

For additional information on this workshop, visit the USCG Web site at *http://www.uscg.mil/marine_event.*

Registration

To register for this workshop, visit the USCG Web site at *http://www.uscg.mil/marine_event.* While the workshop is open to the public, meeting space is limited by room capacity. Since seating is limited, we ask anyone interested in attending the workshop to register in advance. The deadline for advance registration is Monday, July 1, 2013. Registration on the first day of the workshop will be permitted on a space-available basis. The registration fee for this event is $325 USD if submitted on or before May 31, 2013 and $375 USD if submitted after May 31, 2013. The registration fee includes admission for one person to each panel session for the two day event, several coffee breaks, and a reception on the first day of the event.

Proceedings

Material presented at the workshop will be made available to the public on the USCG Web site listed above after the conclusion of this event. For additional information on material presented at this event, you may contact one of the individuals listed above in **FOR FURTHER INFORMATION CONTACT**. Summaries of comments made and materials presented will be available on the docket at the conclusion of this event. To view the docket, see instructions above in **ADDRESSES**.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Services for Individuals With Disabilities

Persons with disabilities who require special assistance should advise us of their anticipated special needs as early as possible by one of the individuals listed above in **FOR FURTHER INFORMATION CONTACT**.

Adjournment

Please note that the workshop may adjourn early if all business is finished.

Authority

This notice is issued under authority of 5 U.S.C. 552(a) and 14 U.S.C. 93(a)(4).

Dated: September 5, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2012–22247 Filed 9–7–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0022]

Agency Information Collection Activities: Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359 Amerasian, Form Number I–363; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 1, 2012, at 77 FR 106, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 10, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2008–0013. When submitting comments by email, please make sure to add OMB Control Number 1615–0022 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the 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 Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* USCIS Form I–363; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–363 is used by applicants to ensure the financial support of a U.S. citizen. Without the use of Form I–363, the USCIS is not able to ensure the child does not become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 respondents responding with an estimated hour burden per response of .5 hour (30 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 Hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–1470.

Dated: September 4, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–22136 Filed 9–7–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0107]

Agency Information Collection Activities: H–2 Petitioner's Employment Related or Fee Related Notification; Form Number, No Form; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 1, 2012, at 77 FR 106, allowing for a 60-day public comment period. USCIS did receive 1 comment in connection with the 60-day notice. The one comment USCIS received was regarding the extension of H–2 Petitioner's Employment Related or Fee Related Notification. The comment did not argue for any changes to the notification; rather, it suggested that the federal government should stop admitting foreign workers. This public comment will not result in any changes to the H–2 Petitioner's Employment Related or Fee Related Notification.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 10, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the OMB USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2009–0015. When submitting comments by email, please make sure to add OMB Control Number 1615–0107 in the subject box.

All submissions received must include the agency name, OMB Control Number and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the 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 Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* H–2 Petitioner's Employment Related or Fee Related Notification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No form; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. The notification requirement is necessary to ensure that alien workers maintain their nonimmigrant status and will help prevent H–2 workers from engaging in unauthorized employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,700 respondents with an estimated hour burden per response of .5 hour (30 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 850 Hours.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–1470.

Dated: September 4, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–22137 Filed 9–7–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0047]

Agency Information Collection Activities: Employment Eligibility Verification, Form I–9, OMB Control No. 1615–0047; Correction

ACTION: 30-Day Notice of Information Collection Under Review; Correction.

On August 22, 2012 the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) published a 30-day Notice of Information Collection Under Review (30-day notice) in the **Federal Register** at 77 FR 50710, requesting public comments in connection with revisions to the Employment Eligibility Verification form (Form I–9) being submitted to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

In the 30-day notice, USCIS inadvertently did not indicate that comments in connection with that notice should be directed to the OMB USCIS Desk Officer. USCIS is now correcting this error. Written comments and/or suggestions regarding the item(s) contained in the 30-day notice published in the **Federal Register** on August 22, 2012 at 77 FR 50710, especially regarding the estimated public burden and associated response time, should be directed to DHS, and to the Office of Information and Regulatory Affairs, OMB, USCIS Desk Officer. Comments may be submitted to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov,* and via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2006–2008.

When submitting comments by email, please make sure to add OMB Control Number 1615–0047 in the subject box.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments for public viewing that it determines may impact the privacy of an individual or is offensive. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov.*

To ensure that the public has sufficient opportunity to comment on this information collection, USCIS is extending the public comment period closing date from Friday, September 21, 2012 to Thursday, September 27, 2012.

Dated: September 4, 2012.

Laura Dawkins,

Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–22138 Filed 9–7–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Importer ID Input Record

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Importer ID Input Record (CBP Form 5106). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 37696) on June 22, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 10, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs).

The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importer ID Input Record.

OMB Number: 1651–0064.

Form Number: CBP Forms 5106.

Abstract: The collection of the information on the Importer ID Input Record (CBP Form 5106) is the basis for identifying entities who wish to import merchandise into the United States, act as consignee on an importation when not the importer of record, or otherwise do business with CBP that would involve the payment of duties, taxes, fees or other monies or the refund of same. Each person, business firm, Government agency, or other organization that intends to file an import entry must file CBP Form 5106 with the first formal entry or request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. This form must also be filed by or on behalf of the ultimate consignee at the first importation in which the party acting as ultimate consignee is so named. CBP Form 5106 is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 24.5. The current version of this form is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_5106.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with an increase in the burden hours from 1,000 hours to 75,000 due to revised estimates by CBP of the number of respondents filing Form 5106. The change in the estimated burden is also due to CBP revising the estimate for the time to complete Form 5106 from 6 minutes to 15 minutes. There are no changes to CBP Form 5106 or to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents Annually: 300,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 75,000.

Dated: September 4, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–22115 Filed 9–7–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities; Voluntary Customer Survey

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0135.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Voluntary Customer Survey. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 36566) on June 19, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 10, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Voluntary Customer Survey.

OMB Number: 1651–0135.

Abstract: Customs and Border Protection (CBP) plans to conduct a customer survey of international travelers seeking entry into the United States at the twenty highest volume airports in order to determine perceptions of the arrival process at our ports of entry. This voluntary customer survey will be conducted using short computer or verbal surveys of travelers as they move through entry processing areas. Travelers who do not speak English will be given a written version of the survey in their language and may submit their responses in writing. The survey will include questions about wait times, ease of entry processing, and the level of communication, efficiency and professionalism of CBP officers. The results and analysis of the survey responses will be used to identify actionable items to improve services to the traveling public with respect to the entry processes for travelers arriving at United States air ports of entry.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Individuals, Travelers.

Estimated Number of Respondents: 21,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,743.

Dated: September 4, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–22229 Filed 9–7–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Designation of Attorney in Fact

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on June 14, 2012; Vol. 77 No. 115, 14522 allowing for a 60 day comment period. No comments were received during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Comments are encouraged and will be accepted for thirty days until October 10, 2012. 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 information collection.

(2) *Title of the Form/Collection:* Designation of Attorney in Fact.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I–312) U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The I–312 is the instrument the U.S. Immigration and Customs Enforcement (ICE) uses to provide immigration bond obligors a means to designate an attorney to accept on the obligor's behalf, the return of cash or United States bonds or notes deposited to secure an immigration bond upon the cancellation of the bond or the performance of the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,250 annual burden hours. Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, U.S. Immigration and Customs Enforcement, 500 12th Street SW., STOP 5705, Washington, DC 20536–5705. Dated: June 13, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–20315 Filed 9–7–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–61]

Notice of Proposed Information Collection for Public Comment: Study of Public Housing Agencies' Engagement with Homeless Households—Follow-up Sample Survey

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 10, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528-new) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard. Copies of the proposed forms and other available information may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology that will reduce burden, (e.g., permitting electronic submission of responses)

This Notice also lists the following information:

Title of Proposal: Study of Public Housing Agencies' Engagement with Homeless Households—Follow-up Sample Survey.

OMB Control Number: 2528-pending.

Description of the need for the information and proposed use: This information collection will support research that will explore and document how public housing agencies (PHAs) currently serve and interact with homeless households, to achieve the following: (1) Establish a baseline level of PHAs' current engagement in serving homeless households, (2) document the practices of PHAs that have an explicit preference for homeless households; (3) explore PHA perceptions of barriers to, or concerns about, increasing the number of homeless households served or targeting homeless households for priority housing assistance; and (4) identify mechanisms to address or eliminate barriers to serving homeless households in mainstream housing assistance, with a focus on the housing choice voucher (HCV) program and public housing. Findings of this study will enable the U.S. Department of Housing and Urban Development (HUD), which funds PHAs, to develop strategies to expand access to mainstream housing opportunities for homeless households that are rooted in evidence and informed by the PHAs themselves. This proposed data collection consists of a telephone survey to be administered to a purposeful sample of 125 public housing agencies.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

ESTIMATED RESPONDENT BURDEN HOURS AND COSTS

Form	Respondent sample	Number of respondents	Average time to complete (minimum, maximum) in minutes	Frequency	Total burden (hours)
Telephone Survey	A purposeful sample of public housing agencies.	125	60	1	125
Total Burden Hours					125

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. 9(a), and Title 12, U.S.C. 1701z–1 *et seq.*

Dated: August 28, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–22212 Filed 9–7–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5604–N–10]

Notice of Proposed Information Collection for Public Comment: Funding Availability for OneCPD Technical Assistance and Capacity Building Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 9, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or email Ms. Pollard at *Colette.Pollard@hud.gov* for a copy of proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Kenneth Rogers, Team Lead, Technical Assistance Division, Office of Technical Assistance and Management, CPD, Department of Housing and Urban Development, 451 7th Street SW., Room 7218, Washington, DC 20410; telephone (202) 708–3176 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for OneCPD Technical Assistance and Capacity Building Program.

Description of the need for the information proposed: Application information is needed to determine competition winners, i.e., those technical assistance providers best able to assist CPD grantees and communities to develop efficient and effective programs and projects that increase the supply of affordable housing units, prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and

community development strategies to revitalize and strengthen their communities.

Agency Form Numbers: SF–424, SF–424CB, SF–424CBW, LLL, 2880.

Members of the affected public: For profit and non-profit organizations or State and local governments equipped to provide technical assistance to recipients of funds administered by the Office of Community Planning and Development (CPD).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Number of respondents	Number of responses per respondent annually	Total annual responses	Hours per response	Total annual hours
Application	35	1	35	100	3,500
Work Plans	15	17	255	18	4,590
Reports	15	16	240	6	1,440
Recordkeeping	15	12	180	6	960
TOTAL			710		10,490

Status of proposed information collection: New Collection.

Authority: Section 3506 of the Paperwork Reduction act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 28, 2012.

Mark Johnston,

Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2012–22216 Filed 9–7–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5609–N–11]

Notice of Proposed Information Collection for Public Comment: Neighborhood Stabilization Program Tracking Study

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* November 9, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent electronically to *jmailto:udson.l.james@hud.gov* or in hard copy to: Judson L. James, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8120, Washington, DC 20410–6000. Please use ''NSP PRA Comment'' in the subject line of any email.

FOR FURTHER INFORMATION CONTACT: Judson L. James at 202–402–5707 (this is not a toll-free number) or *judson.l.jamesmailto:@hud.gov,* for copies of the proposed forms and other available documents. Please use ''NSP PRA Comment'' in the subject line of any email.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. This Notice also lists the following information:

Title of Proposal: Site Visit Protocols for Neighborhood Stabilization Program (NSP2) Evaluation; Second Round.

OMB Control Number:

Description of the Need for the Information and Proposed Use: The U.S. Department of Housing and Urban Development (HUD) is conducting an important national study of the Neighborhood Stabilization Program (NSP), with a particular focus on the round of funding from the American Recovery and Reinvestment Act (ARRA), known as ''NSP2.'' This information collection will constitute the second round of site visits and interviews of NSP2 grantees, as well as collection of grantees' property-level data on NSP2 activities conducted. The information collected will be used to describe how program implementation occurred in practice, gather views of what program outcomes and impacts have occurred, and explore factors that contributed to program outcomes.

Agency Form Numbers:

Members of the Affected Public: A total of 29 NSP2 grantees (25 local and 4 national) and 50 partner agencies will be part of the study. Staff of these grantees will be asked to participate in interviews with HUD's contractor and to provide HUD's contractor with access to their records for tracking program activity. Local interviews will take approximately 2 hours per person and will be administered to approximately 4 staff per NSP2 grantee and 4 additional staff among partner agencies. Interviews with national grantees will be administered to approximately 2 staff per NSP2 grantee.

Property-level data will be compiled either by grantee representatives or by a HUD contractor. Approximately one-half of the 29 grantees (or 14 grantees) and 25 partner organizations will likely chose to report the required data themselves via the study's preformatted spreadsheet. HUD estimates that each spreadsheet will take one person about 1.5 working days (12 hours) to complete, on average.

For the remaining 15 grantees and 25 partner organizations, the data will be compiled by the research team with the support of local representatives. The majority of this effort will be conducted

by the researcher. HUD estimates that it will take approximately two hours per grantee and partner organization to provide access to records during this time (e.g., pulling the appropriate files).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The following chart details the respondent burden on a quarterly and annual basis:

	Number of entities	Responses per entity	Hours per response	Total hours
Interviews: Local NSP grantees	25	4	2	200
Interviews: Local Partner agencies	50	4	2	400
Interviews: National NSP2 grantees	4	2	2	16
Providing Access to Records	40	1	2	80
Compiling Records	39	1	12	468

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 31, 2012.

Erika C. Poethig,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–22213 Filed 9–7–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5605–N–01]

Notice of Proposed Information Collection; Comment Request: Fair Housing Initiatives Program Grant Application and Monitoring Reports

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

This information is required by the grant application to assist the Department in selecting the highest ranked applicants to receive funds under the Fair Housing Initiatives Program and carry out fair housing enforcement and/or education and outreach activities under the following initiatives; Private Enforcement, Education and Outreach, and Fair Housing Organization. The information collected from quarterly and final progress reports and enforcement logs will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices.

DATES: *Comments Due Date: November 9, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Paula Stone, FHIP Division, Office of Programs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 5222 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Program Contact, Myron Newry, Director, FHIP Division, Office of Programs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 5222, telephone (202) 402–7095 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the Department's program functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the Department's assessment of the paperwork burden that may result from the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information which may be collected; and (4) Minimize the burden of the information collection on responders, including the use of appropriate automated collection techniques or other forms of information technology (e.g., electronic transmission of data).

Title of Proposal: 24 CFR part 125, Fair Housing Initiatives Program.

OMB Control Number, if applicable: 2529–0033.

Description of the need for the information and proposed use: This is an extension of a currently approved information collection used to select applicants for the Fair Housing Initiatives Program (FHIP) grants under a FHIP Notice of Funding Availability (NOFA). These grants are to fund fair housing enforcement and/or education and outreach activities under the following initiatives: Administrative Enforcement; Private Enforcement, Education and Outreach, and Fair Housing Organizations. Additionally, the information is collected to monitor grants and grant funds.

Agency form numbers, if applicable: HUD 904 A, B and C, SF–425, SF–424, SF–LLL, HUD–2880, HUD–2990, HUD–2993, HUD–424CB, HUD–424–CBW, HUD2994–A, HUD–96010, and HUD–27061.

Members of the affected public: The collection of information involves Qualified Fair Housing Organizations (QFHOs); Fair Housing Organizations (FHOs); public or private non-profit organizations or institutions and other public or private entities that are working to prevent or eliminate discriminatory housing practices; State and local governments; and Fair Housing Assistant Program Agencies.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of 46,420 total hours is needed to prepare the information collection. The number of respondents is 400 with a frequency response of 1 per annum, and the total hours per respondent is 76.50 hours for application development. There is an estimated 104 agencies that will receive funding and have to provide quarterly and final reports, with approximately 59 having to provide Enforcement Logs and 1 agency reporting on a semi-annual

basis. The estimated number of respondents is based on the average of the number of submissions for NOFA years 2009 to current. The number of hours is an average based on grantee estimates of time to review instructions, search existing data sources, prepare required responses to the application, complete the certification, and assemble exhibits.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 3, 2012.

Sara Pratt,

Deputy Assistant Secretary for Enforcement and Programs.

[FR Doc. 2012–22215 Filed 9–7–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5657–N–01]

Notice of Availability: Funding for Tenant-Protection Vouchers for Certain At-Risk Households in Low-Vacancy Areas: Request for Comments

AGENCY: Office of General Counsel, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability, on its Web site, of instructions, eligibility, and selection criteria on the funding process for tenant protection vouchers for certain at-risk households in low-vacancy areas, as provided for in the Consolidated and Further Continuing Appropriations Act, 2012 (2012 Appropriations Act), and seeks public comment on these instructions and criteria. The instruction, eligibility and selection criteria for this funding process are set forth in a notice posted on HUD's Web site at the addresses provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: *Comment Due Date:* October 10, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding the notice posted on HUD's Web site to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Any questions regarding this notice should be directed to the Housing Voucher and Management Operations Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410–8000, telephone number 202–708–0477 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

The 2012 Appropriations Act (Pub. L. 112–55, approved November 18, 2011) provides that up to $10,000,000 of the $75,000,000 appropriated for tenant protection actions may be made available to provide housing choice voucher rental assistance to residents residing in low-vacancy areas and who may have to pay rents greater than 30 percent of household income, as the result of certain specified conditions. The 2012 Appropriations Act provides that the tenant protection assistance may be provided as either enhanced vouchers or project-based voucher assistance.

HUD's notice that provides the instructions, eligibility, and selection criteria on the funding process for tenant protection vouchers for certain at-risk households in low-vacancy areas can be found on HUD's Web site at the following addresses: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/pih* and at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg.*

HUD is seeking public comment on this notice. Following receipt and consideration of public comment, a final notice will be issued with final instructions, eligibility, and selection criteria, which may include revisions to the instructions and criteria contained in the notice that has been posted on HUD's Web site, at the Web site addresses listed above.

Dated: August 30, 2012.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2012–22120 Filed 9–7–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5661–N–01]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c)(5) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review

Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW., Room B–133/3150, Washington, DC, 20410–8000; telephone (202) 708–2224 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)) requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board (''Board''). In compliance with the requirements of Section 202(c) (5), this notice advises of actions that have been taken by the Board from August 1, 2011 to December 31, 2011.

I. Settlement Agreements, Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, Reprimands, and Administrative Payments

1. Euro Mortgage Bankers, Inc., Melville, NY [Docket No. 11–1120–MR]

Action: On November 30, 2011, the Board issued a Notice of Administrative Action permanently withdrawing the FHA approval of Euro Mortgage Bankers, Inc. (''EMB'').

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: EMB used falsified and/or conflicting information in the origination of HUD/FHA loans; failed to ensure loan applications were taken and processed by authorized employees; failed to ensure that documents were not handled by an interested third party; failed to adequately document the income used to qualify the borrower; failed to document the source of funds used for the downpayment and/or closing costs; failed to perform quality control on all loans that went into default within the first six months; and failed to timely submit audited financial statements and supplementary reports to HUD.

2. Superior Mortgage Corporation, Hammonton, NJ [Docket No. 11–1177–MR]

Action: On October 11, 2011, the Board entered into a Settlement Agreement with Superior Mortgage Corporation (''Superior'') that required Superior to pay a civil money penalty in the amount of $10,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Superior failed to notify the Department that it had paid a fine in the amount of $30,000 to the Department of Banking of the Commonwealth of Pennsylvania; failed to ensure that only principal owners or corporate officers submit the annual certification report; and submitted a false certification to HUD when it submitted its electronic annual certification for 2011.

3. Town Square Mortgage & Investments, Inc., Frisco, TX [Docket No. 11–1194–MR]

Action: On September 20, 2011, the Board entered into a Settlement Agreement with Town Square Mortgage & Investments, Inc. (''Town Square Mortgage'') that required Town Square Mortgage to pay a civil money penalty in the amount of $11,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Town Square Mortgage submitted false audited financial statements to HUD for Fiscal Year ending April 30, 2010, when it claimed ownership of a residential condominium unit located in Apollo Beach, Florida; submitted audited financial statements to HUD that were not in conformity with Generally Accepted Accounting Principles due to the improper capitalization of a residential condominium unit; and displayed the FHA/HUD logo on its Web site when promoting its FHA mortgage services.

4. Wall Street Financial Corporation, Fairfield, NJ [Docket No. 11–1179–MR]

Action: On November 8, 2011, the Board issued a Notice of Administrative Action withdrawing the FHA approval of Wall Street Financial Corporation (''WSFC'') for a period of one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: WSFC failed to timely submit or complete its audited financial statements for its fiscal year ending December 31, 2010; failed to pay its annual certification fee; and failed to submit its annual certification for 2010.

5. Franklin American Mortgage Company, Franklin, TN [Docket No. 11–1202–MR]

Action: On October 4, 2011, the Board entered into a Settlement Agreement with Franklin American Mortgage Company (''FAMC'') that required FAMC to pay a civil money penalty in the amount of $14,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: FAMC failed to notify HUD that it paid a fine in the amount of $6,750 to the Department of Banking of the Commonwealth of Pennsylvania to resolve allegations that FAMC had violated the Mortgage Licensing Act, and submitted a false certification to HUD when it submitted it electronic annual certification for 2011.

6. Midland Mortgage Co., Oklahoma City, OK [Docket No. 10–1999–MR]

Action: On November 23, 2011, the Board entered into a Settlement Agreement with Midland Mortgage Company (''MMC'') that required MMC, without admitting fault or liability, to pay a civil money penalty in the amount of $1,300,000 and to pay all outstanding mortgage insurance premiums owed to HUD.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: MMC failed to remit mortgage insurance premiums to HUD/FHA on 3,438 loans, and failed to notify HUD/FHA within fifteen (15) days of the termination of 2,488 contracts for mortgage insurance.

7. UnionFederal Mortgage Corporation, Nanuet, NY [Docket No. 11–1205–MR]

Action: On November 30, 2011, the Board issued a Notice of Administrative Action withdrawing the FHA approval of UnionFederal Mortgage Corporation (''UFMC'') for a period of one year.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: UFMC failed to notify HUD that it voluntarily surrendered its license to the New York State Banking Department on or about October 20, 2010.

8. Vanguard Funding, LLC, Garden City, NY [Docket No. 11–1102–MR]

Action: On November 28, 2011, the Board entered into a Settlement Agreement with Vanguard Funding, LLC (''VF'') that required VF, without admitting fault or liability, to pay a civil money penalty in the amount of $101,500, to indemnify HUD against losses relating to five (5) FHA-insured loans for a period of five (5) years from the date of the Settlement Agreement, and to require third party training for its underwriters.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by

HUD: VF failed to notify HUD within ten (10) business days that it was the subject of two state enforcement actions prohibiting it from originating mortgages; VF originated six (6) FHA-insured mortgages in the state of New York while it was the subject of an order from the state of New York suspending its mortgage banker license; VF permitted a non-FHA approved mortgage broker to perform loan origination services on two (2) FHA-insured loans; VF approved three (3) loans for borrowers who were ineligible for federally insured mortgages due to outstanding delinquent federal debt; VF approved two (2) FHA-insured loans without adequately documenting the income used to qualify the borrowers; VF approved three (3) FHA-insured loans without resolving discrepancies in the loan files relating to the borrowers' income and employment; VF failed to document the source of gift funds on three (3) FHA-insured loans; VF approved a loan when the borrower did not meet the minimum credit requirements; VF approved one loan where it omitted a liability of the borrower in the underwriting analysis; VF accepted three (3) loan applications from loan correspondents for which VF was not an FHA approved Sponsor; and VF failed to review five (5) FHA-insured loans that went into early payment default within the first six (6) months of repayment.

9. Wells Fargo Bank, N.A., Minneapolis, MN [Docket No. 11–1183–MR]

Action: On December 20, 2011, the Board issued a letter of reprimand to Wells Fargo Bank, N.A. (''Wells Fargo'').

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Wells Fargo failed to comply with property preservation and protection requirements on two (2) HUD-insured homes following foreclosure.

10. MetLife Bank, N.A., Bridgewater, NJ [Docket No. 11–1148–MR]

Action: On December 12, 2011, the Board entered into a Settlement Agreement with MetLife Bank, N.A. (''MetLife'') that required MetLife, without admitting fault or liability, to pay an administrative payment in the amount of $41,250 and waive all insurance benefits or indemnify HUD against any losses relating to eleven (11) FHA-insured mortgages for a period of five (5) years from the date of the Settlement Agreement.

Cause: The Board took this action based on the following violations of HUD/FHA requirements self-reported by MetLife: MetLife violated HUD/FHA requirements when it approved eleven (11) FHA-insured loans without identifying irregularities and resolving discrepancies and conflicting information in the loan files; MetLife violated HUD/FHA requirements on six (6) FHA-insured loans when it failed to adequately document the borrowers' income; MetLife violated HUD/FHA requirements when it approved four (4) FHA-insured loans after failing to ensure that documents were not handled by an interested third party; MetLife violated HUD/FHA requirements on four (4) FHA-insured transactions when it failed to document the source of funds used for the borrowers' down- payments and/or closing costs; MetLife violated HUD/FHA requirements when it approved three (3) FHA-insured loans and omitted monthly debt obligations from its underwriting analysis; MetLife violated HUD/FHA requirements when it approved an FHA-insured loan for a borrower who was ineligible because of an outstanding court-ordered judgment; MetLife violated HUD/FHA requirements when it approved a loan for FHA mortgage insurance without ensuring the borrower met the statutory 3.5% minimum investment requirement; and MetLife violated HUD/FHA requirements when it approved a loan for a borrower that was over-insured by $3,598.54, because it had failed to consider the seller's inducement to purchase.

11. Reliance First Capital, LLC Melville, NY [Docket No. 11–1203–MR]

Action: On December 22, 2011, the Board entered into a Settlement Agreement with Reliance First Capital, LLC (''Reliance'') that required Reliance to pay a civil money penalty in the amount of $11,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Reliance failed to notify HUD that it agreed to pay a fine in the amount of $5,000 to the Department of Banking of the Commonwealth of Pennsylvania, and submitted a false certification to HUD when it submitted its electronic annual certification for 2011.

12. Virginia Commonwealth Bank, Petersburg, VA [Docket No. 11–1273–MR]

Action: On December 8, 2011, the Board entered into a Settlement Agreement with Virginia Commonwealth Bank (''VCB'') that required VCB, without admitting fault or liability, to pay a civil money penalty in the amount of $6,725 and to remit all outstanding mortgage insurance premiums and late fees owed to HUD.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: VCB failed to timely remit mortgage insurance premiums on forty-four (44) loans.

13. E Mortgage Management, LLC, Haddon Township, NJ [Docket No. 11–1200–MR]

Action: On February 3, 2012, the Board entered into a Settlement Agreement with E Mortgage Management, LLC (''EMM'') that required EMM to pay a civil money penalty in the amount of $14,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: EMM failed to notify HUD that EMM agreed to pay a fine in the amount of $61,500 to the Department of Banking of the Commonwealth of Pennsylvania, and submitted a false certification to HUD when it submitted its electronic Annual Certifications for 2011.

14. Master Mortgage Corporation, Bayamon, PR [Docket No. 11–1147–MR]

Action: On February 3, 2012, the Board issued a Notice of Administrative Action withdrawing the FHA approval of Master Mortgage Corporation (''MMC'') for five years.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: MMC failed to timely submit audited financial statements and supplementary reports to HUD, and failed to notify HUD that MMC and MMC's President were issued a Complaint and Cease and Desist Order from the Commissioner of Financial Institutions of Puerto Rico that required MMC to pay fines totaling $280,000, ordered MMC to permanently cease and desist from operating and engaging in the business of a mortgage institution in Puerto Rico, required MMC to immediately surrender its mortgage institution's license, and barred MMC's president from serving as an officer, director, or owner of any financial institution.

15. Clarion Mortgage Capital, Inc., Greenwood Village, CO [Docket No. 10–1798–MR]

Action: On February 23, 2011, the Board entered into a Settlement Agreement with Clarion Mortgage Capital, Inc. (''Clarion'') that required Clarion to pay a civil money penalty in the amount of $45,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Clarion failed to comply with HUD's quality control requirements; violated HUD's mortgagee employee and staffing requirements; and charged unallowable and unsupported fees.

16. PHH Home Loans, LLC, Mount Laurel, NJ [Docket No. 11–1201–MR]

Action: On February 15, 2012, the Board entered into a Settlement Agreement with PHH Home Loans, LLC (''PHH'') that required PHH to pay a civil money penalty in the amount of $14,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: PHH failed to notify HUD that PHH agreed to pay a fine of $11,750 to the Department of Banking of the Commonwealth of Pennsylvania; failed to notify HUD that it paid a fine of $50,000 to the Illinois Department of Financial and Professional Regulation; and submitted a false certification to HUD when it submitted its electronic annual certification for 2011.

17. HomeState Mortgage Company, LLC, Anchorage, AK [Docket No. 11–1286–MR]

Action: On April 3, 2012, the Board entered into a Settlement Agreement with HomeState Mortgage Company, LLC (''HMC'') that required HMC, without admitting fault or liability, to pay a civil money penalty in the amount of $15,000 and to complete a six-month period of probation, during which time HMC must submit all marketing materials to HUD on a quarterly basis for review and approval.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: HMC reproduced the official HUD seal on an advertisement or business solicitation, and disseminated a misrepresentative or misleading advertisement or business solicitation to the public.

18. United Northern Mortgage Bankers, LTD, Levittown, NY [Docket No. 11–1149–MR]

Action: On March 16, 2012, the Board entered into a Settlement Agreement with United Northern Mortgage Bankers LTD (''UNMB'') that required UNMB, without admitting fault or liability, to pay a civil money penalty in the amount of $25,000, indemnify HUD against losses relating to two FHA-insured loans for a period of five years, and complete a six-month period of probation during which time UNMB must submit the results of its monthly QC audits and certifications as to its QC staffing and operations.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: UNMB failed to ensure that the quality control reviews for early payment defaults were completed; used conflicting information in originating and obtaining HUD/FHA mortgage insurance; and failed to adequately document the stability of income used to qualify the borrowers.

19. Fifth Third Bank, Cincinnati, OH [Docket No. 10–1998–MR]

Action: On April 27, 2012, the Board entered into a Settlement Agreement with Fifth Third Bank (''Fifth Third'') that required Fifth Third to pay a civil money penalty in the amount of $700,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Fifth Third failed to timely remit mortgage insurance premiums to HUD/FHA, and failed to notify HUD/FHA within 15 calendar days of the termination, transfer or sale of mortgage insurance contracts.

II. Lenders That Failed To Timely Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board entered into settlement agreements with the lenders listed below, which required the lender to pay a $7,500 or $3,500 civil money penalty, without admitting fault or liability.

Cause: The Board took this action based upon allegations that the lenders listed below failed to comply with the Department's annual recertification requirements in a timely manner.

1. Anchor Funding Corporation, Norcross, GA ($7,500.00) *[Docket No. 11–1225–MRT]*

2. Freyre Mortgage Corp., San Juan, PR. ($3,500.00) *[Docket No. 11–1229–MRT]*

III. Lenders That Failed To Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board voted to withdraw the FHA approval of each of the lenders listed below for a period of one year.

Cause: The Board took this action based upon allegations that the lenders listed below were not in compliance with the Department's annual recertification requirements.

1. First Home Mortgage, Inc., Jonesboro, AR *[Docket No. 12–1642–MRT]*.

2. HCL Finance Inc., San Jose, CA *[Docket No. 12–1641–MRT]*.

3. Ikon Mortgage Lenders, Inc., Fort Lauderdale, FL *[Docket No. 09–9910–MRT]*.

4. Delta Home and Lending, Inc., Sacramento, CA *[Docket No.12–1643–MRT]*.

5. Axiom Mortgage Bankers Corporation, Irvine, CA *[Docket No. 11–1234–MRT]*.

6. Red Rock Mortgage & Lending, LLC., Oklahoma City, OK [*Docket No. 11–1233–MRT*].

Dated: August 31, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 2012–22126 Filed 9–7–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP02000.L54100000.FR0000. LVCLA10A5170.241A; AZA 35235]

Notice of Realty Action: Application for Conveyance of Federally Owned Mineral Interests in Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is processing an application under the Federal Land Policy and Management Act to convey the federally owned mineral interests of 111.33 acres located in Maricopa County, Arizona, to the surface owner, Gavilan Peak Estates, LLC. Upon publication of this notice, the BLM is temporarily segregating the federally owned mineral interests in the land covered by the application from all forms of appropriation under the mining and mineral leasing laws for up to 2 years while the BLM processes the application.

DATES: Interested persons may submit written comments to the BLM at the address listed below. Comments must be received no later than October 25, 2012.

ADDRESSES: Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004. Detailed information concerning this action is available for review at this address.

FOR FURTHER INFORMATION CONTACT: Vivian Titus, Senior Land Law Examiner, at 602–417–9598. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The location of the federally owned mineral interest segregated by this notice is intended to be identical in location as the privately owned surface interest of the applicant, as described in the applicant's deeds recorded on June 21, 2006, at the Maricopa County Recorder's office under Recordation Numbers 20060834935 and 20060834944. The lands referred to in this notice consist of four individual parcels, described in the two deeds mentioned above, and are described as follows:

Gila and Salt River Base and Meridian

Parcel 1

The Southwest Quarter of the Southeast Quarter, the South Half of the Northwest Quarter of the Southeast Quarter, the South Half of the Northeast Quarter of the Southwest Quarter, and the East Half of the Southeast Quarter of the Southwest Quarter;

Except the East 528 feet of the East Half of the Southeast Quarter of the Southwest, all in Section 35, Township 7 North, Range 2 East, Gila and Salt River Base and Meridian, Maricopa, Arizona.

Parcel 2

That part of the Southeast Quarter of the Southeast Quarter of Section 35, Township 7 North, Range 2 East, Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Beginning at a point 658.00 feet West of the Brass Cap and the Southeast corner of Section 35, Township 7 North, Range 2 East; Thence North 754.85 feet to a set point; Thence West 577.00 feet to a set point; Thence South 755.26 feet to a set point; Thence East 577.00 feet to a point of beginning; Except any part thereof lying within the following described parcel: Commencing at the East Quarter corner of said Section 35; Thence South along the East line of said Section 35, a distance of 785 feet; Thence West 675 feet to the True Point of Beginning; Thence South Parallel to and 675 feet West of the East line of said Section 35, a distance of 1100 feet; Thence West 570 feet; Thence North 1100 feet; Thence East 570 feet to the True Point of Beginning.

Parcel 3

That part of the East Half of the Southeast Quarter of Section 35, Township 7 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying West of the West lines of those certain parcels described in Docket 11938, Page 261; and in Docket 14071, Page 774; and lying South of the North line of said parcel described in Docket 14071, Page 774; extended westerly.

Parcel 4

A part of the Southeast Quarter of Section 35, Township 7 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows: Commencing at the East Quarter corner of said Section 35; Thence South along the East line of said Section 35, a distance of 785 feet; Thence West 675 feet to the Point of Beginning; Thence South parallel to and 675 feet West of the East line of said Section 35, a distance of 1,100 feet; Thence West 570 feet; Thence North 1,100 feet; Thence East 570 feet to the Point of Beginning.

The areas described aggregates approximately 111.33 acres in Maricopa County, Arizona.

Under certain conditions, Section 209(b) of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1719, authorizes the sale and conveyance of the federally owned mineral interests in land when the surface estate is not federally owned. The objective is to allow consolidation of the surface and mineral interests when either one of the following conditions exist: (1) There are no known mineral values in the land; or (2) Where continued Federal ownership of the mineral interests interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than mineral development.

An application was filed for the sale and conveyance of the federally owned mineral interests in the above-described parcels of land. Subject to valid existing rights, on September 10, 2012 the federally owned mineral interests in the lands described above are hereby segregated from all forms of appropriation under the general mining and mineral leasing laws, while the application is being processed to determine if either one of the two specified conditions exists and, if so, to otherwise comply with the procedural requirements of 43 CFR part 2720. The segregative effect shall terminate upon: (1) Issuance of a patent or other document of conveyance as to such mineral interests; (2) Final rejection of the application; or (3) September 10, 2014, whichever occurs first.

Comments: Your comments are invited. Please submit all comments in writing to Vivian Titus at the address listed above. 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 available to the public at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2720.1–1(b).

Julie A. Decker,

Deputy State Director, Resources.

[FR Doc. 2012–22220 Filed 9–7–12; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN00000.L18200000.XZ0000]

Notice of Temporary Closure of Public Lands in Eastern Lassen County, California, and Western Washoe County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that BLM-managed public lands in the area affected by the Rush Fire in eastern Lassen County, California, and western Washoe County, Nevada, are closed to public access because of dangers posed by the Rush Fire. Exempted from this closure are personnel and vehicles involved with fire suppression and resource protection and State, local and Federal officials involved with enforcement. This closure is necessary to protect public health and safety.

DATES: The temporary closure is effective August 14, 2012, and will be lifted no later than September 14, 2012.

FOR FURTHER INFORMATION CONTACT: Lynda Roush, Acting Northern California District Manager, 707–825–2309; or BLM Eagle Lake Field Office Manager Ken Collum, 530–252–5374. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the

above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This closure affects all public lands bounded by the Juniper Ridge and Tuledad Roads, (combined Lassen County Road 522), the Stage Road (Lassen County Road 504), Marr Road (Lassen County Road 526) and the BLM Buckhorn Road on the north; U. S. Highway 395 on the west; Nevada Highway 447 and the Sand Pass Road on the east; and the Wendel Road on the south. The closure begins at T34N, R13E, SE corner of Section 25 and continues through the entire fire area. This closure is made under authority of 43 CFR 8364. Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7. Specific roads included in the closure are Ryepatch Road, Horn Road, Garate Road, Ramhorn Road, Shinn Ranch Road, Stoney Road, Deep Cut Road, Smoke Creek Road, Skedaddle Ranch Road, Brubeck Road, Dry Valley Road, and Buckhorn Road from the junction with Lassen County Road 526 (the Marr Road) to the junction with Nevada State Highway 447. The Ramhorn Springs Campground and the Dodge Reservoir and Campground are also closed.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2012–22222 Filed 9–7–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare an Environmental Impact Statement and Announcement of Public Scoping Meetings for Continued Operation of the Paradox Valley Unit, Montrose County, CO

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation intends to prepare an environmental impact statement to identify and evaluate brine disposal alternatives to replace or supplement the existing Brine Injection Well No. 1 which has a projected remaining useful life of three to five years under current operations.

DATES: Comments on the scope of the environmental impact statement (EIS) will be accepted from September 10, 2012, to November 26, 2012.

Three public scoping meetings will be held to solicit public input on the scope of the EIS, potential alternatives, and issues to be addressed in the EIS. See the **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Written comments regarding the scope and content of the EIS should be sent to Mr. Terence Stroh, Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, Colorado 81506; telephone (970) 248–0608; facsimile (970) 248–0601; or email at *paradoxeis@usbr.gov.*

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the EIS, should contact Mr. Stroh using the information cited above. See the **SUPPLEMENTARY INFORMATION** section for locations of public scoping meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Terence Stroh, Bureau of Reclamation, 2764 Compass Drive, Suite 106, Grand Junction, Colorado 81506; telephone (970) 248–0608; email at *TStroh@usbr.gov;* or Mr. Andy Nicholas, Bureau of Reclamation, Paradox Valley Field Office, P.O. Box 20, Bedrock, Colorado 81411; telephone (970) 859–7214; email at *ANicholas@usbr.gov;* or Mr. Kib Jacobson, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone (801) 524–3753; email at *KJacobson@usbr.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual(s) during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual(s). You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Paradox Valley Unit was constructed to assist in meeting the objectives and standards of the Federal Water Pollution Control Act of 1948 (Pub. L. 80–845) and the Colorado River Basin Salinity Control Act of 1974, as amended and supplemented (Pub. L. 93–320), which authorizes the construction, operation, and maintenance of works in the Colorado River Basin to control the salinity of water delivered to users in the United States and Mexico. Authorized facilities included wells, pumps, pipelines, solar evaporation ponds, and all necessary appurtenant and associated works such as roads, fences, dikes, power transmission facilities, and permanent operating facilities.

Background

The Paradox Valley Unit is located along the Dolores River in the Paradox Valley in Montrose County, Colorado, about ten miles east of the Colorado-Utah state line. The Dolores River is a major tributary to the Colorado River. Groundwater in the Paradox Valley is highly saline. Saline concentrations in this area have been measured in excess of 250,000 milligrams per liter; by far one of the most concentrated sources in the Colorado River Basin. Groundwater then surfaces into the Dolores River. Studies show that the Dolores River accumulated more than 205,000 tons of salt annually before the Paradox Valley Unit began operation.

The Paradox Valley Unit presently consists of a brine collection well field, brine surface treatment facility, brine injection facility, a 16,000-foot injection well, and associated roads, pipelines, and electrical facilities. Unit operations have been adjusted over time to address increased seismic activity and injection pressures. Under normal operations, the Paradox Valley Unit averages injection of about nine to ten million gallons of brine per month. The Unit currently controls about 110,000 tons of salt per year that would have entered the Dolores River and, in turn, degraded the water quality of the mainstem of the Colorado River.

Proposed Action

The proposed action is to identify, evaluate, and implement brine disposal alternatives to replace or supplement Brine Injection Well No. 1 which was built in 1988 and has a projected remaining useful life of three to five years, under current operations, provided that acceptable seismicity levels and well integrity are maintained.

Need for Action

The Bureau of Reclamation's Paradox Valley Unit is one of the most effective salinity control projects in the Colorado River Basin and provides about ten percent of the total salinity control in the Colorado River at Imperial Dam. Because the existing brine injection well is nearing the end of its useful life, another well or alternative brine disposal mechanism is needed for continued enhancement and protection of the quality of water available in the Colorado River for use in the United States and the Republic of Mexico, and to enable the United States to comply with its obligations under the agreement with Mexico of August 30, 1973.

Scoping Information

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Scoping is an early and public process for determining concerns to be addressed and for identifying significant issues and suggested alternatives related to the proposed action. In addition to oral comments provided at the scoping meetings, Reclamation also invites written comments during the scoping period. To be most effectively considered, written comments should be received no later than November 26, 2012.

When the EIS is complete, its availability will be announced in the **Federal Register**, in the local news media, through direct contact with interested parties, and on the project Web site. Comments will be solicited on the document at that time.

If special assistance is required to participate in the public scoping meetings, please contact Ms. Justyn Hock at 970–248–0625 or email at *JHock@usbr.gov.* Please notify Ms. Hock as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Dates and Addresses of Public Scoping Meetings

The scoping meeting dates and addresses are:

- Tuesday, September 25, 2012, 6:00 to 8:00 p.m., Paradox Valley School, 21501 6 Mile Road, Paradox, Colorado 81429.
- Wednesday, September 26, 2012, 7:00 to 9:00 p.m., Holiday Inn Express, 1391 South Townsend Avenue, Montrose, Colorado, 81401.
- Thursday, September 27, 2012, 7:00 to 9:00 p.m., Colorado Mesa University, University Center—Room 221, 1100 North Avenue, Grand Junction, Colorado 81501–3122.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 17, 2012.

Larry Walkoviak,

Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 2012–22176 Filed 9–7–12; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–850]

Certain Electronic Imaging Devices; Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Amend the Notice of Investigation and Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 6) granting a motion by complainant FlashPoint Technology, Inc. (''Flashpoint'') and respondents Huawei Technologies Co., Ltd. and FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA) (collectively ''the Huawei Respondents'') to amend the Notice of Investigation (''NOI'') and complaint to replace the Huawei Respondents with Huawei Device Co., Ltd. of Shenzhen, China and Huawei Device USA Inc. of Plano, Texas.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 29, 2012, based on a complaint filed by FlashPoint Technology, Inc. (''Flashpoint'') of Peterborough, New Hampshire alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by reason of infringement of certain claims of U.S. Patent No. 6,400,471; U.S. Patent No. 6,222,538; U.S. Patent No. 6,504,575; and U.S. Patent No. 6,223,190. The NOI named HTC Corporation of Taoyuan, Taiwan; HTC America, Inc. of Bellevue, Washington; Pantech Co., Ltd. of Seoul, Korea; Pantech Wireless, Inc. of Atlanta, Georgia; Huawei Technologies Co., Ltd. of Shenzhen, China; FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA) of Plano, Texas; ZTE Corporation of Shenzhen, China; and ZTE (USA) Inc. of Richardson, Texas.

On August 2, 2012, Flashpoint and respondents Huawei Technologies Co., Ltd. and FutureWei Technologies, Inc. d/b/a Huawei Technologies (USA) (collectively ''the Huawei Respondents'') filed a motion to amend the complaint and NOI to replace the currently named Huawei Respondents with Huawei Device Co., Ltd., having a principal place of business at Section B, Huawei Administration Building, Bantian, Longgang, Shenzhen, Guangdong, P.R. China, 518129, and Huawei Device USA Inc., having a principal place of business at 5700 Tennyson Parkway, Suite #600, Plano, Texas 75024.

On August 9, 2012, the ALJ issued an ID granting the joint motion to amend the complaint and NOI to replace the named Huawei Respondents with Huawei Device Co., Ltd. and Huawei Device USA Inc. The ALJ found that good cause exists to amend the complaint and NOI because Flashpoint recently learned which entities are responsible for the accused products based on communications with counsel for the Huawei Respondents. In addition, the ALJ found that the substitution of the parties will not require extension of the target date, will not change the scope of the investigation, and will assist in obtaining a complete record for the investigation. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission=s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.43–45 of the Commission's Rules of Practice and Procedure (19 CFR 210.43–45).

By order of the Commission.

Issued: September 5, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–22172 Filed 9–7–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–798]

Certain Light-Emitting Diodes and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 38) granting the joint motion to terminate the above-captioned investigation in its entirety on the basis of a settlement agreement. In view of that determination, the Commission finds that review of another ID (Order No. 36), which granted leave to amend the complaint and notice of investigation, is moot.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 18, 2011, based on a complaint filed by Samsung LED Co., Ltd. of Suwon City, Korea, and Samsung LED America, Inc. of Atlanta, Georgia (collectively, ''SLED''). 76 FR 51396–97 (Aug. 18, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diodes and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,282,741; 7,893,443; 7,838,315; 7,959,312; 7,964,881; 6,551,848; 7,268,372; and 7,771,081. The Commission's notice of investigation named as respondents OSRAM GmbH of Munich, Germany; OSRAM Opto Semiconductors GmbH of Regensburg, Germany; OSRAM Opto Semiconductors Inc. of Sunnyvale, California; and OSRAM Sylvania Inc. of Danvers, Massachusetts (collectively, ''OSRAM''). On December 7, 2011, the Commission determined not to review an ID (Order No. 15) granting SLED's motion to amend the Notice of Investigation to change the name of respondent OSRAM GmbH to OSRAM AG. Notice (Dec. 7, 2011).

On July 26, 2012, SLED filed a motion to amend the Complaint and Notice of Investigation to substitute Samsung Electronics Co., Ltd. of Suwon City, Korea (''Samsung Electronics''), for the SLED complainants, as a result of corporate reorganization. On July 30, 2012, OSRAM filed an opposition, and on August 7, 2012, the ALJ issued an ID granting the motion as an ID. Order No. 36.

On August 9, 2012, SLED and OSRAM filed a joint motion to terminate the investigation in its entirety based on a settlement agreement between OSRAM and Samsung Electronics. On August 10, 2012, the ALJ granted the motion as an ID. Order No. 38.

No petitions for review of either ID were filed. The Commission has determined not to review Order No. 38, and the investigation is thereby terminated. As a result, review of Order No. 36 is moot.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

By order of the Commission.

Issued: September 5, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–22171 Filed 9–7–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 4, 2012, a proposed Consent Decree in *United States* v. *State of Utah, School and Institutional Trust Lands Administration,* Civil Action No. 2:12–CV–00841–DBP, was lodged with the United States District Court for the District of Utah.

The Consent Decree resolves claims by the United States against the State of Utah, School and Institutional Trust Lands Administration (''SITLA'') pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), for response costs incurred in conducting a removal action at the Cook Slurry Site (''Site'') in Saratoga Springs, Utah (the ''Removal Action''). Cook Associates Inc., doing business as Cook Slurry Company (''Cook''), operated an explosives manufacturing facility at the Site on school trust lands owned by the State of Utah which predecessor agencies to SITLA had leased to Cook. Under the terms of the settlement SITLA will reimburse the United States $316,500 of the costs of completing the Removal Action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, and either emailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *State of Utah, School and Institutional Trust Lands Administration,* Civil Action No. 2:12–CV–00841–DBP, and D.J. Ref. No. 90–11–3–10515.

During the public comment period, the settlement agreement may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the settlement agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.enrd@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a

copy from the Consent Decree Library by mail, please enclose a check in the amount of $3.75 ($.25 per page) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–22121 Filed 9–7–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–363]

Controlled Substances: Final Adjusted Aggregate Production Quotas for 2012

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice.

SUMMARY: This notice establishes final adjusted 2012 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Chief, Liaison and Policy Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 307–4654.

SUPPLEMENTARY INFORMATION:

Background

Section 306(a) of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. In accordance with 21 U.S.C. 826 and 21 CFR 1303.11, DEA published in the **Federal Register** on December 15, 2011, notice of the established 2012 aggregate production quotas for controlled substances in Schedules I and II (76 FR 78044). That notice stated that the Administrator would adjust, as needed, the established aggregate production quotas in 2012 as provided for in 21 CFR 1303.13. The 2012 proposed adjusted aggregate production quotas were subsequently published in the **Federal Register** on July 5, 2012 (77 FR 39737) in consideration of the outlined criteria. All interested persons were invited to comment on or object to the proposed adjusted aggregate production quotas on or before August 6, 2012.

Analysis for Final Adjusted 2012 Aggregate Production Quotas

Consideration has been given to the criteria outlined in the July 5, 2012, notice of proposed adjusted aggregate production quotas in accordance with 21 CFR 1303.13. In addition, nine companies, eight DEA registered manufacturers and one non-registrant, submitted timely comments regarding a total of 25 Schedule I and II controlled substances. Comments received proposed that the aggregate production quotas for 3,4-Methylenedioxy-N-Methylcathinone (methylone), alfentanil, amphetamine (for conversion), amphetamine (for sale), codeine (for conversion), codeine (for sale), desomorphine, dihydromorphine, hydrocodone (for sale), hydromorphone, levomethorphan, lisdexamfetamine, methadone intermediate, methylphenidate, morphine (for conversion), morphine (for sale), noroxymorphone (for conversion), noroxymorphone (for sale), oripavine, oxycodone (for conversion), oxycodone (for sale), oxymorphone (for conversion), oxymorphone (for sale), sufentanil, and tapentadol were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements, and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2011 year-end inventories, initial 2012 manufacturing quotas, 2012 export requirements, actual and projected 2012 sales, research and product development requirements, and additional applications received. Based on all of the above, the Administrator has determined that the proposed adjusted 2012 aggregate production quotas for 3,4-Methylenedioxypyrovalerone (MDPV), 3,4-Methylenedioxy-N-Methylcathinone (methylone), 4-Methyl-N-Methylcathinone (mephedrone), alfentanil, amphetamine (for conversion), desomorphine, diethyltryptamine, dihydromorphine, gamma hydroxybutyric acid, hydrocodone (for sale), hydromorphone, levomethorphan, methadone, methadone intermediate, methylphenidate, morphine (for sale), oxycodone (for conversion), oxycodone (for sale), and sufentanil required additional consideration and hereby further adjusts the 2012 aggregate production quotas for those substances. Regarding amphetamine (for sale), codeine (for conversion), codeine (for sale), morphine (for conversion), noroxymorphone (for conversion), noroxymorphone (for sale), oripavine, oxymorphone (for conversion), oxymorphone (for sale), and tapentadol, the Administrator hereby determines that the proposed adjusted 2012 aggregate production quotas for these substances as published on July 5, 2012, at 77 FR 39737 are sufficient to meet the current 2012 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate inventories. Pursuant to the above, the Administrator hereby establishes the 2012 final aggregate production quotas for Schedule I and II controlled substances, expressed in grams of anhydrous acid or base, as follows:

	Final adjusted 2012 quotas
Basic Class—Schedule I	
1-[1-(2-Thienyl)cyclohexyl]piperidine	5 g
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200)	45 g
1-Butyl-3-(1-naphthoyl)indole (JWH–073)	45 g
1-Methyl-4-phenyl-4-propionoxypiperidine	2 g
1-Pentyl-3-(1-naphthoyl)indole (JWH–018)	45 g
2,5-Dimethoxyamphetamine	12 g
2,5-Dimethoxy-4-ethylamphetamine (DOET)	12 g
2,5-Dimethoxy-4-n-propylthiophenethylamine	12 g
3-Methylfentanyl	2 g
3-Methylthiofentanyl	2 g
3,4-Methylenedioxyamphetamine (MDA)	30 g

	Final adjusted 2012 quotas
3,4-Methylenedioxy-N-methylcathinone (methylone)	30 g
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	24 g
3,4-Methylenedioxymethamphetamine (MDMA)	30 g
3,4-Methylenedioxypyrovalerone (MDPV)	20 g
3,4,5-Trimethoxyamphetamine	12 g
4-Bromo-2,5-dimethoxyamphetamine (DOB)	12 g
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	12 g
4-Methoxyamphetamine	88 g
4-Methylaminorex	12 g
4-Methyl-2,5-dimethoxyamphetamine (DOM)	12 g
4-Methyl-N-methylcathinone (mephedrone)	25 g
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	68 g
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	53 g
5-Methoxy-3,4-methylenedioxyamphetamine	12 g
5-Methoxy-N,N-diisopropyltryptamine	12 g
Acetyl-alpha-methylfentanyl	2 g
Acetyldihydrocodeine	2 g
Acetylmethadol	2 g
Allylprodine	2 g
Alphacetylmethadol	2 g
Alpha-ethyltryptamine	12 g
Alphameprodine	2 g
Alphamethadol	2 g
Alpha-methylfentanyl	2 g
Alpha-methylthiofentanyl	2 g
Alpha-methyltryptamine (AMT)	12 g
Aminorex	12 g
Benzylmorphine	2 g
Betacetylmethadol	2 g
Beta-hydroxy-3-methylfentanyl	2 g
Beta-hydroxyfentanyl	2 g
Betameprodine	2 g
Betamethadol	2 g
Betaprodine	2 g
Bufotenine	3 g
Cathinone	12 g
Codeine-N-oxide	602 g
Desomorphine	10 g
Diethyltryptamine	18 g
Difenoxin	50 g
Dihydromorphine	3,750,000 g
Dimethyltryptamine	18 g
Gamma-hydroxybutyric acid	37,000,000 g
Heroin	20 g
Hydromorphinol	54 g
Hydroxypethidine	2 g
Ibogaine	5 g
Lysergic acid diethylamide (LSD)	16 g
Marihuana	21,000 g
Mescaline	13 g
Methaqualone	10 g
Methcathinone	12 g
Methyldihydromorphine	2 g
Morphine-N-oxide	655 g
N-Benzylpiperazine	12 g
N,N-Dimethylamphetamine	12 g
N-Ethylamphetamine	12 g
N-Hydroxy-3,4-methylenedioxyamphetamine	12 g
Noracymethadol	2 g
Norlevorphanol	52 g
Normethadone	2 g
Normorphine	18 g
Para-fluorofentanyl	2 g
Phenomorphan	2 g
Pholcodine	2 g
Properidine	2 g
Psilocybin	2 g
Psilocyn	2 g
Tetrahydrocannabinols	393,000 g
Thiofentanyl	2 g
Tilidine	10 g
Trimeperidine	2 g

	Final adjusted 2012 quotas
Basic Class—Schedule II	
1-Phenylcyclohexylamine	2 g
1-Piperdinocyclohexanecarbonitrile	27 g
4-Anilino-N-phenethyl-4-piperidine (ANPP)	1,800,000 g
Alfentanil	29,002 g
Alphaprodine	2 g
Amobarbital	40,007 g
Amphetamine (for conversion)	13,300,000 g
Amphetamine (for sale)	33,400,000 g
Carfentanil	5 g
Cocaine	216,000 g
Codeine (for conversion)	65,000,000 g
Codeine (for sale)	39,605,000 g
Dextropropoxyphene	7 g
Dihydrocodeine	400,000 g
Diphenoxylate	900,000 g
Ecgonine	83,000 g
Ethylmorphine	2 g
Fentanyl	1,428,000 g
Glutethimide	2 g
Hydrocodone (for sale)	79,700,000 g
Hydromorphone	4,207,000 g
Isomethadone	4 g
Levo-alphacetylmethadol (LAAM)	3 g
Levomethorphan	10 g
Levorphanol	3,600 g
Lisdexamfetamine	12,000,000 g
Meperidine	5,500,000 g
Meperidine Intermediate-A	5 g
Meperidine Intermediate-B	9 g
Meperidine Intermediate-C	5 g
Metazocine	5 g
Methadone (for sale)	23,100,000 g
Methadone Intermediate	29,970,000 g
Methamphetamine	3,130,000 g
[750,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,331,000 grams for methamphetamine mostly for conversion to a schedule III product; and 49,000 grams for methamphetamine (for sale)]	
Methylphenidate	64,600,000 g
Morphine (for conversion)	83,000,000 g
Morphine (for sale)	48,200,000 g
Nabilone	20,502 g
Noroxymorphone (for conversion)	7,200,000 g
Noroxymorphone (for sale)	1,981,000 g
Opium (powder)	73,000 g
Opium (tincture)	1,000,000 g
Oripavine	15,300,000 g
Oxycodone (for conversion)	7,600,000 g
Oxycodone (for sale)	105,200,000 g
Oxymorphone (for conversion)	12,800,000 g
Oxymorphone (for sale)	5,500,000 g
Pentobarbital	34,000,000 g
Phenazocine	5 g
Phencyclidine	24 g
Phenmetrazine	2 g
Phenylacetone	16,000,000 g
Racemethorphan	2 g
Remifentanil	2,500 g
Secobarbital	336,002 g
Sufentanil	6,730 g
Tapentadol	5,400,000 g
Thebaine	116,000,000 g

Aggregate production quotas for all other Schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero.

Dated: August 31, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–22128 Filed 9–7–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA 353]

Final Adjusted Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2012

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice.

SUMMARY: This notice establishes the Final Adjusted 2012 Assessment of Annual Needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: *Effective Date:* September 10, 2012.

FOR FURTHER INFORMATION CONTACT: John W. Partridge, Chief, Liaison and Policy Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (202) 307–4654.

SUPPLEMENTARY INFORMATION: The 2012 Assessment of Annual Needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and imported into the United States in 2012 to provide adequate supplies of each chemical for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks of such chemicals. Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish an assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100.

On July 18, 2012, a notice entitled ''Proposed Adjustment of the Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2012'' was published in the **Federal Register** (77 FR 42333). That notice proposed to adjust the 2012 Assessment of Annual Needs for ephedrine (for sale), ephedrine (for conversion), pseudoephedrine (for sale), phenylpropanolamine (for sale) and phenylpropanolamine (for conversion). All interested persons were invited to comment on or object to the proposed assessments on or before August 17, 2012.

Comments Received

DEA did not receive any comments to the proposed adjustment of the assessment of annual needs for ephedrine (for sale), ephedrine (for conversion), pseudoephedrine (for sale), phenylpropanolamine (for sale), and phenylpropanolamine (for conversion).

Conclusion

In determining the adjusted 2012 assessments, DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294 and 75 FR 79407 respectively). DEA considered changes in demand, changes in the national rate of net disposal, and changes in the rate of net disposal by the registrants holding individual manufacturing or import quotas for the chemical; whether any increased demand or changes in the national and/or individual rates of net disposal are temporary, short term, or long term; whether any increased demand could be met through existing inventories, increased individual manufacturing quotas, or increased importation without increasing the assessment of annual needs; whether any decreased demand would result in excessive inventory accumulation by all persons registered to handle the particular chemical; and other factors affecting the medical, scientific, research, industrial, and importation needs in the United States, lawful export requirements, and reserve stocks, as found relevant.

Other factors that DEA considered include trends as derived from information provided in applications for import, manufacturing, and procurement quotas and in import and export declarations. The inventory, acquisition (purchases), and disposition (sales) data as provided by DEA-registered manufacturers and importers reflects the most current information available to DEA at the time of publication of this Notice. The underlying data used to determine the final 2012 assessment of annual needs is the same as that used in determining the proposed 2012 assessment of annual needs, as published on September 14, 2011, at 76 FR 56809.

In accordance with 21 U.S.C. 826(a) and 21 CFR 1315.13, the Administrator hereby orders that the 2012 assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in kilograms of anhydrous acid or base, is adjusted and established as follows:

List I chemical	Final 2012 assessment of annual needs (kg)
Ephedrine (for sale)	4,300
Phenylpropanolamine (for sale)	5,800
Pseudoephedrine (for sale)	278,000
Phenylpropanolamine (for conversion)	26,200
Ephedrine (for conversion)	12,000

Dated: August 31, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–22127 Filed 9–7–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Cambrex Charles City, Inc.

By Notice dated June 18, 2012, and published in the **Federal Register** on June 26, 2012, 77 FR 38085, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616–3466, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Phenylacetone (8501)	II
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances for internal use, and to manufacture bulk intermediates for sale to its customers. No comments or objections have been received. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Cambrex Charles City, Inc. to import the

basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C .952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: August 29, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–22157 Filed 9–7–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Research Triangle Institute

By Notice dated May 15, 2012, and published in the **Federal Register** on May 22, 2012, 77 FR 30327, Research Triangle Institute, Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture marihuana, and cocaine derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by the National Institute on Drug Abuse.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Research Triangle Institute to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 29, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–22154 Filed 9–7–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration, Noramco, Inc., (GA)

By Notice dated May 9, 2012, and published in the **Federal Register** on May 21, 2012, 77 FR 30026, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance listed in schedule I.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: August 29, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–22129 Filed 9–7–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Alltech Associates, Inc.

By Notice dated May 15, 2012 and published in the **Federal Register** on May 22, 2012, 77 FR 30327, Alltech Associates, Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxy-amphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxy-amphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I

Drug	Schedule
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Ecgonine (9180)	II
Meperidine intermediate-B (9233)	II
Noroxymorphone (9668)	II

The company plans to manufacture high purity drug standards used for analytical applications only in clinical, toxicological, and forensic laboratories.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Alltech Associates, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Alltech Associates, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 29, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–22156 Filed 9–7–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; AMPAC Fine Chemicals LLC

By Notice dated May 11, 2012, and published in the **Federal Register** on May 21, 2012, 77 FR 30026, AMPAC Fine Chemicals LLC., Highway 50 and Hazel Avenue, Building 05001, Rancho Cordova, California 95670, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Thebaine (9333)	II
Poppy Straw Concentrate (9670)	II

The company is a contract manufacturer. In reference to Poppy Straw Concentrate the company will manufacture Thebaine intermediates for sale to its customers for further manufacture. No other activity for this drug code is authorized for registration.

No comments or objections have been received. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

DEA has considered the factors in 21 USC § 823(a) and determined that the registration of AMPAC Fine Chemicals LLC., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time.

DEA has investigated AMPAC Fine Chemicals LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR § 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 29, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–22159 Filed 9–7–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management; Agency Information Collection Activities; Extension Without Change; Comment Request; DOL Generic Solution for Solicitation for Grant Applications

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), is soliciting comments concerning a proposed extension of the authorization to conduct the DOL Generic Solution for Solicitation for Grant Applications information collection.

DATES: Submit written comments on or before November 9, 2012.

ADDRESSES: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov* to request additional information, including requesting a copy of this Information Collection Request (ICR).

Submit comments regarding this ICR, including suggestions for reducing the burden, by sending an email to *DOL_PRA_PUBLIC@dol.gov.* Comments may also be sent to Michel Smyth, Departmental Clearance Officer, U.S. Department of Labor, Office of the Chief Information Officer, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210.

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: Periodically the DOL solicits grant applications by issuing a Solicitation for Grant Applications. To ensure grants are awarded to the applicant(s) best suited to perform the functions of the grant, applicants are generally required to submit a two-part application. The first part of DOL grant applications consists of submitting Standard Form 424, Application for Federal Assistance. The second part of a grant application usually requires a technical proposal demonstrating the applicant's capabilities in accordance with a statement of work and/or selection criteria. This information collection is subject to the PRA.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1225–0086. The current approval is scheduled to expire

on November 30, 2012; however, the DOL intends to seek continued approval for this collection of information for an additional three years.

The DOL, 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 an opportunity to comment on proposed, revised, and continuing information collections before submitting them to the OMB. This program helps to ensure 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 can be properly assessed. Interested parties are encouraged to provide comments to the individual listed in the **ADDRESSES** section above. Comments must be written to receive consideration, and they will be summarized and may be included in the request for OMB approval of the final ICR. The comments will also become a matter of public record.

The DOL is particularly interested in comments that:

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

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

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

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: DOL Generic Solution for Solicitation for Grant Applications.

OMB Control Number: 1225–0086.

Affected Public: Private Sector—not for-profit institutions—and State, Local, and Tribal Governments.

Estimated Number of Respondents: 7,500.

Frequency: On occasion.

Total Estimated Annual Responses: 7,500.

Estimated Average Time per Response: 25 hours.

Estimated Total Annual Burden Hours: 187,500 hours.

Total Estimated Annual Cost Burden: $0.

Dated: September 5, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–22239 Filed 9–7–12; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management; Agency Information Collection Activities; Extension Without Change; Comment Request; DOL Generic Solution for Customer Satisfaction Surveys and Conference Evaluations

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning the proposed extension of the DOL Generic Solution for Customer Satisfaction Surveys and Conference Evaluations information collection request (ICR), as part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.).

DATES: Submit written comments on or before November 9, 2012.

ADDRESSES: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov* to request additional information, including requesting a copy of this ICR. Submit comments regarding this ICR, including suggestions for reducing the burden, by sending an email to *DOL_PRA_PUBLIC@dol.gov.* Comments may also be sent to Michel Smyth, Departmental Clearance Officer, U.S. Department of Labor, Office of the Chief Information Officer, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210.

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: The DOL periodically conducts customer satisfaction surveys and conference evaluations that help assess Departmental products and services and lead to improvements in areas deemed necessary. This information collection is subject to the PRA.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1225–0059. The current approval is scheduled to expire on November 30, 2012; however, the DOL intends to seek continued approval for this collection of information for an additional three years.

The DOL, 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 an opportunity to comment on proposed and/or continuing collections of information before they are submitted to the OMB. This program helps to ensure 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 can be properly assessed. Interested parties are encouraged to provide comments to the individual listed in the **ADDRESSES** section above. Comments must be written to receive consideration, and they will be summarized and may be included in the request for OMB approval of the final ICR. The comments will become a matter of public record.

The DOL is particularly interested in comments that:

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

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

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

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: DOL Generic Solution for Customer Satisfaction Surveys and Conference Evaluations.

OMB Control Number: 1225–0059.

Affected Public: Individuals or households; Private Sector—businesses or other for-profits, farms, and not for-profit institutions; and State, Local, and Tribal Governments.

Estimated Number of Respondents: 375,000.

Frequency: On occasion.

Total Estimated Annual Responses: 375,000.

Estimated Average Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 37,500 hours.

Total Estimated Annual Cost Burden: $0.

Dated: September 4, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–22245 Filed 9–7–12; 8:45 am]

BILLING CODE 4510–23–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–008; NRC–2008–0476]

Approval of Transfer of Early Site Permit (ESP) and Conforming Amendment, Virginia Electric and Power Company, North Anna ESP Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of request for license transfer; opportunity to comment, opportunity to request a hearing.

DATES: Submit comments by October 10, 2012. A request for a hearing must be filed by October 1, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2008–0476. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0476. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Chandu P. Patel, Project Manager, Office of New Reactor, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3025; email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2008–0476 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0476.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application dated March 1, 2012, is available under ADAMS Accession No. ML12072A091.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2008–0476 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will posts all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under § 52.28 of Title 10 of the Code of Federal Regulations (10 CFR), ''Transfer of Early Site Permit;'' 10 CFR 50.80, ''Transfer of Licenses;'' and 10 CFR 50.90, ''Application for Amendment of License, Construction Permit, or Early Site Permit;'' approving the direct transfer of the Old Dominion Electric Cooperative's (ODEC) interest in the North Anna ESP [Early Site Permit] Site's Early Site Permit (ESP–003). The transfer would be to Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP). DVP and ODEC are currently the holders of the ESP–003. The Commission is also considering amending the permit for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by DVP and ODEC, DVP would become the holder of the ESP following approval of the proposed permit transfer and would assume all rights, duties, and obligations of ESP–003.

The proposed amendment would delete references to ODEC, reflect DVP as the permit holder, and delete certain provisions that are no longer applicable because they applied only where ODEC maintained an interest in the ESP.

Pursuant to 10 CFR 52.28 and 10 CFR 50.80, no ESP, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the ESP to any person, unless the Commission gives its consent in writing. The Commission will approve an application for the direct transfer of an ESP if the Commission determines that

the proposed transferee is qualified to hold the permit and that the transfer is otherwise consistent with applicable provisions of law, regulations and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming permit amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315(b), ''[w]here administrative license amendments are necessary to reflect an approved transfer, such amendments will be included in the order that approves the transfer. Any challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.'' In light of the generic determination reflected in 10 CFR 2.1315(b), only public comments with respect to whether the amendment accurately reflects the approved transfer are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

III. Opportunity to Request a Hearing

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Requests and petition that are filed after the 20-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an

exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 20 days from the date of publication of this notice. Filings submitted after that date will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this license transfer application, see the application dated March 1, 2012, available for public inspection at the NRC's PDR, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML12072A091. The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 31st day of August 2012.

For the Nuclear Regulatory Commission.

Amy M. Snyder,

Acting Chief, Projects Licensing Branch 2, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2012–22175 Filed 9–7–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0199; Docket No. 50–316]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit 2; Exemption

1.0 Background

Indian Michigan Power Company (the licensee) is the holder of Renewed Facility Operating License No. DPR–74, which authorizes operation of the Donald C. Cook Nuclear Plant, Unit 2 (CNP–2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S Nuclear Regulatory Commission (NRC, or the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Berrien County in Michigan.

2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.12, ''Specific exemptions,'' the licensee has, by letter dated September 29, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11286A198), requested an exemption from 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' and Appendix K to 10 CFR 50, ''ECCS Evaluation Models.'' The regulations in 10 CFR 50.46 contain acceptance criteria for the emergency core cooling system (ECCS) for reactors fueled with zircaloy or ZIRLO™ cladding. In addition, Appendix K to 10 CFR part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumes the use of a zirconium alloy, which is a material different from Optimized ZIRLO™. The licensee's requested exemption relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.46 and Appendix K is needed to support the use of a different fuel rod cladding material. Accordingly, the licensee requested an exemption that would allow the use of Optimized ZIRLO™ fuel rod cladding at CNP–2.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at CNP–2. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for adequate ECCS performance. As previously documented in the NRC staff's review of topical reports submitted by Westinghouse Electric Company, LLC (Westinghouse), and subject to compliance with the specific conditions of approval established therein, the NRC staff finds that the applicability of these ECCS acceptance criteria to Optimized ZIRLO™ has been demonstrated by Westinghouse. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ pproved topical report WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A, ''Optimized ZIRLO™,'' July 2006, ADAMS Accession No. ML062080576; the public version is WCAP–14342–A & CENPD–404–NP–A at ADAMS Accession No. ML062080569) demonstrate an acceptable retention of post-quench ductility up to 10 CFR 50.46 limits of 2,200 °F and 17 percent equivalent clad reacted (ECR). Furthermore, the NRC staff has concluded that oxidation measurements previously provided by Westinghouse (''SER Compliance with WCAP–12610–P–A & CENPD–404–P–A Addendum 1–A 'Optimized ZIRLO™,''' November 2007, non-public version at ADAMS Accession No. ML073130562, public version at ADAMS Accession No. ML073130560) illustrate that oxide thickness (and associated hydrogen pickup) for Optimized ZIRLO™ at any given burnup would be less than both zircaloy-4 and ZIRLO™. Hence, the NRC staff concludes that Optimized ZIRLO™ would be expected to maintain better post-quench ductility than ZIRLO™. This finding is further supported by an ongoing loss-of-coolant accident (LOCA) research program at Argonne National Laboratory, which has identified a strong correlation between cladding hydrogen content (due to in-service corrosion) and post-quench ductility.

In addition, the provisions of 10 CFR 50.46 require the licensee to periodically evaluate the performance of the emergency core cooling system (ECCS), using currently approved LOCA models and methods, to ensure that the fuel rods will continue to satisfy 10 CFR 50.46 acceptance criteria. Granting the exemption to allow the licensee to use Optimized ZIRLO™ fuel rods in addition to the current mix of fuel rods does not diminish this requirement of periodic evaluation of ECCS performance. Thus, the underlying purpose of the rule will continue to be achieved for Donald C. Cook Nuclear Plant, Unit 2.

Paragraph I.A.5 of Appendix K to 10 CFR part 50 states that the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of this provision of the rule would not permit use of the equation for Optimized ZIRLO™ cladding for determining acceptable fuel performance. However, the NRC staff previously found that metal-water reaction tests performed by Westinghouse on Optimized ZIRLO™ (see Appendix B of WCAP–12610–P–A & CENPD–404–P–A, Addendum 1–A) demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, the NRC staff agrees that application of Appendix K, paragraph I.A.5 is not necessary to achieve the underlying purpose of the rule in these circumstances. Since these evaluations demonstrate that the underlying purpose of the rule will be met, there will be no undue risk to the public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the use of Optimized ZIRLO™ fuel rod cladding material at CNP–2. This change to the plant configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR part 50 is to establish acceptance criteria for ECCS performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to Optimized ZIRLO™, even though the evaluations above show that the intent of the regulation is met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved through the use of Optimized ZIRLO™ fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50, to allow the use of Optimized ZIRLO™ fuel rod cladding material at CNP–2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment and has published an environmental assessment for this exemption on August 23, 2012 (77 FR 51071).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of August, 2012.

For the Nuclear Regulatory Commission.

Michele Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–22173 Filed 9–7–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0209]

Guidance on Performing a Seismic Margin Assessment

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft Japan Lessons-Learned Project Directorate guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment the draft Japan Lessons-Learned Project Directorate Interim Staff Guidance (JLD–ISG), JLD–ISG–2012–04, ''Guidance on Performing a Seismic Margin Assessment in response to the March 2012 Request for Information Letter.'' This draft JLD–ISG provides guidance on an acceptable method for licensees to carry out a Seismic Margins Analysis (SMA) method referred to in the seismic portion of a letter requiring recipients (licensees) to submit information under oath and affirmation to the NRC.

DATES: Comments must be filed no later than October 10, 2012. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure

consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0209. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0209. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Gratton, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1055; email: *Christopher.Gratton@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0209 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publically available by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0209.
- *NRC's Agencywide Document Access and Management System (ADAMS):* You may access publically available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The draft JLD–ISG–2012–04 is available under ADAMS Accession No. ML12222A327. The 10 CFR 50.54(f) request letter was issued in March 2012, and can be located under ADAMS Accession No. ML12053A340.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room 01–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0209 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publically disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publically disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background Information

Following the events at the Fukushima Dai-ichi nuclear power plant on March 11, 2011, the NRC established a senior-level agency task force referred to as the Near-Term Task Force (NTTF). The NTTF was tasked with conducting a systematic and methodical review of the NRC regulations and processes and determining if the agency should make additional improvements to those programs in light of the events at Fukushima Dai-ichi. As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY–11–0093, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' dated July 12, 2011 (ADAMS Accession No. ML111861807). These recommendations were enhanced by the NRC staff following interactions with stakeholders. Documentation of the staff's efforts is contained in SECY–11–0124, ''Recommended Actions To Be Taken Without Delay From the Near-Term Task Force Report,'' dated September 9, 2011, (ADAMS Accession No. ML11245A158), and SECY–11–0137, ''Prioritization of Recommended Actions To Be Taken in Response to Fukushima Lessons Learned,'' dated October 3, 2011 (ADAMS Accession No. ML11269A204).

As directed by the staff requirements memorandum (SRM) for SECY–11–0093, the NRC staff reviewed the NTTF recommendations within the context of the NRC's existing regulatory framework and considered the various regulatory vehicles available to the NRC to implement the recommendations. The staff's prioritization of the recommendations was established in SECY–11–0124 and SECY–11–0137.

In March 2012, the NRC issued Request for Information Pursuant to Section 50.54(f) of Title 10 of the Code of Federal Regulations (10 CFR), Regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident,'' hereafter called the ''March 12, 2012, 50.54(f) letter.'' Enclosure 1 of that letter, ''Recommendation 2.1: Seismic,'' described the actions related to seismic hazard and risk reassessments to be taken by licensees in response to the letter. Among the actions discussed in Enclosure 1 is an SMA method, which may be appropriate for some plants depending on the outcome of the hazard reassessment phase. Enclosure 1 to the 50.54(f) letter states that the SMA approach should be the NRC SMA approach (e.g.; NUREG/CR–4334. ''An Approach to the Quantification of Seismic Margins in Nuclear Power Plants,'' issued in August 1985 (ADAMS Accession No. ML090500182), as enhanced for full-scope plants in NUREG–1407, ''Procedural and Submittal Guidance for the Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities,'' ADAMS Accession No. ML063550238.

This draft JLD–ISG, ''Guidance on Performing a Seismic Margin Assessment in Response to the March 2012, Request for Information Letter,'' (ADAMS Accession No. ML12222A327) describes the enhancements to the NRC SMA method described in NUREG/CR–4334 needed to meet the objectives of the March 12, 2012, 50.54(f) letter. It presents staff positions on enhancements to the major elements of the NRC SMA and updates references to allow for use of recent advances in

methods and guidance. These guidance documents include the American Society of Mechanical Engineers/American Nuclear Society, ''Standard for Level 1/Large Early Release Frequency Probabilistic Risk Assessment for Nuclear Power Plant Applications,'' Standard ASME/ANS RA–Sa–2009, 2009 (hereafter called the ASME/ANS PRA standard) and the Screening, Prioritization, and Implementation document (SPID) currently under development by the Nuclear Energy Institute (with NRC staff input) for NRC endorsement.

Licensees may propose other methods for satisfying these requirements. The NRC staff will review such methods and determine their acceptability on a case-by-case basis.

This guidance, at this time, is only intended to be used for an SMA conducted in response to the 50.54(f) letter, and not for other purposes.

The NRC ISG DC/COL–ISG–020, ''Seismic Margin Analysis for New Reactors Based on Probabilistic Risk Assessment'' (ADAMS Accession No. ML100491233), remains the NRC's current guidance for application to new reactors. The contents of this draft JLD–ISG have no implications for NRC ISG DC/COL–ISG–020, the ASME/ANS PRA standard, or any other document.

The draft JLD–ISG is not a substitute for the requirements in the March 12, 2012, 50.54(f) letter and compliance with the draft JLD–ISG is not required. This draft JLD–ISG is being issued in draft form for public comment to involve the public in developing the regulatory positions.

Proposed Action

By this action, the NRC is requesting public comments on draft JLD–ISG–2012–04. This draft JLD–ISG proposes guidance related to requirements contained in the seismic portion of the March 12, 2012, 50.54(f) letter. The NRC staff will make a final determination regarding issuance of the JLD–ISG after it considers any public comments received in response to this request.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 4th day of September, 2012.

David L. Skeen,

Director, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–22174 Filed 9–7–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17Ad–15, OMB Control No. 3235–0409, SEC File No. 270–360.

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 existing collection of information provided for in the following rule: Rule 17a–10 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–15 requires approximately 477 transfer agents to establish written standards for accepting and rejecting guarantees of securities transfers from eligible guarantor institutions. Transfer agents are also required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 477 registered transfer agents. The staff estimates that every transfer agent will spend about 40 hours annually to comply with Rule 17Ad–15. The total annual burden for all transfer agents is 23,480 hours (477 times 40). The average cost per hour is approximately $50. Therefore, the total cost of compliance for all transfer agents is $1,174,000 (23,480 times $50).

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: September 4, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22143 Filed 9–7–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulation S–P, SEC File No. 270–480, OMB Control No. 3235–0537.

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'') has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in the privacy notice and opt out notice provisions of Regulation S–P—Privacy of Consumer Financial Information (17 CFR part 248) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The privacy notice and opt out notice provisions of Regulation S–P (the ''Rule'') implement the privacy notice and opt out notice requirements of Title V of the Gramm-Leach-Bliley Act (''GLBA''), which include the requirement that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution

shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties (''privacy notice''). Title V of the GLBA also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option (''opt out notice''). The Rule applies to broker-dealers, investment advisers registered with the Commission, and investment companies (''covered entities'').

Commission staff estimates that, as of early May, 2012, the Rule's information collection burden applies to approximately 21,500 covered entities (approximately 4,700 broker-dealers, 12,600 investment advisers registered with the Commission, and 4,200 investment companies). In view of (a) the minimal recordkeeping burden imposed by the Rule (since the Rule has no recordkeeping requirement and records relating to customer communications already must be made and retained pursuant to other SEC rules); (b) the summary fashion in which information must be provided to customers in the privacy and opt out notices required by the Rule (the model privacy form adopted by the SEC and the other agencies in 2009, designed to serve as both a privacy notice and an opt out notice, is only two pages); (c) the availability to covered entities of the model privacy form and online model privacy form builder; and (d) the experience of covered entities' staff with the notices, SEC staff estimates that covered entities will each spend an average of approximately 12 hours per year complying with the Rule, for a total of approximately 258,000 annual burden-hours ($12 \times 21{,}500 = 258{,}000$). SEC staff understands that the vast majority of covered entities deliver their privacy and opt out notices with other communications such as account opening documents and account statements. Because the other communications are already delivered to consumers, adding a brief privacy and opt out notice should not result in added costs for processing or for postage and materials. Also, privacy and opt out notices may be delivered electronically to consumers who have agreed to electronic communications, which further reduces the costs of delivery. Because SEC staff assumes that most paper copies of privacy and opt out notices are combined with other required mailings, the burden-hour estimates above are based on resources required to integrate the privacy and opt out notices into another mailing, rather than on the resources required to create and send a separate mailing. SEC staff estimates that, of the estimated 12 annual burden-hours incurred, approximately 8 hours would be spent by administrative assistants at an hourly rate of $65, and approximately 4 hours would be spent by internal counsel at an hourly rate of $378, for a total annualized cost of $2,032 for each of the covered entities ($8 \times \$65 = \$520$; $4 \times \$378 = \$1{,}512$; $\$520 + \$1{,}512 = \$2{,}032$). Hourly cost estimates for personnel time are derived from the Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2011, modified by SEC staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Accordingly, SEC staff estimates that the total annualized cost for the estimated total hour burden for the approximately 21,500 covered entities subject to the Rule is approximately $43,688,000 ($\$2{,}032 \times 21{,}500 = \$43{,}688{,}000$).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information on respondents; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 4, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22144 Filed 9–7–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67776; File No. SR–Phlx–2012–110]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Elimination of a Reversal and Conversion Fee Cap

September 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 remove a fee cap on equity options transactions on certain reversals and conversion strategies.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to remove a fee cap on equity options transactions on certain reversals and conversion strategies. The fee cap was intended to incentivize market participants by capping option transaction fees related to reversal and conversion strategies to encourage trading on the Exchange and the Exchange believes such a fee cap is no longer necessary. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

The Exchange proposes to eliminate this cap for all market participants relating to option transaction fees in Multiply Listed Options (Section II of the Pricing Schedule) of $500 per day for reversal and conversion strategies executed on the same trading day in the same options class (''Reversal and Conversion Cap''). The Reversal and Conversion Cap applies only to executions occurring on either of the two days preceding the standard options expiration date, which typically was the third Thursday and Friday of every month.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(4) of the Act [4] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed elimination of the Reversal and Conversion Cap is reasonable because the Exchange previously capped the option transaction fees in Multiply Listed options for reversals and conversions in an effort to incentivize market participants, but the Exchange believes such an incentive is no longer necessary. The Exchange also believes that this proposal is equitable and not unfairly discriminatory because the Exchange is eliminating the Reversal and Conversion Cap for all members and the Exchange believes that market participants will continue to transact in Multiply Listed options for reversals and conversions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[5] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2012–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2012–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–110 and should be submitted on or before October 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22140 Filed 9–7–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67777; File No. SR–CBOE–2012–084]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Transaction Fees for CBOE Range Options on the S&P 500 Index

September 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule to establish fees for transactions in CBOE Range Options on the S&P 500 Index (''SROs''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange received approval to list and trade cash-settled, European-style Range Options that overlie any index eligible for options trading on the Exchange.[3] Range Options pay an exercise settlement amount if the settlement value of the underlying index at expiration falls within the specified Range Length. As stated in the Range Option approval order:

> The Commission believes that Range Options would provide investors with a potentially useful investment choice. The Commission notes that investors now can replicate the features and structures of Range Options through the use of currently available options traded on the Exchange.[13] [NB: This superscript ''13'' represents footnote 13 in the Range Option approval order that was published in the **Federal Register**, which is quoted below in text; it does not represent a footnote in this filing.] *The payout structure of a Range Option can be replicated by purchasing four calls or puts with varying strike prices.* Range Options will enable investors to obtain the same payout structure by purchasing one option, with the potential of significantly reducing investors' transaction costs.[4] (emphasis added).

The Exchange will list Range Options on the S&P 500 Index (Ticker: SRO) beginning on August 28, 2012. The purpose of this filing is to establish transaction fees for SROs. In considering the appropriate and equitable amount of transaction fees for SROs, the Exchange considered the fact that the exposure provided by Range Options is equivalent to four option positions. Consistent with the spirit of the Commission's observation noted above, the Exchange will not be assess [sic] a transaction fee equal to the transaction fees for four options positions, but rather will, in general, assess a transaction fee equal to the transaction fees for two option positions. The Exchange believes that this transaction cost level strikes the appropriate balance between establishing reasonable fees and the Exchange's goal of introducing new products to the marketplace that are competitively priced.

The amount of transaction fees for SROs [5] will be as follows:

- *Customer, Professional Customer and Voluntary Professional Customer:* $0.80 per contract for customer, professional customer and voluntary professional customer transactions.[6] The Exchange notes that the customer, professional customer and voluntary professional customer fees for standard S&P 500 Index (''SPX'') options are: (a) $0.44 per contract if the premium is greater than or equal to $1, and (b) $0.35 per contract if the premium is less than $1. For ease of use, the Exchange is proposing to establish a single fee for customer, professional customer and voluntary professional customer transactions in SROs regardless of the premium amount. The Exchange is not proposing to double the amount of either existing standard SPX option fee, but rather used those fees as a measure for setting the proposed $0.80 per contract fee. The Exchange also proposes to layer SROs into the existing Customer Large Trade Discount regime for other S&P products, which will limit the amount of customer transaction fees to the first 10,000 contracts.[7]
- *CBOE Market-Maker, Designated Primary Market-Maker (''DPM''), E–DPM and Lead Market-Maker (''LMM''):* $0.40 per contract for CBOE Market-Maker DPM, E–DPM and LMM transactions, which is equal to double the transaction fee equal for a single standard SPX option.[8] As with some other S&P products, transactions in SROs will be excluded from the Liquidity Provider Sliding Scale.[9]
- *Clearing Trading Permit Holder Proprietary:* $0.50 per contract for Clearing Trading Permit Holder Proprietary transactions, which is equal to double the transaction fee for a single standard SPX option.[10] As with some other S&P products, transactions in SROs will be excluded from the Clearing Trading Permit Holder Fee Cap.[11] The Exchange also proposes to

[3] *See* Securities Exchange Act Release No. 57376 (February 25, 2008), 73 FR 11689 (March 4, 2008) (order approving SR–CBOE–2007–104).

[4] 73 FR at 11692.

[5] CBOE is adding ''SRO'' to the title of the Index Options Rate Table, which will exclude SROs from the fees set forth in that table and adding ''SRO'' to the Proprietary Index Options Rate Table, which will set forth the fees for SROs in that table, to the Fees Schedule. *See* pages 19 [sic] and 20 [sic] to Exhibit 5.

[6] *See* page 20 [sic] to Exhibit 5.

[7] *See* proposed addition of ''SRO'' to the Customer Large Trade Discount Table to the Fees Schedule. *See* page 22 [sic] to Exhibit 5.

[8] *See* page 20 [sic] to Exhibit 5.

[9] *See* proposed addition of ''SRO'' to the Liquidity Provider Sliding Scale Table to the Fees Schedule. *See* page 20 [sic] to Exhibit 5. As explained in SR–CBOE–2012–008, the Exchange excludes certain proprietary, singly-listed products from the Liquidity Provider Sliding Scale because the Exchange has ''expended considerable resources developing its singly-listed products.'' *See* Securities Exchange Act Release No. 66277 (January 30, 2012), 77 FR 5595 (February 3, 2012).

[10] *See* page 20 [sic] to Exhibit 5.

[11] *See* proposed addition of ''SRO'' to Clearing Trading Permit Holder Fee Cap Table and to

Continued

exclude SROs from the CBOE Proprietary Products Sliding Scale.[12] Because the CBOE Proprietary Products Sliding Scale is structured on a per contract basis and because SROs provide the exposure of four contracts, the Exchange believes that it is appropriate to exclude SROs. As with other S&P products, firm facilitations for SROs will not be free. To reflect this, the Exchange is adding ''SROs'' to this provision in the ''Notes'' section to the Clearing Trading Permit Holder Fee Cap Table.[13] Products such as SROs are assessed fees for firm facilitations because they are proprietary and the Exchange has expended considerable resources developing its singly-listed products.

• *Broker-Dealer and Non-Trading Permit Holder Market-Maker:* $0.80 per contract for Broker-Dealer and Non-Trading Permit Holder Market-Maker transactions, which is equal to double the transaction fee for a single standard SPX option.[14]

• *Marketing Fee:* $0.00 per contract. As with certain other S&P products, the Exchange proposes to add SROs to footnote 6 to the Fees Schedule so that the Exchange's marketing fee will not apply to SROs.[15]

• *Floor Brokerage Fees:* $0.08 for non-crossed orders and $0.04 for crossed orders, which is equal to double the respective Floor Brokerage fees for a single standard SPX option.[16] SROs will be excluded from the calculation of the additional monthly fee assessed to any Floor Broker Trading Privilege Holder that executes more than 20,000 standard SPX options during the month.[17]

• *Surcharge Fee (Index License):* $0.20 on all non-public customer transactions in SROs.[18] The Index License fee helps the Exchange recoup some of the license fees that the Exchange pays to the reporting authority.

• *AIM Contract Execution Fee:* As with other certain S&P products, applicable standard transaction fees will apply to AIM, SAM, FLEX AIM and FLEX SAM transactions in SROs.[19]

CBOE notes that SROs are eligible for trading on the Exchange as Flexible Exchange (''FLEX'') options, although FLEX option trading functionality is currently disabled.[20] When FLEX trading is enabled for SROs, CBOE will submit a filing to establish FLEX fees.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[21] in general, and furthers the objectives of Section 6(b)(4)[22] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities.

In setting the proposed transaction fees for SROs, the Exchange considered the fact that the exposure provided by Range Options is equivalent to four option positions. Consistent with the spirit of the Commission's observation in the Range Option approval order (that Range Options may reduce investor transaction costs), the Exchange determined not to propose a transaction fee equal to the fees for four options positions, but rather has proposed, in general, to assess a transaction fee equal to the fees for two option positions. The Exchange believes that this transaction cost level strikes the appropriate balance between establishing reasonable fees and the Exchange's goal of introducing new products to the marketplace that are competitively prices [sic].

The Exchange believes that the fees are equitable and do not unfairly discriminate because they provide comparable pricing among similar categories of market participants. The Exchange believes that a fee of $0.80 per contract for Customer, Professional Customer, Voluntary Professional Customer, Broker-Dealer and Non-Trading Permit Holder Market-Maker transactions is equitable since those market participants will effectively pay half of the transactions costs associated with the exposure of four options.

The Exchange believes that a fee of $0.40 per contract for CBOE Market-Make, DPM, E–DPM and LMM transactions is equitable since those market participants provide a valuable market service by adding liquidity to the Exchange and since they are subject to liquidity provider obligations. This standard rate is not subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule. Excluding SROs from the Liquidity Provider Sliding Scale is equitable and not unfairly discriminatory because all similarly-situated market participants trading in the product will be charged the same fees for such transactions and because the Exchange expended significant resources developing SROs.

The Exchange also believes that a fee of $0.50 per contract for Clearing Trading Permit Holders is equitable since they contribute capital to facilitate customer orders, which in turn provides a deeper pool of liquidity that benefits all market participants. Excluding SROs from the CBOE Proprietary Products Sliding Scale is equitable and not unfairly discriminatory because that scale is structured on a per contract basis and because SROs provide the exposure of four contracts. Accordingly, the Exchange believes that it is appropriate to exclude SROs. As with other S&P products, firm facilitations for SROs will not be free. Products such as SROs are assessed fees for firm facilitations because they are proprietary and the Exchange has expended considerable resources developing its singly-listed products.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as

footnote 11 to the Fees Schedule. *See* pages 21 [sic] and 32 [sic] to Exhibit 5. *See* Securities Exchange Act Release No. 63701 (January 11, 2011), 76 FR 2934 (January 18, 2011) (notice of SR–CBOE–2010–116 which filing, among other things, established a multiply-listed options fee cap and a CBOE proprietary products sliding scale).

[12] *See* proposed addition of the sentence ''SROs are excluded from the CBOE Proprietary Products Sliding Scale'' to the CBOE Proprietary Products Sliding Scale Table. *See* page 21 [sic] to Exhibit 5.

[13] *See* proposed addition of ''SRO'' to the CBOE Trading Permit Holder Fee Cap Table. *See* page 21 [sic] to Exhibit 5.

[14] *See* page 20 [sic] to Exhibit 5.

[15] *See* page 31 [sic] to Exhibit 5.

[16] *See* proposed addition of ''SRO'' and ''SRO Crossed Orders'' to the Floor Brokerage and PAR Official Fees Table to the Fees Schedule. *See* page 24 [sic] to Exhibit 5.

[17] *See* proposed addition of the sentence ''For purposes of determining the 20,000 contract per month threshold, SRO executions are excluded for purposes of the calculation of executed SPX contracts during the month'' to footnote 25 to the Fees Schedule at page 34 [sic] to Exhibit 5.

[18] *See* proposed addition of ''SRO'' to the Surcharge Fee section of the Proprietary Index Options Rate Table to the Fees Schedule. *See* page 20 [sic] to Exhibit 5.

[19] *See* proposed addition of ''SRO'' to footnote 18 to the Fees Schedule. *See* page 33 [sic] to Exhibit 5.

[20] *See* CBOE Rule 20.12 (FLEX Trading) and *CBOE Regulatory Circular RG12–056* (CFLEX 2.0 Rollout Schedule and Settings) at page 4, issued on April 20, 2012.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4).

establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act [23] and subparagraph (f)(2) of Rule 19b–4[24] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2012–084 and should be submitted on or before October 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22141 Filed 9–7–12; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 C.F.R. 240.19b–4(f)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67778; File No. SR–FINRA–2012–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to the Handling of Stop and Stop Limit Orders

September 4, 2012.

I. Introduction

On May 24, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA's rules relating to the handling of stop orders and stop limit orders. The proposed rule change was published for comment in the **Federal Register** on June 6, 2012.[3] The Commission received four comment letters regarding the proposal.[4] On July 19, 2012, the Commission designated a longer period to act on the proposed rule change, until September 4, 2012.[5] On August 9, 2012, FINRA submitted a response to the comment letters.[6] This order approves the proposed rule change.

II. Description of the Proposal

FINRA proposes to amend its rules governing the handling of stop orders. FINRA Rule 6140(h) currently provides that a member may, but is not obligated to, accept a stop order or a stop limit order in a designated security.[7] A buy stop order becomes a market order when a transaction takes place at or above the stop price, and a sell stop order becomes a market order when a transaction takes place at or below the stop price.[8] When a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the limit price.[9] Accordingly, FINRA rules provide that stop orders and stop limit orders are triggered (*i.e.,* become a market or a limit order) by a transaction in a security.

FINRA now proposes to also allow members to offer customers stop orders and stop limit orders that would be triggered by a transaction or by an event other than a transaction (*e.g.,* a quotation).[10] FINRA has indicated that some firms and their customers prefer alternative triggers for activating stop orders and stop limit orders.[11] According to FINRA, some members believe that, for certain securities, quotations may serve as a better indicator of the current price than transactions.[12] For example, quotations for thinly traded securities may be continuously updated, whereas there may be limited trading in the securities.[13] However, FINRA also states that some members and customers prefer to have transactions trigger stop orders and stop limit orders, and believe that customers could be disadvantaged

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67085 (May 31, 2012), 77 FR 33537 (''Notice'').

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated June 26, 2012 (''SIFMA Letter''); Gary J. Sjostedt, Director, Order Routing and Sales, TD Ameritrade, Inc., dated June 27, 2012 (''TD Ameritrade Letter''); and Christopher Nagy, President, KOR Trading LLC, dated July 9, 2012 (''KOR Letter''); and web comment from Virgil F. Liptak, dated July 3, 2012 (''Liptak Letter''). The comment letters received by the Commission are available at *http://www.sec.gov/comments/sr-finra-2012-026/finra2012026.shtml.*

[5] Securities Exchange Act Release No. 67471, 77 FR 43620 (July 25, 2012).

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Racquel L. Russell, Assistant General Counsel, Regulatory Policy and Oversight, FINRA, dated August 9, 2012 (''FINRA Response'').

[7] FINRA Rule 6140(a) defines a ''designated security'' as any NMS stock as defined in Rule 600(b)(47) of Regulation NMS, 17 CFR 242.600(b)(47).

[8] *See* FINRA Rule 6140(h)(1)(A)–(B).

[9] *See* FINRA Rule 6140(h)(2).

[10] FINRA previously proposed to delete in its entirety Rule 6140(h). *See* Securities Exchange Act Release No. 63256 (November 5, 2010), 75 FR 69503 (November 12, 2010) (SR–FINRA–2010–055). The Commission disapproved that proposed rule change. *See* Securities Exchange Act Release No. 63885 (February 10, 2011), 76 FR 9062 (February 16, 2011) (Order Disapproving SR–FINRA–2010–055).

[11] *See* Notice, *supra* note 3, at 33537.

[12] *See id.*

[13] *See id.*

if quotations trigger stop orders and stop limit orders.[14] For example, some members are concerned that using quotations as a trigger could result in an execution at a price that the stock had never traded at on that day.[15]

FINRA proposes permitting a member to accept an order type that activates as a market or limit order using an event other than a transaction at the stop price as the trigger, such as a quotation.[16] The member may not label the order type a ''stop order'' or a ''stop limit order,'' and must clearly distinguish it from a ''stop order'' and a ''stop limit order.'' [17] For example, an order type that triggers using a quotation at the stop price may be labeled a ''stop quotation order.'' [18] FINRA believes that requiring members to distinguish orders triggered by an event other than a transaction from stop orders or stop limit orders will allow members and customers to share a uniform understanding that transactions serve as the triggering event for stop orders and stop limit orders.[19] In addition, FINRA proposes that the member offering such an order type must disclose to the customer, in paper or electronic form, prior to the time the customer places the order, a description of the order type including the triggering event.[20] A member that permits customers to engage in securities transactions online must also post the required disclosures on the member's Web site in a clear and conspicuous manner.[21]

FINRA further proposes that a member that routes a customer stop order or stop limit order to another broker-dealer or exchange for handling or execution must take reasonable steps to ensure that the order is handled or executed by the other broker-dealer or exchange in accordance with proposed Rule 5350(a).[22] Similarly, under the proposal, a member that routes an order type using an alternative trigger (*i.e.,* a trigger other than a transaction) to another broker-dealer or exchange must take reasonable steps to ensure that the order is handled or executed by the other broker-dealer or exchange in accordance with the terms of the order as communicated to the customer placing the order.[23]

FINRA believes that, given the various risks and benefits of each triggering event, members and their customers should determine the appropriate triggering event for stop orders and stop limit orders.[24] In addition, FINRA believes that providing customers and members with the flexibility to select and offer other triggering events for alternative order types in accordance with their investment objectives and business models, while requiring members to disclose a description of the order type, including the triggering event, prior to the time the customer places the order, will promote just and equitable principles of trade.[25]

III. Summary of Comments Received and FINRA's Response

The Commission received four comment letters on the proposed rule change.[26] KOR Trading LLC (''KOR''), the Securities Industry and Financial Markets Association (''SIFMA''), and TD Ameritrade, Inc. (''TD Ameritrade'') generally supported FINRA's objective to provide members with flexibility regarding the triggers for stop orders, but preferred a disclosure-based approach over creation of a new order type.[27] An individual commenter believes that FINRA should retain and enforce Rule 6140(h) as written rather than amend it to accommodate members that were offering stop orders and stop limit orders triggered by events other than a transaction and disclosing the triggering event in brokerage agreements.[28]

KOR stated that the use of disclosures, especially those requiring affirmative consent, would allow investors flexibility to choose the trigger for stop orders and stop limit orders, and would reduce the burden on the industry to create new order types.[29] KOR also stated that brokers should increase efforts to educate their customers about stop orders and stop limit orders.[30]

SIFMA stated that, although some of its members would like flexibility in choosing the applicable trigger for stop orders and stop limit orders and others would prefer to have one established trigger point, SIFMA members agree that FINRA should not introduce a new order type to provide for the desired flexibility.[31] Instead, SIFMA advocates a disclosure and negative consent approach in which a firm would be required to disclose what would trigger a stop order or stop limit order and, if the customer does not object to the disclosed trigger, the firm may conclude the customer consents to the use of that trigger.[32] SIFMA believes this approach would avoid the costs and burdens of creating a new order type, including the cost of educating investors about the new order type.[33]

TD Ameritrade raised concerns that FINRA's proposal would create an undue burden on the industry by requiring it to incorporate a new order type without clearly defined benefits, and may create unnecessary investor confusion.[34] In addition, TD Ameritrade believes creating a new order type identifying stop orders and stop limit orders triggered by a quotation is unnecessary as there is no evidence investors misunderstand or are harmed by such orders.[35]

FINRA responds that the proposed rule change addresses concerns related to the potential for investor confusion with respect to the operation of stop orders and stop limit orders, while providing members the flexibility to offer orders types based on other triggers.[36] FINRA notes that it has engaged in extensive discussions with its member firms about the proposed rule change and has taken into account the input provided by members in formulating the proposed rule change.[37] For example, FINRA had considered removing the current definition of ''stop order'' and substituting a disclosure provision that would require members to disclose to customers how stop orders would be triggered.[38] FINRA states that its members expressed a number of concerns about this approach, including that it could lead to investor confusion regarding the handling of stop orders, errors when routing stop orders for

[14] *See id.*

[15] *See id.* FINRA states that some members expressed concern that quotations may be more vulnerable to abuse because they can be manipulated to trigger stops and then withdrawn or changed, while other members noted that using transactions also could result in the improper triggering of a customer's stop order due to trades at prices outside of the current market. *See id.* at 33537 n.6.

[16] FINRA proposes to move the stop order definition from FINRA Rule 6140(h) to proposed FINRA Rule 5350. FINRA states that this will ensure that the existing and proposed stop order provisions apply uniformly to both OTC Equity Securities and NMS stocks. *See id.* at 33538.

[17] *See* Proposed FINRA Rule 5350, Supplementary Material .01.

[18] *See* Notice, *supra* note 3, at 33538.

[19] *See id.*

[20] *See* Proposed FINRA Rule 5350, Supplementary Material .01. For example, the disclosure can be made at account opening. *See* Notice, *supra* note 3, at 33538.

[21] *See* Proposed FINRA Rule 5350, Supplementary Material .01.

[22] *See* Proposed FINRA Rule 5350, Supplementary Material .02.

[23] *See id.*

[24] *See* Notice, *supra* note 3, at 33538.

[25] *See id.*

[26] *See supra* note 4.

[27] *See* KOR Letter; TD Ameritrade Letter; SIFMA Letter.

[28] *See* Liptak Letter.

[29] *See* KOR Letter.

[30] *See id.*

[31] *See* SIFMA Letter.

[32] *See id.*

[33] *See id.*

[34] *See* TD Ameritrade Letter.

[35] *See id.*

[36] *See* FINRA Response at 4.

[37] *See id.* at 3.

[38] *See id.*

execution to another broker that uses a different trigger for stop orders, and executions of quotation-triggered stop orders at prices at which the stock had not traded that day.[39] FINRA also had considered retaining the existing rule to require that only transactions trigger stop orders and stop limit orders.[40] However, certain FINRA members were concerned that trades outside the current market, whether permissible transactions or clearly erroneous trades, could improperly trigger transaction-based stop orders and stop limit orders, and believed that quotations may serve as a better indicator of current market price for thinly traded securities.[41]

FINRA believes the proposed approach—to retain the default trigger while permitting the use of other triggers and requiring disclosure of those triggers—strikes the appropriate balance in addressing the views expressed by FINRA members.[42] In particular, FINRA believes that the proposal would provide members with flexibility in offering various order types, while also addressing concerns regarding the potential for investor confusion with respect to the operation of stop orders.[43]

FINRA states that the purpose of the proposed rule change is to make explicit in FINRA rules that firms are permitted to offer stop orders and stop limit orders that are triggered by an event other than a transaction, such as a quotation, as long as that order type is clearly differentiated from stop orders and stop limit orders triggered by a transaction.[44] Contrary to views expressed by commenters, FINRA does not believe the proposed rule change would impose additional costs on members that offer stop orders and stop limit orders given the current requirement to use a transaction-based trigger for orders labeled as ''stop'' or ''stop limit,'' thus requiring order types that use an alternative trigger to be labeled differently.[45] In addition, FINRA is concerned that allowing the trigger for stop orders and stop limit orders to vary solely based on customer consent may diminish the level of certainty for customers as to how stop orders would be treated and would result in less uniformity in the handling of stop orders and stop limit orders.[46]

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, the comment letters received, and FINRA's response, the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b) of the Act[47] and the rules and regulations thereunder applicable to a national securities association.[48] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[49] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA's proposal would allow the use of transaction-based stop orders and stop limit orders by providing a uniform definition of ''stop order'' and ''stop limit order'' while also allowing member firms to offer order types that are triggered by an event other than a transaction (*e.g.,* a quotation).[50] The Commission notes that a member that provides an order type that is triggered by an event other than a transaction at the stop price cannot label the order type a ''stop order'' or a ''stop limit order,'' and must clearly distinguish the order type from a ''stop order'' and a ''stop limit order.''[51] In addition, the member must disclose to the customer, in paper or electronic form, prior to the time the customer places the order, a description of the order type including the triggering event.[52]

While several commenters advocated for an alternative approach and raised concerns regarding a potential burden as a result of the proposal, the Commission believes that FINRA's proposal would allow members flexibility in the types of orders they offer and provide for disclosure to customers regarding the operation of such orders. In this regard, the Commission notes that FINRA weighed various alternatives and took into account extensive input from its members in formulating the proposal.[53] In addition, the Commission notes FINRA's belief that the proposal should not impose additional costs on firms that continue existing practices consistent with FINRA rules.[54] Further, the Commission notes FINRA's concern that permitting stop order triggers to vary solely based on customer consent, as suggested by commenters, could undermine the ability of customers to understand how their stop orders would be handled.[55]

The Commission believes that FINRA's proposal sufficiently addresses issues regarding FINRA's previous proposed rule change, which would have deleted in its entirety the provisions of FINRA Rule 6140 relating to the handling of stop orders by member firms.[56] The Commission believes that FINRA's proposal should enhance the ability of investors to understand the key attributes of order types offered by their brokers so that they can make informed choices as to whether to use a particular type of order.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[57] that the proposed rule change (SR–FINRA–2012–026) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22142 Filed 9–7–12; 8:45 am]

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[39] *See id.*

[40] *See id.* at 4.

[41] *See id.* at 3.

[42] *See id.* at 4.

[43] *See id.*

[44] *See id.* at 2.

[45] *See id.* at 4.

[46] *See id.* Finally, FINRA notes that it will provide an implementation period of no less than 90 days following Commission approval of the proposed rule change to provide members that determine to offer stop orders and stop limit orders with alternative triggers with time to make necessary technology changes. *See id.*

[47] 15 U.S.C. 78o–3(b).

[48] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78o–3(b)(6).

[50] *See* Proposed FINRA Rule 5350.

[51] *See* Proposed FINRA Rule 5350, Supplementary Material .01.

[52] *See id.*

[53] *See* Notice, *supra* note 3, at 33537; and FINRA Response at 2.

[54] *See* FINRA Response at 4.

[55] *See id.*

[56] *See* Securities Exchange Act Release No. 63885 (February 10, 2011), 76 FR 9062 (February 16, 2011) (Order Disapproving SR–FINRA–2010–055).

[57] 15 U.S.C. 78s(b)(2).

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67774; File No. SR–FINRA–2012–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Existing NASD IM–2110–3 as New FINRA Rule 5270 (Front Running of Block Transactions) With Changes in the Consolidated FINRA Rulebook

September 4, 2012.

I. Introduction

On May 17, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/

k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt existing NASD Interpretive Material (''IM'') 2110–3 (Front Running Policy) as proposed FINRA Rule 5270 to amend the existing Front Running Policy in several ways to broaden its scope and provide further clarity into activities that FINRA believes are inconsistent with just and equitable principles of trade. The proposed rule change was published for comment in the **Federal Register** on June 6, 2012.[3] The Commission received two comment letters on the proposed rule change,[4] and a response to comments from FINRA.[5] On August 30, 2012, FINRA submitted Amendment No. 1 to the proposal.[6] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

As part of the process of developing a consolidated rulebook,[7] FINRA proposed to adopt existing NASD IM–2110–3 (''Front Running Policy'') as proposed FINRA Rule 5270 with the changes described below.

A. Current Front Running Policy

The current Front Running Policy states that it shall be considered conduct inconsistent with just and equitable principles of trade for a member or a person associated with a member, for an account in which such member or person associated with a member has an interest or exercises investment discretion or for certain customer accounts, to buy or sell an option or security future when the member or person associated with a member has material, non-public market information concerning an imminent block transaction [8] in the underlying security or when the customer has been provided such material, non-public market information by the member of any person associated with a member.[9] Similarly, the same prohibition applies for a member or any person associated with a member with respect to an order to buy or sell an underlying security when such member or person associated with a member causing such order to be executed has material, non-public market information concerning an imminent block transaction in an option or a security future overlying that security, or when a customer has been provided such material, non-public market information by the member or any person associated with a member; prior to the time information concerning the block transaction has been made publicly available.[10]

The Front Running Policy also prohibits providing material, non-public market information concerning an imminent block transaction to customers who then trade on the basis of the information. The Front Running Policy is limited to transactions in equity securities and options that are required to be reported on a last sale reporting system and to any transaction involving a security future, regardless of whether the transaction is reported. The prohibitions apply until the information concerning the block transaction has been made publicly available.[11]

Finally, the Front Running Policy includes exceptions for ''transactions executed by member participants in automatic execution systems in those instances where participants must accept automatic executions'' as well as situations where a member receives a customer's block order relating to both an option or security future and the underlying security and the member, in furtherance of facilitating the customer's block order, positions the other side of one or both components of the order. In the latter case, a member is still prohibited from covering any resulting proprietary position by entering an offsetting order until information concerning the block transaction has been made publicly available.

B. Proposed Changes to Front Running Policy

1. Expansion of the Front Running Policy

FINRA proposes to expand the Front Running Policy to apply to all securities and other financial instruments and contracts (in addition to the existing options and security futures) that overlay the security that is the subject of an imminent block transaction and that have a value that is materially related to, or otherwise acts as a substitute for, the underlying security. Specifically, FINRA proposes to expand the Front Running Policy to cover trading in an option, derivative, security-based swap, or other financial instrument overlying a security that is the subject of an imminent block transaction if the value of the underlying security is materially related to, or otherwise acts as a substitute for, such security, as well as any contract that is the functional economic equivalent of a position in such security (''related financial instrument'').[12]

The proposal would also expand the Front Running Policy when the imminent block transaction involves a related financial instrument, and prevent trading in the underlying security. The proposed rule change also would extend the Front Running Policy to include explicitly trading in the same security or related financial instrument that is the subject of an imminent block transaction.[13]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67079 (May 30, 2012), 77 FR 33522 (''Notice'').

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Ryan K. Bakhtiari, President, Public Investors Arbitration Bar Association (''PIABA''), dated June 26, 2012 (''PIABA Letter''); and Sean Davy, Managing Director, Corporate Credit Markets Division, Securities Industry and Financial Markets Association (''SIFMA''), dated July 9, 2012 (''SIFMA Letter'').

[5] *See* Letter from Brant K. Brown, Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated August 29, 2012 (''FINRA Response'').

[6] In that amendment, FINRA clarified that the proposed rule would not apply to orders or transactions involving government securities. FINRA noted, however, that actions for similar front-running conduct occurring in the exempted securities markets, including the government securities market, continue to be covered by FINRA Rule 2010. In the amendment, FINRA also clarified that the 10,000 share language in proposed Supplementary Material .03 refers to equity securities. Because this amendment is technical in nature, it is not subject to notice and comment.

[7] The FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. *See* FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

[8] NASD IM–2110–3 states that ''[a] transaction involving 10,000 shares or more of an underlying security, or options or security futures covering such number of shares is generally deemed to be a block transaction, although a transaction of less than 10,000 shares could be considered a block transaction in appropriate cases.''

[9] *See* NASD IM–2110–3(a).

[10] *See* NASD IM–2110–3(b).

[11] *See* NASD IM–2110–3 (''when [the information] has been disseminated via the tape or high speed communications line of one of those systems, a similar system of a national securities exchange under Section 6 of the Act, an alternative trading system under Regulation ATS, or by a third-party news wire service'').

[12] FINRA notes that the proposed rule is not intended to provide an exhaustive list of prohibited trading activity. *See* Notice, *supra* note 3.

[13] The trading restrictions imposed by the current Front Running Policy apply until information about the imminent customer block transaction ''has been made publicly available,'' which the rule defines as having been disseminated to the public in trade reporting data. The proposed rule change generally retains this standard for determining when information has become publicly available.

2. Amended Exceptions to the Front Running Policy

The proposed rule change would replace several existing provisions in the Front Running Policy with proposed Supplementary Material to FINRA Rule 5270. FINRA proposes to replace the existing exceptions in the Front Running Policy for certain transactions in automatic execution systems and for positioning the other side of certain orders when a member receives a customer's block order relating to both an option and the underlying security or both a security future and the underlying security. The new Supplementary Material identifies types of transactions that are permitted. Specifically, under the proposed Supplementary Material, there would be three broad categories of permitted transactions: (1) Transactions that the member can demonstrate are unrelated to the customer block order; (2) transactions that are undertaken to fulfill or facilitate the execution of the customer block order; or (3) transactions that are executed, in whole or in part, on a national securities exchange and comply with the marketplace rules of that exchange. These three categories of permitted transactions are discussed below.

First, with respect to transactions that are unrelated to the customer block order, Supplementary Material .04(a) would allow members to engage in such transactions provided that the member can demonstrate that the transactions are unrelated to the material, non-public market information received in connection with the customer order. The Supplementary Material would include a list of potentially permitted transactions as examples of transactions that, depending upon the circumstances, may be unrelated to the customer block order. These types of transactions could include transactions where the member has effective information barriers established to prevent internal disclosure of customer order information,[14] transactions in the security that is the subject of the customer block order that are related to a prior customer order in that security, transactions to correct bona fide errors, and transactions to offset odd-lot orders.

Second, with respect to transactions undertaken to fulfill or facilitate the execution of the customer block order, proposed Supplementary Material .04(b) would specify that Front Running Policy does not preclude transactions undertaken for the purpose of fulfilling, or facilitating the execution of, a customer's block order.[15] According to FINRA, firms are permitted to trade ahead of a customer's block order when the purpose of such trading is to fulfill the customer order and when the customer has authorized such trading, including that the firm has disclosed to the customer that it may trade ahead of, or alongside of, the customer's order. FINRA proposes, however, that when engaging in trading activity that could affect the market for the security that is the subject of the customer block order, the member must minimize any potential disadvantage or harm in the execution of the customer's order, must not place the member's financial interests ahead of those of its customer, and must obtain the customer's consent to such trading activity. The Supplementary Material would provide that a member may obtain consent through affirmative written consent or through means of a negative consent letter.[16] In addition, a member may provide clear and comprehensive oral disclosure to, and obtain consent from, the customer on an order-by-order basis, provided the member documents who provided the consent and such consent evidences the customer's understanding of the terms and conditions for handling the customer's order.

Finally, proposed Supplementary Material .04(c) would state that the prohibitions in the Front Running Policy shall not apply if the member's trading activity is undertaken in compliance with the marketplace rules of a national securities exchange and at least one leg of the trading activity is executed on that exchange.

3. Other Proposed Changes

FINRA proposes to adopt proposed Supplementary Material .05 to state that the front running of any customer order, not just imminent block transactions, that places the financial interests of the member ahead of those of its customer or the misuse of knowledge of an imminent customer order may violate other FINRA rules, including FINRA Rules 2010 and 5320, or the federal securities laws.[17]

As initially proposed, FINRA would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval, with the implementation date occurring no later than 90 days following publication of that *Regulatory Notice.*[18]

III. Discussion of Comment Letters and FINRA Response

The Commission received one comment letter in support of the proposed rule change,[19] and one comment letter requesting revisions and clarifications to the proposed rule change.[20] As noted above, FINRA responded to the comments in its response dated August 29, 2012.

One commenter stated its belief that the extension of the Front Running Policy to cover any securities and financial instruments (not just option contracts and futures) was a logical approach and would better protect investors.[21] The commenter expressed concern with the exceptions provided in the Supplementary Material, and stated that FINRA should closely monitor the

However, FINRA proposes to expand the rule to include related financial instruments that may not result in publicly available trading information being made available. Accordingly, FINRA also proposes that the prohibitions in the rule be in place until the material, non-public market information is either publicly available or ''has otherwise become stale or obsolete.'' Whether information has become stale or obsolete will depend upon the particular facts and circumstances involved, including specific information the member has regarding the transaction, but could include factors such as the amount of time that has passed since the member learned of the block transaction, subsequent trading activity in the security, or a significant change in market conditions.

[14] According to FINRA, in addition to more traditional information barriers, such as those in place to prevent communication between trading units, this provision could also include the use of automated systems (*e.g.,* trades through a ''black box'') where the orders placed into the automated system are handled without the knowledge of a person associated with the member who may be trading in the same security. However, a person associated with a member who places an order into a ''black box'' or other automated system, or otherwise has knowledge of the order or the ability to access information in the system, may not then trade in the same security or a related financial instrument solely because the order ultimately was being handled by the automated system rather than by the person. Traders who have no knowledge of the order, due to the presence of an information barrier or otherwise, could continue to trade in the security or a related financial instrument. *See* Notice, *supra* note 3.

[15] According to FINRA, these transactions may include, for example, hedging or other positioning activity undertaken in connection with the handling of the customer order. *See* Notice, *supra* note 3.

[16] The negative consent letter must clearly disclose to the customer the terms and conditions for handling the customer's orders, and if the customer does not object, then the member may reasonably conclude that the customer has consented and may rely on the letter.

[17] Although ''not held'' orders are not subject to the restrictions in FINRA Rule 5320, front running a ''not held'' order that is not of block size may nonetheless violate FINRA Rule 2010. *See* Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011). If the ''not held'' order is of block size, the proposed rule change would apply to trading activity ahead of the order.

[18] *See* FINRA Response, *supra* note 5.

[19] *See* PIABA Letter, *supra* note 4.

[20] *See* SIFMA Letter, *supra* note 4.

[21] *See* PIABA Letter.

exceptions to ensure member firms are not using them as loopholes to engage in prohibited activities. In its response, FINRA stated that it intends to examine firms for compliance with, and fully enforce, the proposed rule.[22]

The other commenter raised three substantive issues with the proposal.[23] First, the commenter stated that the proposed rule change contained a flaw in that the barriers to the resumption of trading in the applicable security or related financial instrument—that the information concerning the block transaction has been made publicly available or has otherwise become stale or obsolete—could interfere with a broker-dealers' risk management activity, which could create problems in providing liquidity to the market.[24] The commenter requested clarity on what serves as the trigger for lifting trading restrictions and stated that trading restrictions should be lifted once the risk of a transaction has been transferred from the customer through the execution of the order.[25] According to the commenter, in the context of a block transaction where a member executes as a principal, the member provides liquidity to the market and is assuming the risks of the transaction. While executing a block transaction in an agency capacity, a member cannot trade ahead of its customer because the execution of the transaction eliminates the opportunity to do so. In certain situations where a type of security is not subject to prompt last sale reporting requirements, the commenter stated that the ''stale or obsolete'' threshold proposed by FINRA could prevent a dealer from performing necessary risk management activities while providing no additional benefit to the customer. Accordingly, the commenter requested confirmation that the execution of a block transaction by the member as principal or agent will be deemed to render the non-public information stale and obsolete for the purposes of front-running the customer, and permit the broker-dealer to transact in the security or related financial instrument, even if the applicable customer-related transaction has not become public.

FINRA responded that the ''stale or obsolete'' standard was intended to supplement, not replace, the existing dissemination standard.[26] FINRA noted that the trading restrictions in proposed FINRA Rule 5270 are linked to actual reporting and dissemination rather than by invoking the ''stale or obsolete'' standard when transactions are subject to prompt reporting requirements and the transaction reports are disseminated. Where there is no reporting and dissemination regime in place for the security or financial instrument, FINRA agreed with the commenter that, once the customer's order is executed and the risk of the transaction has transferred from the customer to the firm, there would be no trading restrictions imposed by proposed FINRA Rule 5270.[27]

Second, the commenter requested additional clarification on whether the negative consent letter described in proposed Supplementary Material .04 would satisfy and be consistent with the ''duty to refrain and disclose'' described in NASD Notice to Members 05–51 (''NTM 05–51'') and FINRA Rule 5320.[28] Additionally, the commenter requested clarity on whether the duty to refrain and disclose described in NTM 05–51 [29] arises on the basis of the same analysis as the obligations under proposed FINRA Rule 5270.

In its response, FINRA agreed that, to the extent possible, proposed Supplementary Material .04 should be read consistently with NTM 05–51 and the obligations set out in FINRA Rule 5320.[30] FINRA stated that the proposed Supplementary Material was intended to acknowledge FINRA's previous guidance and the disclosure and consent provision in proposed Supplementary Material .04 mirrors FINRA Rule 5320. Moreover, FINRA stated that the duties set out in NTM 05–51 arise from the same concerns that FINRA Rule 5270 is designed to address. FINRA affirmed that proposal encapsulates the obligations established in NTM 05–51 with the difference noted by SIFMA: the disclosure obligation in proposed Supplementary Material .04 can be in the form of negative consent or, provided certain criteria are met, oral consent, which is not permitted by the duty to refrain and disclose as set out in NTM 05–51. FINRA further noted that, in addition to complying with the disclosure obligation in proposed Supplementary Material .04, the member must minimize any potential disadvantage to the customer or harm in the execution of the customer's order, and the member must not place its financial interests ahead of those of its customer. FINRA stated that, provided a member meets all of the criteria in proposed Supplementary Material .04, that member would have fulfilled its duty to refrain and disclose as set out in the Notice to Members.

Finally, the commenter requested a 180-day implementation period following publication of the applicable *Regulatory Notice* announcing the Commission's approval of the proposal, rather than a 90-day implementation period, because members will need to make additional technology and system modifications to comply with the rule.[31] FINRA responded that it would extend the implementation date to within 180 days following publication of the *Regulatory Notice* announcing the Commission's approval of the rule.[32]

IV. Discussion and Commission Findings

After careful review of the proposal, the comment letters, and the FINRA Response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [33] and, in particular, the requirements 15A(b)(6) of the Act.[34] Specifically, the Commission finds that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, 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

[22] *See* FINRA Response.

[23] *See* SIFMA Letter.

[24] *See* SIFMA Letter.

[25] *Id.*

[26] Under NASD IM–2110–3, information regarding a block transaction is considered publicly available ''when it has been disseminated via the tape or high speed communications line of one of those systems, a similar system of a national securities exchange under Section 6 of the Act, an alternative trading system under Regulation ATS, or by a third-party news wire service.''

[27] *See* FINRA Response at 3.

[28] FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) generally prohibits a member that accepts and holds a customer order in an equity security without immediately executing the order from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

[29] NTM 05–51 addresses members' obligations involving large, potentially market-moving orders received from a customer, such as VWAPs, institutional orders, and basket transactions. It states that, when a member receives such an order, it must ''(1) refrain from any conduct that could disadvantage or harm the execution of the customer's order or place the member's financial interests ahead of those of its customer's and (2) if applicable, disclose in writing to the customer that the member intends to engage in hedging and other positioning activity that could affect the market for the security that is the subject of the transaction.'' It further states that the disclosure must be in the form of an affirmative consent letter, but the disclosure need not be on a transaction-by-transaction basis.

[30] *See* FINRA Response at 4.

[31] *See* SIFMA Letter at 4.

[32] *See* FINRA Response at 5.

[33] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78*o*–3(b)(6).

general, to protect investors and the public interest.

The proposed rule change is intended to clarify the types of front running trading activity that FINRA believes are inconsistent with just and equitable principles of trade while also ensuring that members may continue to engage in transactions that do not present the risk of abusive trading practices that the rule is intended to prevent. The Commission finds that expanding the rule beyond options and security futures could enhance the protection of investors by further prohibiting the potential misuse of information from customer orders. Expanding the front running prohibition is reasonably designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and better protect investors and the public interest, while protecting imminent block transactions.

Moreover, the proposed rule change also would include three exceptions to the Front Running Policy: (1) Transactions that the member can demonstrate are unrelated to the customer block order; (2) transactions that are undertaken to fulfill or facilitate the execution of the customer block order; and (3) transactions that are executed, in whole or in part, on a national securities exchange and comply with the marketplace rules of that exchange. The Commission finds that these exceptions should not unnecessarily restrict legitimate trading activities of members and are consistent with just and equitable principles of trade and the protection of investors and the public interest, and should not result in fraudulent and manipulative acts and practices. Specifically, transactions that the member can demonstrate are unrelated to the customer block order do not present the potential for abusive trading practices that can disadvantage a customer's order in violation of the rule, since such transactions would not be using the information from the customer's order. Moreover, transactions that are undertaken to fulfill or facilitate the execution of the customer block order similarly do not present the potential for abuse, as such transactions would be seeking to ensure the execution of a customer block order. Finally, permitting transactions that are executed, in whole or in part, on a national securities exchange and comply with the marketplace rules of that exchange would remove impediments to and perfect the mechanism of a free and open market and a national market system,[35] as it would help ensure that members would not unknowingly violate FINRA rules when such members rely on the rules of a particular national securities exchange.

For the foregoing reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–FINRA–2012–025), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–22139 Filed 9–7–12; 8:45 am]

BILLING CODE 8011–01–P

[35] 15 U.S.C. 78*o*–3(b)(6).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13252 and #13253]

New Mexico Disaster #NM–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA–4079–DR), dated 08/24/2012.

Incident: Flooding.

Incident Period: 06/22/2012 through 07/12/2012.

Effective Date: 08/24/2012.

Physical Loan Application Deadline Date: 10/23/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 05/24/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/24/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lincoln, Sandoval, and the Santa Clara Pueblo.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 132526 and for economic injury is 132536.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–22199 Filed 9–7–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8017]

60-Day Notice of Proposed Information Collection: Application for Employment as a Locally Employed Staff or Family Member

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 9, 2012.

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public

Notice 8017'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.

• *Email: ColeCM@state.gov.*

• *Mail:* U.S. Department of State—SA–44, HR/OE, Suite 368, Attention: Caroline Cole, 301 4th Street SW., Washington, DC 20547.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Caroline Cole, Bureau of Human Resources, Office of Overseas Employment, U.S. Department of State, Washington, DC 20547, who may be reached on 202–203–7390 or at *ColeCM@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Application for Employment as a Locally Employed Staff or Family Member.

• *OMB Control Number:* 1405–0189.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Human Resources, Office of Overseas Employment (HR/OE).

• *Form Number:* DS–0174.

• *Respondents:* Candidates seeking employment at U.S. Missions abroad, including family members of Foreign Service, Civil Service, and uniformed service members officially assigned to the Mission and under Chief of Mission authority.

• *Estimated Number of Respondents:* 40,000.

• *Estimated Number of Responses:* 40,000.

• *Average Time per Response:* 1 hour.

• *Total Estimated Burden Time:* 40,000 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The DS–0174, Application for Employment as a Locally Employed Staff or Family Member, is needed to meet information collection requirements for recruitments conducted at approximately 170 U.S. embassies and consulates throughout the world. Current employment application forms do not meet the unique requirements of Mission recruitment (e.g., language skills and hiring preferences) under the FS Act of 1980 and 22 U.S.C. 2669(c). The DS–0174 is needed to improve data gathering and to clarify interpretation of candidate responses.

Methodology

Candidates for employment use the DS–0174 to apply for Mission-advertised positions throughout the world. Mission recruitments generate approximately 40,000 applications per year. Data that HR and hiring officials extract from the DS–0174 determines eligibility for employment, qualifications for the position, and selections according to Federal policies.

Dated: August 31, 2012.

William E. Schaal, Jr.,

Director, HR/EX, Department of State.

[FR Doc. 2012–22203 Filed 9–7–12; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 5, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 10, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–NEW.

Type of Review: New collection.

Title: Capital Magnet Fund Reporting.

Abstract: The purpose of the Capital Magnet Fund (CMF) program is to competitively award grants to certified Community Development Financial Institutions (CDFIs) and qualified nonprofit housing organizations to attract and leverage other finance resources towards the support of affordable housing and related community development projects. The CMF was authorized in July of 2008 under Section 1339 of the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), and $80 million was appropriated for this initiative under the Consolidated Appropriations Act of 2010 (Pub. L. 111–117). Twenty-three Awardees were competitively selected after a careful review of their program applications. These Awardees entered into Assistance Agreements with the CDFI Fund that set forth certain required terms and conditions of the award, including reporting and data collection requirements. The Assistance Agreement requires the collection of annual reports that are used to collect information for compliance monitoring and program evaluation purposes. This information is reviewed to ensure the Awardee's compliance with its performance goals and contractual obligations and the overall performance of the program.

Affected Public: Private Sector: Businesses or other for-profits; Not-for-profit institutions.

Estimated Total Burden Hours: 920.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–22170 Filed 9–7–12; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be held Tuesday, October 9, 2012, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS Issues.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22130 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 17, 2012.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be held Wednesday, October 17, 2012, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22169 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 9, 2012.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be held Tuesday, October 9, 2012, at 2:00 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22166 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 2, 2012.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be held Tuesday, October 2, 2012, at 9:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notifications of intent to participate must be made with Ms. Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write

TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22165 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 2, 2012.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be held Tuesday, October 2, 2012, at 11 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22163 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 24, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, October 24, 2012, 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS topics.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22161 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 4, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be held Thursday, October 4, 2012 at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22160 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 10, 2012.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, October 10, 2012, at 2

p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22131 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 16, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be held Tuesday, October 16, 2012, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 4, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–22132 Filed 9–7–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 175 September 10, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removal of the Gray Wolf in Wyoming From the Federal List of Endangered and Threatened Wildlife and Removal of the Wyoming Wolf Population's Status as an Experimental Population; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0039; FXES11130900000C6–123–FF09E30000]

RIN 1018–AX94

Endangered and Threatened Wildlife and Plants; Removal of the Gray Wolf in Wyoming From the Federal List of Endangered and Threatened Wildlife and Removal of the Wyoming Wolf Population's Status as an Experimental Population

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The best scientific and commercial data available indicate that gray wolves (*Canis lupus*) in Wyoming are recovered and are no longer in need of protection as part of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Therefore, we, the U.S. Fish and Wildlife Service (Service), remove the gray wolf in Wyoming from the Federal List of Endangered and Threatened Wildlife. Wyoming's gray wolf population is stable, threats are sufficiently minimized, and a post-delisting monitoring and management framework has been developed. Therefore, this final rule returns management for this species to the appropriate State, Tribal, or Federal agencies; management in National Parks and National Wildlife Refuges will continue to be guided by existing authorizing and management legislation and regulations. Finally, this action makes obsolete and removes the Yellowstone Experimental Population Area established in 1994 to facilitate reintroductions.

DATES: This rule becomes effective on September 30, 2012.

ADDRESSES: This final rule, comments received, and additional supporting information are available on the Internet at *http://www.regulations.gov,* Docket No. FWS–R6–ES–2011–0039. Additional background information is also available online at *http://www.fws.gov/mountain-prairie/species/mammals/wolf/.* Comments and materials we received, as well as supporting documentation we used in preparing this rule are available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Mountain-Prairie Region Office, Ecological Services Division, 134 Union Blvd., Lakewood, CO 80228; telephone 303–236–7400. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Mountain-Prairie Region Office, Ecological Services Division; telephone 303–236–7400. Direct all questions or requests for additional information to: GRAY WOLF QUESTIONS, U.S. Fish and Wildlife Service, Mountain-Prairie Region Office, Ecological Services Division, 134 Union Blvd., Lakewood, CO 80228. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Table of Contents

Executive Summary
Background
—Delisting Wolves in Wyoming
—Previous Federal Actions
—Reengaging Wyoming and Changes to Its Wolf Management Plan
—Species Description and Basic Biology
—Recovery Planning and Implementation
○ Recovery Planning and the Development of Recovery Criteria
○ Monitoring and Managing Recovery
○ Recovery by State
○ Recovery by Recovery Area
○ Genetic Exchange Relative to our Recovery Criteria
○ Conclusion on Progress Towards our Recovery Goals
Summary of Comments and Recommendations
—Technical and Editorial Comments
—The Delisting Process and Compliance with Applicable Laws, Regulations, and Policy
—Northern Rocky Mountain (NRM) Gray Wolf Recovery Goals
—The Geographic Scope of Recovery and the Impact of This Decision on Range
—General Comments on Whether To Delist
—Human-Caused Mortality
—Gene Flow and Genetic Diversity
—Adequacy of Regulatory Mechanisms
—Public Attitudes Toward Wolves
—Other Potential Threat Factors
—Cumulative Impacts of Threats
—Post-Delisting Monitoring
—Positives and Negatives of Wolf Restoration
—Native American Tribal Considerations
Summary of Factors Affecting the Species
—Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.
○ Suitable Habitat
○ Unoccupied Suitable Habitat
○ Currently Occupied Habitat
○ Potential Threats Affecting Habitat or Range
—Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.
○ Commercial or Recreational Uses
○ Overutilization for Scientific or Educational Purposes
—Factor C. Disease or Predation.
○ Disease
○ Natural Predation
○ Human-caused Mortality
—Factor D. The Inadequacy of Existing Regulatory Mechanisms.
○ National Park Service
○ National Wildlife Refuges
○ Tribal Lands
○ Forest Service
○ State Regulatory Mechanisms
○ Environmental Protection Agency
—Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.
○ Public Attitudes Toward the Gray Wolf
○ Genetic Considerations
○ Poison
○ Climate Change
○ Catastrophic Events
○ Impacts to Wolf Pack Social Structure as a Result of Human-caused Mortality
Conclusion (Including Cumulative Impacts)
Significant Portion of the Range Analysis
Post-Delisting Monitoring
Effects of the Rule
Required Determinations
—Paperwork Reduction Act
—National Environmental Policy Act
—Executive Order 13211
—Government-to-Government Relationship With Tribes
References Cited
Authority
List of Subjects in 50 CFR Part 17
Regulation Promulgation

Executive Summary

(1) Purpose of the Regulatory Action

This rulemaking is necessary to remove gray wolves (*Canis lupus*) in Wyoming from the Federal List of Endangered and Threatened Wildlife. Delisting is appropriate because gray wolves in Wyoming are recovered and are no longer in need of protection as part of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Wyoming's gray wolf population is stable, threats are sufficiently minimized, and a post-delisting monitoring and management framework has been developed. This action also makes obsolete and removes the Yellowstone Experimental Population Area established in 1994 to facilitate reintroductions.

(2) Major Provision of the Regulatory Action

This action is authorized by the Act. We are amending § 17.11(h), subchapter B of chapter I, title 50 of the Code of Federal Regulations by removing the entry for ''Wolf, gray [Northern Rocky Mountain DPS]'' under MAMMALS in the List of Endangered and Threatened Wildlife. We are also amending § 17.84, subchapter B of chapter I, title 50 of the Code of Federal Regulations by removing and reserving both paragraphs

pertaining to experimental populations of ''Gray wolf (*Canis lupus*)'': (i) and (n). In short, this action removes the gray wolf in Wyoming from the Federal List of Endangered and Threatened Wildlife and makes obsolete and removes the Yellowstone Experimental Population Area established in 1994 to facilitate reintroductions.

(3) Costs and Benefits

We have not analyzed the costs or benefits of this rulemaking action because the Act precludes consideration of such impacts on listing and delisting determinations. Instead, listing and delisting decisions are based solely on the best scientific and commercial information available regarding the status of the subject species.

Background

Delisting Wolves in Wyoming

This rulemaking is separate and independent from, but additive to, the previous action delisting wolves in the Northern Rocky Mountain (NRM) Distinct Population Segment (DPS) (74 FR 15123, April 2, 2009; 76 FR 25590, May 5, 2011). We conclude that this approach is appropriate given the Congressional directive to reissue our 2009 delisting, which created a remnant piece of the NRM DPS. This approach is also consistent with our 2009 delisting determination, which stated that ''if Wyoming were to develop a Service-approved regulatory framework it would be delisted in a separate rule'' (74 FR 15123, April 2, 2009, p. 15155). This rule is separate from prior actions to remove the other portions of the NRM DPS from the List of Endangered and Threatened Wildlife. Outside Wyoming, this rule will not affect the status of the gray wolf in the portions of the NRM DPS under State laws or suspend any other legal protections provided by State law.

Previous Federal Actions

In 1967, we determined the eastern timber wolf (*C. l. lycaon*) in the Great Lakes region was threatened with extinction (32 FR 4001, March 11, 1967). In 1973, we added the NRM gray wolf (*C. l. irremotus*) to the U.S. List of Endangered Fish and Wildlife (38 FR 14678, June 4, 1973). Both of these listings were issued pursuant to the Endangered Species Conservation Act of 1969. In 1974, these subspecies were listed as endangered under the Act of 1973 (39 FR 1158, January 4, 1974). We listed a third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*) as endangered on April 28, 1976, (41 FR 17736) in Mexico and the United States Southwest. Later in 1976, we listed the Texas gray wolf subspecies (*C. l. monstrabilis*) as endangered in Texas and Mexico (41 FR 24062, June 14, 1976).

Due to questions about the validity of subspecies classification at the time and issues associated with the narrow geographic scope of each subspecies, we published a rule reclassifying the gray wolf as endangered at the species level (*C. lupus*) throughout the coterminous 48 States and Mexico (43 FR 9607, March 9, 1978). The exception was Minnesota, where the gray wolf was reclassified to threatened. This rule also provided assurance that this reclassification would not alter our intention to focus recovery on each population as separate entities. Accordingly, recovery plans were developed for: The Great Lakes in 1978 (revised in 1992) (Service 1978, entire; Service 1992, entire); the NRM region in 1980 (revised in 1987) (Service 1980, entire; Service 1987, entire); and the Southwest in 1982 (Service 1982, entire). A revision to the Southwest recovery plan is now under way.

In 1994, we established nonessential experimental gray wolf populations under section 10(j) of the Act (50 CFR 17.84(i)), in portions of Idaho, Montana, and all of Wyoming, including the Yellowstone Experimental Population Area (59 FR 60252, November 22, 1994) and the Central Idaho Experimental Population Area (59 FR 60266, November 22, 1994). These designations assisted us in initiating gray wolf reintroductions in central Idaho and in Yellowstone National Park (YNP). The Yellowstone Experimental Population Area included the entire State of Wyoming. In 2005 and 2008, we revised these regulations to provide increased management flexibility for this recovered wolf population in States and on Tribal lands with Service-approved post-delisting wolf management plans (70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)).

The NRM gray wolf population achieved its numerical and distributional recovery goals at the end of 2000 (Service *et al.* 2012, Table 4). The temporal portion of the recovery goal was achieved in 2002 when the numerical and distributional recovery goals were exceeded for the third successive year (Service *et al.* 2012, Table 4). In light of this success, we once reclassified and twice delisted all or part of this population (68 FR 15804, April 1, 2003; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009). These reclassification and delisting rules were overturned by U.S. District Courts (*Defenders of Wildlife, et al.* v. *Norton, et al.,* 354 F.Supp.2d 1156 (D. Or. 2005); *National Wildlife Federation, et al.* v. *Norton, et al.,* 386 F.Supp.2d 553 (D. Vt. 2005); *Defenders of Wildlife, et al.* v. *Hall, et al.,* 565 F.Supp.2d 1160 (D. Mont. 2008); *Defenders of Wildlife, et al.* v. *Salazar, et al.,* 729 F.Supp.2d 1207 (D. Mont. 2010). Each of these rulemakings and the subsequent litigation are discussed below.

In 2003, we reclassified the coterminous 48-State listing into three DPSs including a threatened Western DPS, a threatened Eastern DPS, and an endangered Southwestern DPS (68 FR 15804, April 1, 2003). The Western DPS, centered around the recovered NRM gray wolf population, included California, northern Colorado, Idaho, Montana, Oregon, northern Utah, Washington, and Wyoming. This rule also removed the protections of the Act for gray wolves in all or parts of 16 southern and eastern States where the species historically did not occur. Finally, this rule established a special 4(d) rule to respond to wolf-human conflicts in areas not covered by existing nonessential experimental population rules. In 2005, the U.S. District Courts in Oregon and Vermont concluded that the 2003 final rule was ''arbitrary and capricious'' and violated the Act (*Defenders of Wildlife, et al.* v. *Norton, et al.,* 354 F.Supp.2d 1156 (D. Or. 2005); *National Wildlife Federation, et al.* v. *Norton, et al.,* 386 F.Supp.2d 553 (D. Vt. 2005)). Both courts ruled the Service improperly downlisted entire DPSs based just on the viability of a core population. The courts' rulings invalidated the April 2003 changes to the gray wolf listing under the Act.

In 2003, we also published an advanced notice of proposed rulemaking announcing our intention to delist the Western DPS as the recovery goals had been satisfied (68 FR 15876, April 1, 2003). This notice explained that delisting would require consideration of threats, and that the adequacy of State wolf management plans to address threats in the absence of protections of the Act would be a major determinant in any future delisting evaluation.

In 2004, we determined that Montana's and Idaho's laws and wolf management plans were adequate to assure that their shares of the NRM wolf population would be maintained above recovery levels (Williams 2004a; Williams 2004b). However, we also found the 2003 Wyoming legislation and plan were not adequate to maintain Wyoming's share of a recovered NRM gray wolf population (Williams 2004c). Wyoming challenged this

determination, and the United States District Court in Wyoming dismissed the case (*State of Wyoming, et al.,* v. *United States Department of Interior, et al.,* 360 F.Supp.2d 1214, (D. Wyoming 2005)). Wyoming's subsequent appeal was unsuccessful (*State of Wyoming, et al.* v. *United States Department of Interior, et al.,* 442 F.Supp.3d 1262 (10th Cir. 2006)). This challenge was resolved on procedural grounds because Wyoming failed to identify a final agency action necessary for judicial review. In 2005, Wyoming petitioned us to revise the listing status for the gray wolf by recognizing a NRM DPS and to remove it from the Federal List of Endangered and Threatened Species (Freudenthal 2005, entire). In 2006, we announced a 12-month finding that Wyoming's petition (delisting wolves in all of Montana, Idaho, and Wyoming) was not warranted because the 2003 Wyoming State laws and its 2003 wolf management plan did not provide adequate regulatory mechanisms to maintain Wyoming's share of a recovered NRM wolf population (71 FR 43410, August 1, 2006). Wyoming challenged this finding in Wyoming Federal District Court. This challenge was rendered moot by Wyoming's revisions to its laws and management plan in 2007, which allowed delisting to move forward. On February 27, 2008, a Wyoming Federal District Court issued an order dismissing the case (*State of Wyoming, et al.,* v. *United States Department of Interior, et al.,* U.S. District Court Case No. 2:06–CV–00245).

In 2008, we issued a final rule recognizing the NRM DPS and removing it from the List of Endangered and Threatened Wildlife (73 FR 10514, February 27, 2008). This DPS included Idaho, Montana, eastern Oregon, north-central Utah, eastern Washington, and Wyoming. This DPS was smaller than the 2003 Western DPS and more closely approximates the historical range of the originally listed NRM gray wolf in the region and the areas focused on in both NRM recovery plans (39 FR 1175 January 4, 1974; Service 1980, pp. 3, 7–8; Service 1987, pp. 2, 23). The Service removed protections across the entire DPS after Wyoming revised its wolf management plan and State law. At the time, we concluded this Wyoming framework provided adequate regulatory protections to conserve Wyoming's portion of a recovered wolf population into the foreseeable future (Hall 2007).

Environmental litigants challenged this final rule in the U.S. District Court for the District of Montana. The plaintiffs also moved to preliminarily enjoin the delisting. On July 18, 2008, the court granted the plaintiffs' motion for a preliminary injunction and enjoined the Service's implementation of the final delisting rule (*Defenders of Wildlife, et al.,* v. *Hall, et al.,* 565 F.Supp.2d 1160 (D. Mont. 2008)). The court stated that we acted arbitrarily in delisting a wolf population that lacked evidence of natural genetic exchange between subpopulations. The court also stated that we acted arbitrarily and capriciously when we approved Wyoming's 2007 wolf management plan because the State failed to commit to managing for at least 15 breeding pairs. In addition, the court concluded we acted arbitrarily in approving Wyoming's 2007 post-delisting management framework that contained a Wyoming statute allowing the Wyoming Game and Fish Commission (WGFC) to diminish Wyoming's Wolf Trophy Game Management Area (Trophy Area) if it ''determines the diminution does not impede the delisting of gray wolves and will facilitate Wyoming's management of wolves.'' In light of the court order, on September 22, 2008, we asked the court to vacate the final rule and remand it to us. On October 14, 2008, the court granted our request *(Defenders of Wildlife* v. *Hall,* 9:08–CV–00056–DWM (D. Mont 2008)). The court's order invalidated the February 2008 rule designating and delisting the NRM DPS.

Following the July 18, 2008, court ruling, we reexamined the NRM DPS and Wyoming's statutes, regulations, and management plan. This reevaluation considered several issues not considered in the previous evaluation. We determined that the best scientific and commercial data available demonstrated that: (1) The NRM DPS was not threatened or endangered throughout ''all'' of its range (i.e., not threatened or endangered throughout all of the DPS); and (2) the Wyoming portion of the range represented a significant portion of the range where the species remained in danger of extinction because of the inadequacy of existing regulatory mechanisms. Thus, on April 2, 2009, we published a final rule recognizing the NRM DPS and removing the DPS from the List of Endangered and Threatened Wildlife, except in Wyoming, where wolves continued to be regulated as a nonessential experimental population under 50 CFR 17.84(i) and (n) (74 FR 15123). The decision to retain the Act's protections only in Wyoming was consistent with a March 16, 2007, Memorandum Opinion issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (M-Opinion) (Department of the Interior 2007, entire). The final rule determined that Wyoming's existing regulatory framework did not provide adequate regulatory mechanisms to maintain Wyoming's share of a recovered NRM wolf population if the protections of the Act were removed and stated that, until Wyoming revised its statutes, regulations, and management plan, and obtained Service approval, wolves in Wyoming would remain protected by the Act (74 FR 15123, April 2, 2009).

The 2009 rule (74 FR 15123, April 2, 2009) was challenged in the U.S. District Court for the District of Montana by environmental litigants and in the U.S. District Court for the District of Wyoming by the State of Wyoming, the Wyoming Wolf Coalition, and Park County, Wyoming. On August 5, 2010, the U.S. District Court for Montana ruled on the merits of the case and vacated our April 2009 final rule (*Defenders of Wildlife, et al.,* v. *Salazar, et al.,* 729 F. Supp.2d 1207 (D. Mont. 2010)). The court concluded that the NRM DPS must be listed or delisted in its entirety. The court rejected the rule's approach allowing protection of only a portion of the species' range because it was inconsistent with the Act's definition of ''species.'' Thus, before delisting could occur, Wyoming had to develop a regulatory framework that was determined by the Service to be adequate to maintain Wyoming's share of a recovered NRM gray wolf population. The court's ruling invalidated the 2009 rule designating and delisting most of the NRM DPS.

On October 26, 2010, in compliance with the order of the U.S. District Court for Montana, we published a final rule notifying the public that the Federal protections in place prior to the 2009 delisting had been reinstated (75 FR 65574). Wolves in eastern Washington, eastern Oregon, north-central Utah, the Idaho panhandle, and northern Montana were again listed as endangered. Former special rules designating the gray wolf in the remainder of Montana and Idaho as nonessential experimental populations were likewise reinstated. Additionally, the NRM gray wolf DPS established by the April 2, 2009, final rule was set aside. Because wolves in Wyoming were not delisted by the April 2, 2009, final rule, their listed status was not affected by the October 26, 2010, rule.

Following the Montana District Court decision, the United States Congress passed, and President Obama signed, H.R. 1473, Public Law 112–10—The Department of Defense and Full Year

Continuing Appropriations Act of 2011 (hereafter referred to as the 2011 Appropriations Act). Section 1713 of the law directed the Service to reissue its April 2009 delisting rule. The Service complied with the Appropriations Act on May 5, 2011 (76 FR 25590). Thus, gray wolves in Montana, Idaho, eastern Oregon, north-central Utah, and eastern Washington were once again delisted. The constitutionality of section 1713 of the 2011 Appropriations Act was upheld in the Montana District Court and the Ninth Circuit Court of Appeals (*Alliance for the Wild Rockies et al.,* v. *Salazar, et al.,* case no. CV 11–70–M–DWM; *Alliance for the Wild Rockies, et al.,* v. *Salazar, et al.,* case no. 11–35670). The Department of Interior withdrew the M-Opinion on this topic on May 4, 2011 (Department of the Interior 2011, entire).

As for the Wyoming challenge to the April 2009 partial delisting rule (74 FR 15123, April 2, 2009), a United States District Court for Wyoming ruled in favor of the Wyoming plaintiffs on November 18, 2010 (*Wyoming et al.,* v. *U.S. Department of the Interior, et al.,* 2010 U.S. Dist. LEXIS 122829). The court rejected the Service's recommendation that the entire State of Wyoming be designated as a Trophy Area, and the court found this position to be arbitrary and capricious, because it was not supported by the administrative record. The court stated that the record indicated only northwestern Wyoming, which has the vast majority of the State's suitable habitat, was biologically essential to maintaining the NRM population. However, the court did not render an opinion on whether Wyoming's current plan, including the size and location of its 2007 Trophy Area, was sufficient. Instead, the court remanded the matter to us to reconsider whether Wyoming's regulatory framework would maintain its share of a recovered wolf population and provide adequate genetic connectivity. Subsequent to this order, the Service and the State reinitiated discussions on revisions to the State's wolf management framework that would satisfy the standards of the Act and allow delisting to again move forward. These discussions led to an agreement and modification of the Wyoming wolf management plan (WGFC 2011, entire).

On October 5, 2011, we proposed to remove the gray wolf in Wyoming from the List of Endangered and Threatened Wildlife (76 FR 61782). This proposal relied on Wyoming's 2011 wolf management plan (WGFC 2011, entire) and noted that conforming changes to State law and regulations would be required to allow Wyoming's plan to be implemented as written. Following publication of the proposal, Wyoming revised its State statutes and gray wolf management regulations (chapter 21) and developed gray wolf hunting season regulations (chapter 47) and an Addendum to the Wyoming Gray Wolf Management Plan. On May 1, 2012, we reopened the public comment period on our October 5, 2011, proposal to allow all interested parties an additional opportunity to comment on the proposed rule in light of these documents (77 FR 25664, May 1, 2012).

Reengaging Wyoming and Changes to Its Wolf Management Plan

The 2009 rule stated that ''until Wyoming revises their statutes, management plan, and associated regulations, and is again Service approved, wolves in Wyoming continue to require the protections of the Act'' (74 FR 15123, April 2, 2009). This rule specifically expressed concern over: (1) The size and permanency of the Trophy Area; (2) conflicting language within the State statutes concerning whether Wyoming would manage for at least 15 breeding pairs and at least 150 wolves, exactly 15 breeding pairs and 150 wolves, or only 7 breeding pairs and 70 wolves; and (3) liberal depredation control authorizations and legislative mandates to aggressively manage the population down to minimum levels.

In early 2011, we began discussions with Wyoming seeking to develop a strategy to address each of these issues. In August 2011, the Service and the State of Wyoming announced the framework of an agreement that we conclude will maintain a recovered wolf population in Wyoming (WGFC 2011, appendix I). Since this agreement, Wyoming has incorporated these changes into its regulatory framework. Below we summarize the key points in the agreement relative to the three overarching Service concerns highlighted above.

First, Wyoming made the existing Trophy Area permanent by incorporating it into State statute. In total, Wyoming wolves will be managed as game animals year-round or protected in about 38,500 square kilometers (km^2) (15,000 square miles (mi^2)) in the northwestern portion of the State (15.2 percent of Wyoming), including YNP, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and most of the Wind River Indian Reservation (Lickfett 2012). This area of Wyoming contains the majority of suitable wolf habitat within the State. Wolves will be designated as predatory animals in the remainder of the State (predator area). The above protected and permanent game areas (see Figure 1) include: 100 percent of the portion of the Greater Yellowstone Area (GYA) recovery area within Wyoming (Service 1987, Figure 2); approximately 79 percent of the Wyoming portion of the primary analysis area used in the 1994 Environmental Impact Statement on The Reintroduction of Gray Wolves to YNP and Central Idaho (1994 Environmental Impact Statement) (areas analyzed as potentially being impacted by wolf recovery in the GYA) (Service 1994, Figure 1.1); the entire home range for 24 of 27 breeding pairs (88 percent), 40 of 48 packs (83 percent), and 282 of 328 individual wolves (86 percent) in the State at the end of 2011 (Service *et al.* 2012, Tables 2, 4, Figure 3; Jimenez 2012a; Jimenez 2012, pers. comm.); and approximately 81 percent of the State's suitable habitat (including over 81 percent of the high-quality habitat (greater than 80 percent chance of supporting wolves) and over 62 percent of the medium-high-quality habitat (50 to 79 percent chance of supporting wolves) (Oakleaf 2011; Mead 2012a)).

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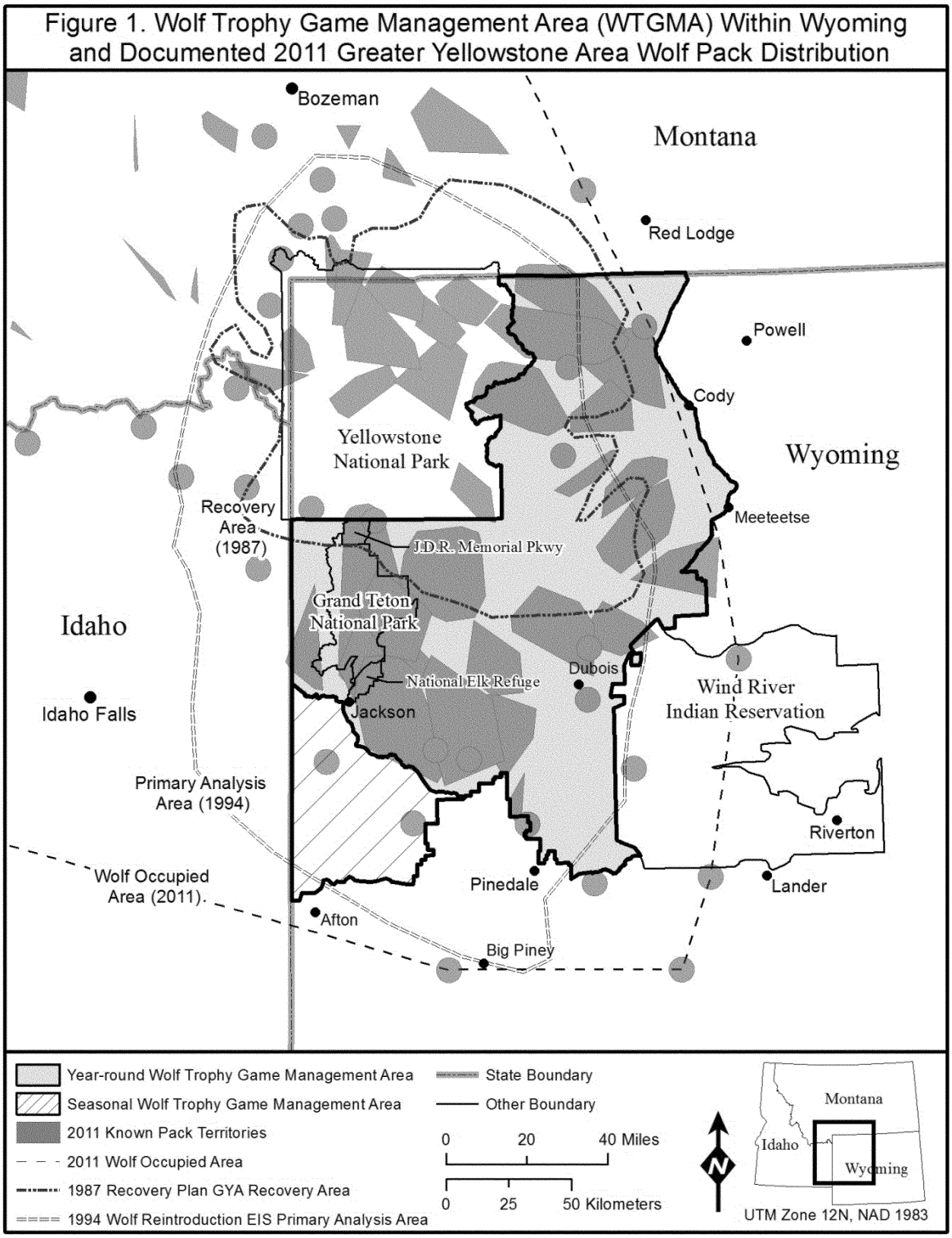

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The State of Wyoming also addressed our prior concern that the size of the Trophy Area would affect natural connectivity and genetic exchange. State wolf management regulations (chapter 21(4)(a)(ii)) commit to managing wolves in Wyoming so that genetic diversity and connectivity issues do not threaten the population. The State's wolf management plan further clarifies a goal for gene flow of at least one effective natural migrant per generation entering into the GYA, as measured over multiple generations (WGFC 2011, pp. 4, 9, 26–29, 54). To assist in this goal, a Wyoming statute provides for a seasonal expansion of the Trophy Area approximately 80 kilometers (km) (50 miles (mi)) south for 4 and a half months during peak wolf dispersal periods (WGFC 2011, pp. 2, 8, 52). We conclude that this seasonal protection will benefit natural dispersal. Furthermore, Wyoming commits to an adaptive management approach that adjusts management if the above minimum level of gene flow is not

documented (WGFC 2011, pp. 26–29; WGFC 2012, pp. 6–7). Finally, translocation of wolves between subpopulations would be used as a last resort, only if necessary to increase genetic interchange (WGFC 2012, p. 7). These efforts would be coordinated with Montana and Idaho (WGFC 2012, p. 7).

Next, Wyoming agreed to maintain a population of at least 10 breeding pairs and at least 100 wolves in portions of Wyoming outside YNP and the Wind River Indian Reservation (WGFC 2011, pp. 1–5, 16–26, 52). Importantly, this commitment does not reflect an intention by the Wyoming Game and Fish Department (WGFD) to reduce the population down to this minimum population level. Rather, Wyoming intends to maintain an adequate buffer above minimum population objectives to accommodate management needs and ensure uncontrollable sources of mortality do not drop the population below this minimum population level (WGFC 2011, p. 24; WGFC 2012, pp. 3–5).

The wolf populations in YNP and on the lands of sovereign nations will provide an additional buffer above the minimum recovery goal. From 2000 to the end of 2011 (the most recent official wolf population estimates available), the wolf population in YNP ranged from 96 to 174 wolves, and between 6 to 16 breeding pairs. While a lower future population level in YNP is predicted (between 50 to 100 wolves and 5 to 10 packs with 4 to 6 of these packs meeting the breeding pair definition annually) (Smith 2012), YNP will always provide a secure wolf population providing a safety margin above the minimum recovery goal. The Wind River Indian Reservation typically contains a small number of wolves (single digits), which sometimes form packs that count toward Tribal population totals. On the whole, we expect the statewide wolf population in Wyoming will be maintained well above minimum recovery levels.

Another substantial improvement is Wyoming's management framework inside the Trophy Area. For example, Wyoming removed statutory mandates for aggressive management of wolves (WGFC 2011, pp. 24, 52). Previous Wyoming law required aggressive management until the population outside the National Parks fell to six breeding pairs or below. The Service was concerned with Wyoming's previous State law, and it has been remedied.

Additionally, Wyoming agreed that wolves in the permanent Trophy Area would not be treated as predatory animals (WGFC 2011, pp. 3, 16–17, 23). Past State laws allowed depredating wolves within the Trophy Area to be treated as predatory animals under certain circumstances at the discretion of the State Game and Fish Commission (WGFC 2011, pp. 3, 16–17, 23). Wyoming modified W.S. 23–1–302(a)(ii) to ensure it does not apply to wolves in the Trophy Area. This change is a substantial improvement over current Wyoming law that will provide for a wolf population in Wyoming (outside of YNP and the Wind River Indian Reservation) that always maintains at least 10 breeding pairs and at least 100 individuals.

Furthermore, Wyoming established defense-of-property regulations that are similar to our nonessential experimental population rules (50 CFR 17.84(n)) (WGFC 2011, pp. 4, 22–23, 30–31, 53). Also, Wyoming's management of depredating wolves will be similar to Service management under the Act's protections (WGFC 2011, pp. 4, 22–23, 30–31, 53). Such rules were in place in Montana and Idaho prior to delisting and allowed continued population growth. These management approaches constitute an additional improvement over the framework Wyoming had in place for most of 2008.

These and other improvements discussed in more detail below have addressed the Service's concerns about wolf management in Wyoming and make this delisting rule possible. Appropriate changes have been incorporated into State statute, State regulations, and the Wyoming wolf management plan.

Species Description and Basic Biology

Gray wolves (*Canis lupus*) are the largest wild members of the dog family (Canidae). Adult gray wolves range from 18–80 kilograms (kg) (40–175 pounds (lb)) depending upon sex and geographic region (Mech 1974, p. 1). In the NRM region, adult male gray wolves average just over 45 kg (100 lb), but may weigh up to 60 kg (130 lb). Females weigh about 20 percent less than males. Wolves' fur color is frequently a grizzled gray, but it can vary from pure white to coal black (Gipson *et al.* 2002, p. 821).

Gray wolves have a circumpolar range including North America, Europe, and Asia. As Europeans began settling the United States, they poisoned, trapped, and shot wolves, causing this once-widespread species to be eradicated from most of its range in the 48 conterminous States (Mech 1970, pp. 31–34; McIntyre 1995, entire). Gray wolf populations were eliminated from Montana, Idaho, and Wyoming, as well as adjacent southwestern Canada by the 1930s (Young and Goldman 1944, p. 414). Gray wolves continue to occur in large numbers in Canada and Alaska and are now well connected to the restored NRM wolf populations (Pletscher *et al.* 1991, pp. 547–548; Boyd and Pletscher 1999, pp. 1105–1106; Committee on the Status of Endangered Wildlife in Canada 2001, pp. iii, v–vi, 13, 21–22, 30–32, 38, 42, 44–46; Boitani 2003, p. 322; Sime 2007; vonHoldt *et al.* 2010, p. 4412; Jimenez *et al.* In review, p. 1).

Wolves primarily prey on medium and large mammals. Wolf prey in the NRM region is composed mainly of elk (*Cervus canadensis*), white tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), moose (*Alces alces*), and (in the GYA) bison (*Bison bison*). Bighorn sheep (*Ovis canadensis*), mountain goats (*Oreamnos americanus*), and pronghorn antelope (*Antilocapra americana*) also are common but less important wolf prey, at least to date.

Wolves normally live in packs of 2 to 12 animals. In the NRM region, pack sizes average 7 wolves but are slightly larger in protected areas. A few complex packs have been substantially bigger in some areas of YNP (Smith *et al.* 2006, p. 243; Service *et al.* 2012, Tables 1–3). Packs typically occupy large territories from 518 to 1,295 km^2 (200 to 500 mi^2). Once a given area is occupied by resident wolf packs, it becomes saturated and wolf numbers become regulated by the amount of available prey, intraspecific conflict (wolf-on-wolf conflict), other forms of mortality, and dispersal. Dispersing wolves may cover large areas as they try to join other packs or attempt to form their own pack in unoccupied habitat (Mech and Boitani 2003, pp. 11–17).

Typically, only one male and female in each pack breed and produce pups (Packard 2003, p. 38; Smith *et al.* 2006, pp. 243–24; Service *et al.* 2012, Tables 1–3). Females and males typically begin breeding as 2-year-olds and may annually produce young until they are over 10 years old. In the NRM region, litters are typically born in April and range from 1 to 7 pups, but average around 5 pups (Service *et al.* 1989–2012, Tables 1–3). Most years, 80 percent of pups survive until winter (Service *et al.* 1989–2012, Tables 1–3). Wolves can live 13 years (Holyan *et al.* 2005, p. 446), but the average lifespan in YNP is less than 4 years (Smith *et al.* 2006, p. 245). Pup production and survival can increase when wolf density is lower and food availability per wolf increases (Fuller *et al.* 2003, p. 186). Pack social structure is very adaptable and resilient. Breeding members can be quickly replaced either from within or outside the pack, and pups can be reared by another pack member, should

their parents die (Boyd and Jimenez 1994, entire; Packard 2003, p. 38; Brainerd *et al.* 2008; Mech 2006, p. 1482). Consequently, wolf populations can rapidly recover from severe disruptions, such as very high levels of human-caused mortality or disease. Wolf populations have been shown to increase rapidly if mortality is reduced after severe declines (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2012, Table 4).

For detailed information on the biology of this species see the ''Biology and Ecology of Gray Wolves'' section of the April 1, 2003, final rule to reclassify and remove the gray wolf from the list of endangered and threatened wildlife in portions of the coterminous United States (2003 Reclassification Rule) (68 FR 15804).

Recovery Planning and Implementation

This section includes a detailed discussion of the recovery criteria including their development, continuous evaluation, and revision as necessary. Additionally, this section includes our summary of progress towards recovery including an assessment of whether the criteria are met. This section discusses the entire NRM population because the recovery criteria apply to the entire population.

Recovery Planning and the Development of Recovery Criteria—As general background, recovery plans are not regulatory documents, but are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that the threats have been minimized sufficiently, and the species is robust enough to reclassify from endangered to threatened or to delist. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may become available that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

For NRM gray wolves, we formed the Interagency Wolf Recovery Team to complete a recovery plan for the NRM population shortly after it was listed (Service 1980, p. i; Fritts *et al.* 1995, p. 111). The NRM Wolf Recovery Plan (recovery plan) was approved in 1980 (Service 1980, p. i) and revised in 1987 (Service 1987, p. i). The 1980 recovery plan's objective was to reestablish and maintain viable populations of the NRM wolf (*C. l. irremotus*) in its former range where feasible (Service 1980, p. iii). This plan did not include recovery goals (i.e., delisting criteria). The 1980 plan covered an area similar to the NRM DPS, as it was once believed to be the range of the purported NRM wolf subspecies. It recommended that recovery actions be focused on the large areas of public land in northwestern Montana, central Idaho, and the GYA. The 1987 revised recovery plan (Service 1987, p. 57) concluded that the subspecies designations may no longer be valid and simply referred to gray wolves in the NRM region. Consistent with the 1980 plan, it also recommended focusing recovery actions on the large blocks of public land in the NRM region.

The 1987 plan specified recovery criteria of a minimum of 10 breeding pairs of wolves (defined as 2 wolves of opposite sex and adequate age, capable of producing offspring) for a minimum of 3 successive years in each of 3 distinct recovery areas including: (1) Northwestern Montana (Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness Areas; and adjacent public and private lands); (2) central Idaho (Selway-Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness Areas; and adjacent, mostly Federal, lands); and (3) the YNP area (including the Absaroka-Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas; and adjacent public and private lands). That plan recommended that wolf establishment not be promoted outside these distinct recovery areas, but it encouraged connectivity between recovery areas. However, no attempts were made to prevent wolf pack establishment outside of the recovery areas unless chronic conflict required resolution (Service 1994, pp. 1–15, 16; Service 1999, p. 2). Since completion of the 1987 recovery plan, we have expended considerable effort to develop, repeatedly reevaluate, and when necessary modify, the recovery goals (Service 1987, p. 12; Service 1994, appendix 8 and 9; Fritts and Carbyn 1995, p. 26; Bangs 2002, p. 1).

The 1994 Environmental Impact Statement reviewed the wolf recovery standards in the NRM region and the adequacy of the recovery goals to assure that the 1987 goals were sufficient (Service 1994, pp. 6:68–78). We were particularly concerned about the 1987 definition of a breeding pair because it included two adult wolves 'capable' of producing offspring instead of two adult wolves that had actually produced offspring. We also believed the relatively small recovery areas identified in the 1987 plan greatly reduced the amount of area that could be used by wolves and would almost certainly eliminate the opportunity for meaningful natural demographic and genetic connectivity. We conducted a thorough literature review of wolf population viability analysis and minimum viable populations, reviewed the recovery goals for other wolf populations, surveyed the opinions of the top 43 wolf experts in North America (of which 25 responded), and incorporated our own expertise into a review of the NRM wolf recovery goal. We published our analysis in the 1994 Environmental Impact Statement and a peer-reviewed paper (Service 1994, appendix 8 & 9; Fritts and Carbyn 1995, pp. 26–38).

Our 1994 analysis concluded that the 1987 recovery goal was, at best, a minimum recovery goal, and that modifications were warranted on the basis of more recent information about wolf distribution, connectivity, and numbers. We also concluded, ''Data on survival of actual wolf populations suggest greater resiliency than indicated by theory,'' and theoretical treatments of population viability ''have created unnecessary dilemmas for wolf recovery programs by overstating the required population size'' (Fritts and Carbyn 1995, p. 26). Based on our analysis, we redefined a breeding pair as an adult male and an adult female wolf that have produced at least two pups that survived until December 31 of the year of their birth, during the previous breeding season. We also concluded that ''Thirty or more breeding pairs comprising some 300+ wolves in a metapopulation (a population that exists as partially isolated sets of subpopulations) with genetic exchange between subpopulations should have a high probability of long term persistence'' because it would contain enough individuals in successfully reproducing packs that were distributed over distinct but somewhat connected large areas, to be viable for the long term (Service 1994, p. 6:75). We explicitly

stated that the required genetic exchange could occur by natural means or by human-assisted migration management and that dispersal of wolves between recovery areas was evidence of that genetic exchange (Service *et al.* 1994, appendix 8, 9). In defining a ''Recovered Wolf Population,'' we found ''in the northern Rockies a recovered wolf population is 10 breeding pairs of wolves in each of 3 areas for 3 successive years with some level of movement between areas'' (Service 1994, pp. 6–7). We further determined that a metapopulation of this size and distribution among the three areas of core suitable habitat in the NRM DPS would result in a wolf population that would fully achieve our recovery objectives.

For more than 15 years, we have concluded that movement of individuals between the metapopulation segments could occur either naturally or by human-assisted migration management (Service 1994, pp. 7–67). Specifically, the 1994 Environmental Impact Statement stated ''The importance of movement of individuals between subpopulations cannot be overemphasized. The dispersal ability of wolves makes such movement likely, unless wolves were heavily exploited between recovery areas, as could happen in the more developed corridor between central Idaho and YNP. Intensive migration management might become necessary if 1 of the 3 subpopulations should develop genetic or demographic problems'' (Service 1994, pp. 7–67). The finding went on to say that human-assisted migration should not be viewed negatively and would be necessary in other wolf recovery programs (Service 1994, pp. 7–67). Furthermore, we found that the 1987 wolf recovery plan's population goal of 10 breeding pairs of wolves in 3 separate recovery areas for 3 consecutive years was reasonably sound and would maintain a viable wolf population into the foreseeable future. We did caution that the numerical recovery goal was somewhat conservative, and should be considered minimal (Service 1994, pp. 6–75).

We conducted another review of what constitutes a recovered wolf population in late 2001 and early 2002 to reevaluate and update our 1994 analysis and conclusions (Service 1994, appendix 9). We attempted to resurvey the same 43 experts we had contacted in 1994 as well as 43 other biologists from North America and Europe who were recognized experts about wolves and conservation biology. We asked experts with a wide diversity of perspectives to participate in our review. In total, 53 people provided their expert opinions regarding a wide range of issues related to the NRM recovery goal. We also reviewed a wide range of literature, including wolf population viability analyses from other areas (Bangs 2002, pp. 1–9).

Despite varied professional opinions and a great diversity of suggestions, experts overwhelmingly thought the recovery goal derived in our 1994 analysis was more biologically appropriate than the 1987 recovery plan's criteria for recovery and represented a viable and recovered wolf population. Reviewers also thought genetic exchange, either natural or human-facilitated, was important to maintaining the metapopulation configuration and wolf population viability. Reviewers also believed the proven ability of a breeding pair to show successful reproduction was a necessary component of a biologically meaningful breeding pair definition. Reviewers recommended other concepts/numbers for recovery goals, but most were slight modifications to those we recommended in our 1994 analysis. While experts strongly (78 percent) supported our 1994 conclusions regarding a viable wolf population, they also tended to believe that wolf population viability was enhanced by higher, rather than lower, population levels and longer, rather than shorter, demonstrated timeframes. A common minority recommendation was an alternative goal of 500 wolves and 5 years. A slight majority of reviewers indicated that even the 1987 recovery goal of only 10 breeding pairs (defined as a male and female capable of breeding) in each of 3 distinct recovery areas may be viable, given the persistence of other small wolf populations in other parts of the world. Based on the above review and considering all available information, we reaffirmed our more relevant and stringent 1994 definition of wolf breeding pairs, population viability, and recovery (Service 1994, p. 6:75; Bangs 2002, pp. 1–9).

We measure the wolf recovery goal by the number of breeding pairs as well as by the number of wolves because wolf populations are maintained by packs that successfully raise pups. We use ''breeding pairs'' (packs that have at least one adult male and at least one adult female and that raised at least two pups until December 31) to describe successfully reproducing packs (Service 1994, p. 6:67; Bangs 2002, pp. 7–8; Mitchell *et al.* 2008, p. 881; Mitchell *et al.* 2010, p. 101). The breeding pair metric includes most of the important biological concepts in wolf conservation, including the potential disruption of human-caused mortality that might affect breeding success in social carnivores (Brainerd *et al.* 2008, p. 89; Wallach *et al.* 2009, p. 1; Creel and Rotella 2010, p. 1). Specifically, we thought it was important for breeding pairs to have: Both male and female members together going into the February breeding season; successful occupation of a territory (generally 500–1,300 km^2 (200–500 mi^2)); enough pups to replace themselves; offspring that become yearling dispersers; at least four wolves at the end of the year, which is near the population low point (note that the absolute low point occurs in April just before pups are born); all social structures and age classes represented within a wolf population; and adults that can raise and mentor younger wolves.

We also determined that an equitable distribution of wolf breeding pairs and individual wolves among the three States and the three recovery areas is an essential part of achieving recovery. Like peer reviewers in 1994 and 2002, we concluded that NRM wolf recovery and long term wolf population viability is dependent on its distribution as well as maintaining the minimum numbers of breeding pairs and wolves. Uniform distribution is not necessary. But a well-distributed population is necessary to maintain proportionate numbers of packs and individuals in all three recovery areas. This approach will maintain wolf distribution in and adjacent to all three recovery areas and most of the region's suitable habitat. Such an approach will retain sizable subpopulations within easily traversable distances from one another and, thus, facilitate natural connectivity.

Following the 2002 review of our recovery criteria, we began to use States, in addition to recovery areas, to measure progress toward recovery goals (Service *et al.* 2003–2012, Table 4). Because Montana, Idaho, and Wyoming each contain the vast majority of one of the original three core recovery areas, we determined the metapopulation structure would be best conserved by equally dividing the overall recovery goal between the three States (73 FR 10514, February 27, 2008, p. 10522). This approach made each State's responsibility for wolf conservation fair, consistent, and clear. It avoided any possible confusion that one State might assume the responsibility for maintaining the required number of wolves and wolf breeding pairs in a shared recovery area that was the responsibility of the adjacent State. State regulatory authorities and traditional management of resident game populations occur on a State-by-

State basis. We determined that management by State would still maintain a sizable wolf population in each core recovery area because they each contain manmade or natural refugia from intensive human-caused mortality (e.g., wilderness and roadless areas, National Parks, and remote Federal lands) that provide a stronghold for wolf populations in each State. Recovery targets by State promote connectivity and genetic exchange between the metapopulation segments by avoiding management that focuses solely on wolf breeding pairs in relatively distinct core recovery areas. This approach also will increase the numbers of potential wolf breeding pairs in the GYA because it is shared by all three States. A large and well-distributed population within the GYA is especially important because it is the most isolated recovery segment within the NRM DPS (Oakleaf *et al.* 2006, p. 554; vonHoldt *et al.* 2007, p. 19).

To recap, we have expended considerable effort to develop, repeatedly reevaluate, and, when necessary, modify, these recovery goals (Service 1980; Service 1987; Service 1994, appendix 8 and 9; Fritts and Carbyn 1995; Bangs 2002, entire). The 1980 recovery plan required simply that we reestablish and maintain viable populations within its former range where feasible. The 1987 recovery plan further quantified the goals by requiring a minimum of 10 breeding pairs of wolves (defined as 2 wolves of opposite sex and adequate age, capable of producing offspring) for a minimum of 3 successive years in northwestern Montana, central Idaho, and the YNP area. In 1994, we revised the definition of a breeding pair (redefined as an adult male and an adult female wolf that have produced at least two pups that survived until December 31 of the year of their birth, during the previous breeding season) and added a requirement that there be genetic exchange (preferably natural, but human assisted if needed) between subpopulations. In 2002, we conducted a peer review of the above information, which led us to reaffirm the conclusions reached above (i.e., the definition of wolf breeding pairs, our view of population viability, and what constitutes recovery), but moved us towards counting recovery by State in addition to by recovery area.

Finally, every NRM rulemaking conducted over the last decade has also included a peer review in which reviewers were asked to weigh in on our conclusions. The vast majority of these reviewers supported our conclusion on long term population viability assuming these criteria were maintained. In the most recent peer review, four of the five peer reviewers concurred with our conclusion that the Wyoming wolf population, whose management is to be driven by the recovery goals, would continue to be a viable population after delisting (Atkins 2011, pp. 6, 10; Atkins 2012, p. 3). Those peer reviewers who specifically addressed the recovery criteria were unanimously supportive of the criteria (Atkins 2011, appendix B). For example, Dr. Scott Mills stated that the thresholds for delisting are consistent with current state-of-the-art viability analysis science and are an appropriate standard for delisting (Atkins 2011, p. 60). Similarly, Dr. David Mech concluded that the recovery criteria still seem adequate (Atkins 2011, p. 73). None of the reviews provided by the independent peer reviewers challenged the adequacy of the recovery criteria (Atkins 2011, appendix B).

The numerical component of the recovery goal represents the minimum number of breeding pairs and individual wolves needed to achieve and maintain recovery. Because the NRM wolf population must always exceed the recovery goal of 30 breeding pairs and 300 wolves, we required that Montana and Idaho each manage for at least 15 breeding pairs and at least 150 wolves in mid-winter. This 50 percent safety margin above minimum recovery levels was intended to provide an adequate safety margin, recognizing that all wildlife populations, including wolves, can fluctuate widely over a relatively short period of time. Managing for a buffer above the minimum recovery target is consistent with our 1994 determination that the addition of a few extra pairs would add security to the population and should be considered in future management planning (Service 1994, pp. 6–75). Additionally, because the recovery goal components are measured in mid-winter when the wolf population is near its annual low point (note the absolute low point occurs in April just before spring litters are born), the average annual wolf population will be higher than these minimal goals.

Because Wyoming, unlike Montana and Idaho, has a large portion of its wolf population in areas outside the State's control (e.g., YNP and the Wind River Indian Reservation), we developed an approach for Wyoming that recognizes this fact, but still holds the State to the same commitment to achieve the desired safety margin above the minimum recovery goal. Specifically, we determined that at least 10 breeding pairs and at least 100 wolves at mid-winter in Wyoming outside YNP and the Wind River Indian Reservation will satisfy Wyoming's contribution to NRM gray wolf recovery. Under this approach, the wolf populations in YNP and the Wind River Indian Reservation will provide a buffer above the minimum recovery goal. We conclude that the YNP wolf population can effectively buffer the rest of the Wyoming wolf population because of the amount of available habitat in the park, the sizable wolf population the park does now and will continue to support, and the relative security of the park population.

Wyoming's wolf population will be further buffered because WGFD intends to maintain an adequate buffer above minimum population objectives to accommodate management needs so that uncontrollable sources of mortality do not drop the population in Wyoming outside of YNP and the Wind River Indian Reservation below the 10 breeding pair and 100 wolf minimum population levels (WGFC 2011, p. 24; WGFC 2012, pp. 3–5). The State of Wyoming also intends to coordinate with YNP and the Wind River Indian Reservation to contribute to the objective of at least 15 breeding pairs and at least 150 wolves statewide, including YNP and the Wind River Indian Reservation. This approach in Wyoming is biologically superior to a single statewide standard in that: It provides population stability outside the park, minimizing the chances of a bad year in YNP compromising maintenance of the minimum recovery goal; it adds an extra layer of representation, resiliency, and redundancy to the GYA's gray wolf population; and it builds public tolerance for a minimum wolf population outside YNP. Further justification for this approach to wolf management after delisting and an additional explanation of why we view this approach as superior for wolf conservation in Wyoming long term is included in Issue and Response 18 below.

To summarize, based on the information above, the current recovery goal for the NRM gray wolf population is: Thirty or more breeding pairs (an adult male and an adult female that raise at least two pups until December 31) comprising 300+ wolves well-distributed between Montana, Idaho, and Wyoming functioning as a metapopulation (a population that exists as partially isolated sets of subpopulations) with genetic exchange (either natural or, if necessary, agency-managed) between subpopulations. This goal further holds Montana, Idaho, and Wyoming to each maintain a population

of at least 10 breeding pairs and at least 100 wolves at the end of the year. To provide that these minimum levels are not compromised, Montana and Idaho each are required to manage for a population minimum of at least 15 breeding pairs and at least 150 wolves at the end of the year. So as not to risk relisting and to provide management flexibility, Montana and Idaho intend to manage well above these minimum required levels. In Wyoming, the State will maintain the entire minimum recovery goal of at least 10 breeding pairs and at least 100 wolves outside of YNP and the Wind River Indian Reservation. So as not to risk relisting and to provide management flexibility, Wyoming also intends to manage well above these minimum required levels. A sizable wolf population in YNP and in the Wind River Indian Reservation will further buffer the population so that minimum recovery goals are not compromised. Our recovery and post-delisting management goals were designed to provide the NRM gray wolf population with sufficient representation, resilience, and redundancy for their long term conservation. After evaluating all available information, we conclude that the best scientific and commercial information available indicates the population will remain viable following delisting if the recovery targets continue to be met.

Monitoring and Managing Recovery—In 1989, we formed an Interagency Wolf Working Group (Working Group) composed of Federal, State, and Tribal agency personnel (Bangs 1991, p. 7; Fritts *et al.* 1995, p. 109; Service *et al.* 1989–2012, p. 1). The Working Group conducted four basic recovery tasks, in addition to the standard enforcement functions associated with the take of a listed species. These tasks were: (1) Monitor wolf distribution and numbers; (2) control wolves that attacked livestock by moving them, conducting other nonlethal measures, or by killing them (Bangs *et al.* 2006, p. 7); (3) conduct research and publish scientific publications on wolf relationships to ungulate prey, other carnivores and scavengers, livestock, and people; and (4) provide accurate science-based information to the public and mass media so that people could develop their opinions about wolves and wolf management from an informed perspective.

The minimum size and distribution of the wolf population is estimated by the Working Group each year and, along with other information, is published in an interagency annual report (Service *et al.* 1989–2012, Table 4, Figure 1). Since the early 1980s, the Service and our cooperating partners have radio-collared and monitored approximately 2,000 wolves in the NRM region to assess population status, conduct research, and to reduce/resolve conflict with livestock. The Working Group's annual minimum population estimates represent the best scientific and commercial data available regarding minimum year-end NRM gray wolf population size and trends, as well as distributional and other information.

Recovery by State—At the end of calendar year 2000, the NRM population first met its overall numerical and distributional recovery goal of a minimum of 30 breeding pairs and more than 300 wolves well-distributed among Montana, Idaho, and Wyoming (68 FR 15804, April 1, 2003; Service *et al.* 2012, Table 4). Because the recovery goal must be achieved for 3 consecutive years, the temporal element of recovery was not achieved until the end of 2002 when at least 663 wolves and at least 49 breeding pairs were present (Service *et al.* 2012, Table 4). By the end of 2011, the NRM wolf population achieved its numerical and distributional recovery goal for 12 consecutive years, while the temporal portion of the recovery criterion has been met for 10 consecutive years (Service *et al.* 2012, Table 4; 68 FR 15804, April 1, 2003; 71 FR 6634, February 8, 2006). By the end of 2011, the NRM gray wolf population included a minimum population estimate of 1,774 wolves (including at least: 653 in Montana; 746 in Idaho; 328 in Wyoming; 18 in Washington; and 29 in Oregon) in 109 breeding pairs (including at least: 39 in Montana; 40 in Idaho; 27 in Wyoming; 2 in Washington; and 1 in Oregon). Distribution at the end of 2011 is illustrated in Figure 2. Population trends through the end of 2011 are illustrated in Figure 3.

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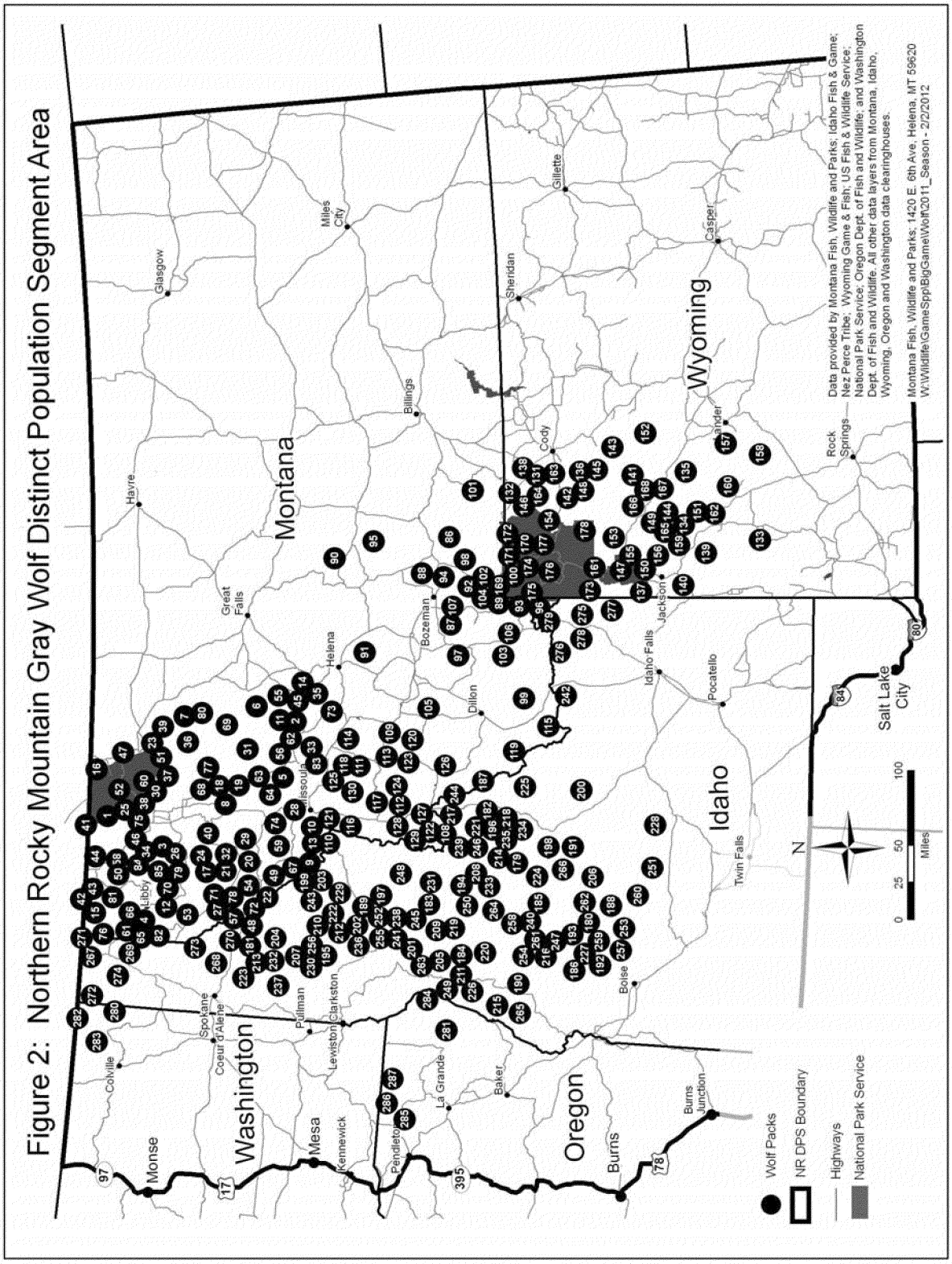
Figure 2: Northern Rocky Mountain Gray Wolf Distinct Population Segment Area
Montana
Wyoming
Idaho
Washington
Oregon
Glasgow
Miles City
Havre
Great Falls
Helena
Billings
Bozeman
Dillon
Sheridan
Cody
Gillette
Casper
Lander
Rock Springs
Jackson
Idaho Falls
Pocatello
Twin Falls
Salt Lake City
Missoula
Kalispell
Libby
Colville
Spokane
Coeur d'Alene
Pullman
Lewiston
Clarkston
Kennewick
Pendleton
La Grande
Baker
Burns
Burns Junction
Boise
Monse
Mesa
Wolf Packs
NR DPS Boundary
Highways
National Park Service
N
0 25 50 100
Miles
Data provided by Montana Fish, Wildlife and Parks; Idaho Fish & Game; Nez Perce Tribe; Wyoming Game & Fish; US Fish & Wildlife Service; National Park Service; Oregon Dept. of Fish and Wildlife; and Washington Dept. of Fish and Wildlife. All other data layers from Montana, Idaho, Wyoming, Oregon and Washington data clearinghouses.
Montana Fish, Wildlife and Parks; 1420 E. 6th Ave, Helena, MT 59620
W:\Wildlife\GameSpp\BigGameWolf\2011_Season - 2/2/2012

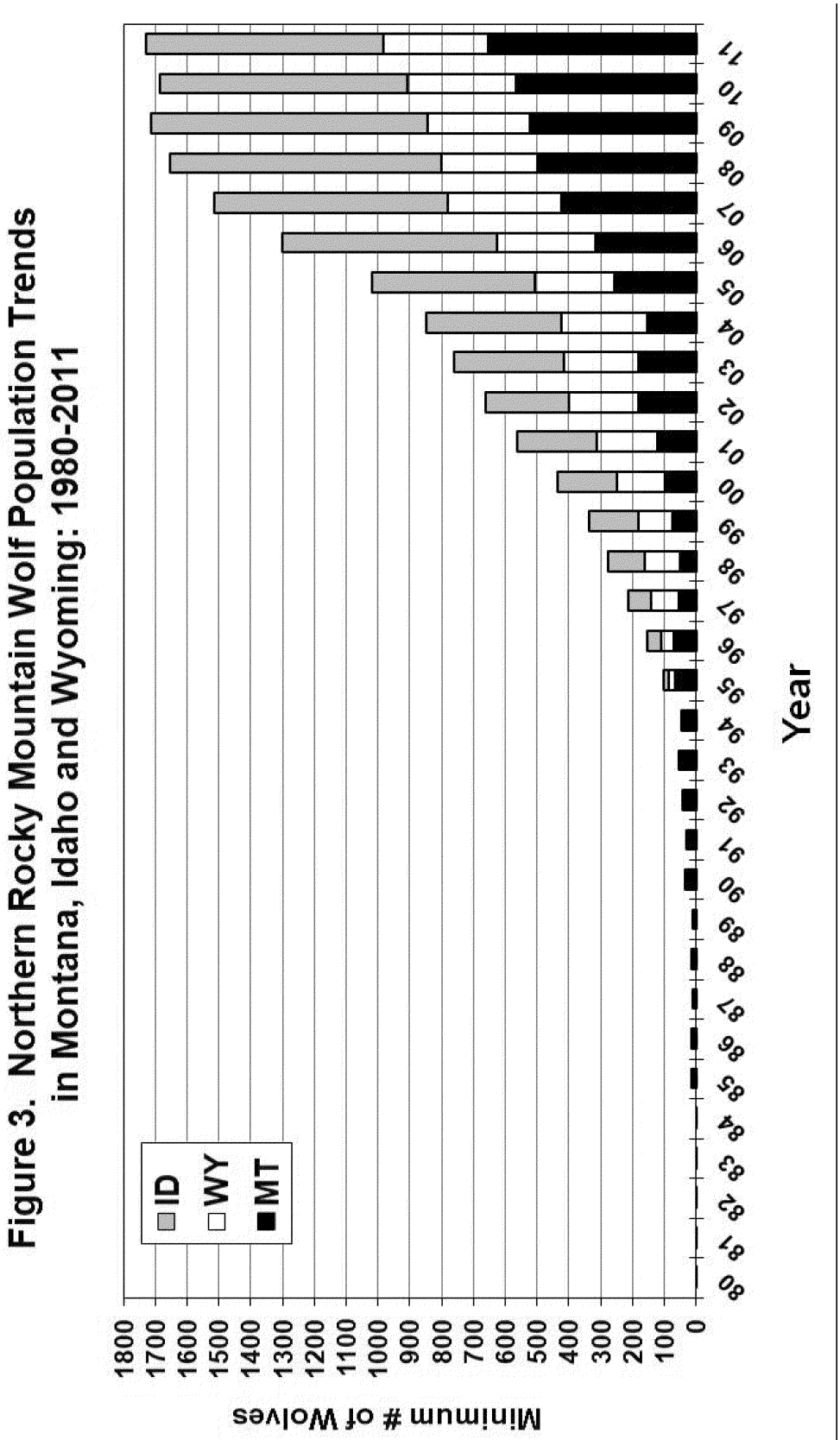

Figure 3. Northern Rocky Mountain Wolf Population Trends in Montana, Idaho and Wyoming: 1980-2011

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Recovery by Recovery Area—As discussed previously, after the 2002 peer review of the wolf recovery efforts, we began using States, in addition to recovery areas, to measure progress toward recovery goals (Service *et al.* 2003–2012, Table 4). However, because the 1987 Recovery Plan (Service 1987, pp. v, 12, 23) included goals for core recovery areas, we have included the following discussion on the history of the recovery efforts and status of these core recovery areas, including how the wolf population's distribution and metapopulation structure is important to maintaining its viability and how the biological characteristics of each core recovery area differ (Service *et al.* 2012, Table 4).

The Northwestern Montana Recovery Area's 84,800 km² (33,386 mi²) includes: Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness Areas; and adjacent public and private lands in northern Montana and the northern Idaho panhandle. Wolves in this recovery area were listed and managed as endangered species. Wolves naturally recolonized this area from Canada. Reproduction first occurred in northwestern Montana in 1986 (Ream *et al.* 1989, entire). The natural ability of wolves to find and quickly recolonize empty habitat (Mech and Boitani 2003, pp. 17–19), the interim control plan (Service 1988, 1999, entire), and the interagency recovery program combined to effectively promote an increase in wolf numbers (Bangs 1991, pp. 7–13). By 1996, the number of known wolves had grown to about 70 wolves in 7 known breeding pairs. However, from 1996 through 2004, the minimum estimated number of breeding pairs and wolves in northwestern Montana fluctuated at a low level, partly due to actual population size and partly due to limited monitoring effort. However, since 2005, it has steadily increased (Service *et al.* 2012, Table 4). At the end of 2011, we estimated a minimum of 431 wolves in 25 breeding pairs in the northwestern Montana recovery area (Service *et al.* 2012, Table 4).

The Northwestern Montana Recovery Area has sustained fewer wolves than the other recovery areas because there is less suitable habitat and it is naturally more fragmented (Oakleaf *et al.* 2006, p. 560; Smith *et al.* 2010, p. 622). Some of the variation in our minimum wolf population estimates for northwestern Montana is also due to the difficulty of counting wolves in the area's thick forests. Wolves in northwestern Montana also prey mainly on white-tailed deer, resulting in smaller packs and territories, which lower the chances of detecting a pack (Bangs *et al.* 1998, p. 878). Increased monitoring efforts in northwestern Montana by Montana Fish, Wildlife and Parks since 2005 were likely responsible for more accurate minimum population estimates. Wolf numbers in 2003 and 2004 also likely exceeded 10 breeding pairs and 100 wolves, but were not documented simply due to less intensive monitoring those years (Service *et al.* 2012, Table 4). By the end of 2011, this recovery area contained more than 10 breeding pairs and 100 wolves for the seventh consecutive year (2005–2011), and probably did so for the last 10 years (2002–2011) (Service *et al.* 2012, Table 4).

Routine dispersal of wolves has been documented among northwestern Montana, central Idaho, and adjacent Canadian populations demonstrating that northwestern Montana's wolves are demographically and genetically linked to both the wolf population in Canada and in central Idaho (Pletscher *et al.* 1991, pp. 547–548; Boyd and Pletscher 1999, pp. 1105–1106; Sime 2007; vonHoldt *et al.* 2010, p. 4412; Jimenez *et al.* In review, p. 1). Because of fairly contiguous but fractured suitable habitat, wolves dispersing into northwestern Montana from both directions will continue to join or form new packs and supplement this segment of the overall wolf population (Forbes and Boyd 1996, p. 1082; Forbes and Boyd 1997, p. 1226; Boyd *et al.* 1995, p. 140; vonHoldt *et al.* 2007, p. 19; vonHoldt *et al.* 2010; Thiessen 2007, p. 50; Sime 2007; Jimenez *et al.* In review, p. 1).

Unlike YNP or the central Idaho Wilderness complex, northwestern Montana lacks a large core refugium that contains large numbers of overwintering wild ungulates and few livestock. Therefore, wolf numbers may not ever be as high in northwestern Montana as they are in the central Idaho or the GYA recovery areas. However, wolves have persisted in this area for over 30 years, the population is robust today, and habitat there is capable of supporting hundreds of wolves (Service *et al.* 2012, Table 4). State management, pursuant to the Montana State wolf management plan (Montana Wolf Management Advisory Council 2003), provides that this population segment will continue to thrive.

The Central Idaho Recovery Area's 53,600 km² (20,700 mi²) includes the Selway-Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness Areas; adjacent, mostly Federal lands, in central Idaho; and adjacent parts of southwestern Montana (Service 1994, p. iv). In January 1995, 15 young adult wolves from Alberta, Canada, were released in central Idaho (Bangs and Fritts 1996, p. 409; Fritts *et al.* 1997, p. 7). In January 1996, an additional 20 wolves from British Columbia were released (Bangs *et al.* 1998, p. 787). Central Idaho contains the greatest amount of highly suitable wolf habitat compared to either northwestern Montana or the GYA (Oakleaf *et al.* 2006, p. 559). Consequently, the central Idaho area population has grown substantially and expanded its range since reintroduction. As in the Northwestern Montana Recovery Area, some of the Central Idaho Recovery Area's increase in its minimum wolf population estimate beginning in 2005 was likely due to an increased monitoring effort by Idaho Department of Fish and Game. The central Idaho population peaked in 2008 and appears to have declined since then (Service *et al.* 2012, Table 4). We estimated a minimum of 797 wolves in 43 breeding pairs in the central Idaho recovery area at the end of 2011 (Service *et al.* 2012, Table 4). This recovery area has contained at least 10 breeding pairs and at least 100 wolves for 14 consecutive years (1998–2011) (Service *et al.* 2012; Table 4).

The GYA recovery area (63,700 km² (24,600 mi²)) includes portions of southeastern Montana, eastern Idaho, and northwestern Wyoming. Portions of Wyoming that are occupied by wolves (Figure 1 above) include most of YNP, Grand Teton National Park, and John D. Rockefeller, Jr. Memorial Parkway; the Absaroka Beartooth, Bridger, Fitzpatrick, Gros Ventre, Jedediah Smith, North Absaroka, Popo Agie, Teton, Washakie, and Winegar Hole Wilderness Areas; the Dubois Badlands, Owl Creek, Scab Creek, and Whiskey Mountain Wilderness Study Areas; and adjacent public and private lands (Service 1994, p. iv). Much of the wilderness portions of the GYA are only used seasonally by wolves due to high elevation, deep snow, and low productivity (in terms of sustaining year-round wild ungulate populations) (Service *et al.* 2012, Figure 3; 71 FR 43410, August 1, 2006). In 1995, 14 wolves representing 3 family groups from Alberta were released in YNP (Bangs and Fritts 1996, p. 409; Fritts *et al.* 1997, p. 7; Phillips and Smith 1996, pp. 33–43). In 1996, this procedure was repeated with 17 wolves representing 4 family groups from British Columbia. Finally, 10 pups were removed from northwestern Montana in a wolf control action and released in YNP in the spring of 1997 (Bangs *et al.* 1998, p. 787). Two of these pups became breeding adults

and their genetic signature is common both in YNP and the GYA (vonHoldt *et al.* 2010, p. 4421). We estimated a minimum of 499 wolves and 38 breeding pairs were in the GYA at the end of 2011 (Service *et al.* 2012, Table 4). By the end of 2011, this recovery area had at least 10 breeding pairs and at least 100 wolves for twelve consecutive years (2000–2011) (Service *et al.* 2012, Table 4).

Wolf numbers in the GYA were relatively stable from 2007 through 2009 with around 450 wolves and between 33 and 38 breeding pairs (Service *et al.* 2012, Table 4). In 2010 and 2011, the GYA population grew to about 500 wolves with 37 to 38 breeding pairs, primarily because numbers of wolves outside YNP in Wyoming grew while wolves in YNP have declined. Specifically, wolves in YNP declined from highs of around 170 wolves and between 11 and 16 breeding pairs in 2003, 2004, and 2007 to around 100 wolves and between 6 and 8 breeding pairs in 2009, 2010, and 2011 (Service *et al.* 1998–2012, Table 2). This decline in YNP likely occurred because: (1) Highly suitable habitat in YNP was saturated with wolf packs; (2) conflict among packs appeared to limit population density; (3) fewer elk occur in YNP than when reintroduction took place (White and Garrott 2006, p. 942; Vucetich *et al.* 2005, p. 259); and (4) suspected outbreaks of disease in 2005 and 2008 (canine distemper (CD) or possibly canine parvovirus (CPV)) reduced pup survival to 20 percent (Service *et al.* 2006, 2009, Table 2; Smith *et al.* 2006, p. 244; Smith and Almberg 2007, pp. 17–20; Almberg *et al.* 2010, p. 2058). YNP predicts wolf numbers in YNP may settle into a lower equilibrium long term (Smith 2012). Maintaining wolf populations safely above recovery levels and promoting demographic and genetic exchange in the GYA segment of the NRM DPS will depend on wolf packs living outside the National Park and wilderness portions of northwestern Wyoming and southwestern Montana (vonHoldt *et al.* 2010, p. 4422).

Genetic Exchange Relative to our Recovery Criteria—Finally, as noted above, the recovery criteria requires the NRM DPS to function as a metapopulation (a population that exists as partially isolated sets of subpopulations) with genetic exchange between subpopulations. The available data conclusively demonstrate that this portion of the recovery criteria (i.e., ''genetic exchange'') is met. Specifically, vonHoldt *et al.* (2010, p. 4412) demonstrated 5.4 effective migrants per generation among the subpopulations from 1995 through 2004 when the NRM region contained between 101 and 846 wolves. Dispersal data of radio-collared wolves also demonstrates genetic exchange satisfying this criteria (Boyd and Pletscher 1999, pp. 1105–1106; Jimenez *et al.* In review, entire). This issue is discussed further in Factor E below.

Conclusion on Progress Towards our Recovery Goals—Given the above, the best scientific and commercial information available demonstrates that all prongs of the recovery criteria are met. The numeric and distributional components of the overarching recovery goal have been exceeded for 12 consecutive years, while the temporal portion of the recovery criterion has been met for 10 consecutive years. Furthermore, Montana, Idaho, and Wyoming have each individually met or exceeded the minimum per-State recovery targets every year since at least 2002 and met or exceeded the minimum management targets every year since at least 2004. It is also worth noting that each of the recovery areas (which were originally used to measure progress towards recovery) have been documented at or above 10 breeding pairs and at least 100 wolves every year since 2005 (and probably exceeded these levels every year since 2002) (Service *et al.* 2012, Table 4). Finally, the available evidence demonstrates that the NRM gray wolf population is functioning as a metapopulation with gene flow between subpopulations. Thus, we conclude that the population has recovered.

Summary of Comments and Recommendations

On October 5, 2011, we opened a 100-day comment period in which interested parties could submit comments or information on the proposal (76 FR 61782). This proposal relied heavily on Wyoming's wolf management plan and noted that conforming changes to State law and regulations would be required to allow Wyoming's plan to be implemented as written. Wyoming modified its State statutes and implementing regulations and amended its wolf management plan in early 2012. On May 1, 2012, we reopened the comment period for 15 days so the public could comment on the proposal in light of these new or revised management documents (77 FR 25664, May 1, 2012).

In total, the comment period was open from October 5, 2011, through January 13, 2012, and from May 1, 2012, through May 16, 2012 (76 FR 61782, October 5, 2011; 77 FR 25664, May 1, 2012). We also held a public hearing and an open house on the proposal on November 15, 2011, in Riverton, Wyoming (76 FR 61782, October 5, 2011). Collectively, during the 115-day comment period, we received approximately 250,000 comments. Comments were submitted by a wide array of parties, including the general public, environmental organizations, groups representing outdoor recreational interests, agricultural organizations, and Federal, State, and local governments.

In accordance with our Interagency Policy for Peer Review in Endangered Species Act Activities (59 FR 34270, July 1, 1994), the proposed rule underwent peer review. Specifically, we contracted with an independent consultant to assemble a scientific peer review to review the proposed rule and its supporting information, including the Wyoming wolf management plan. This report was delivered to the Service and posted online for public review and comment in late 2011. While the peer review report was largely supportive of the scientific basis, analysis, and conclusions of the delisting proposal, the peer review report made a number of suggestions including recommending Wyoming further clarify how it intends to meet its management objectives in the face of multiple human-caused mortality factors. Following revision to the State law, regulations and management plan, we reopened the comment period. Accordingly, the independent expert peer reviewers were provided an opportunity to revise or supplement their review during the reopened comment period.

We reviewed and considered all comments in this final decision. Substantive comments received during the comment periods and new information have been addressed below or incorporated directly into this final rule. Comments of a similar nature are grouped together under subject headings in a series of ''Issues'' and ''Responses.''

Technical and Editorial Comments

Issue 1: Numerous technical and editorial comments and corrections were provided by respondents on various parts of the proposal. Several peer reviewers and others suggested or provided additional literature to consider in the final rule.

Response 1: We corrected and updated this final rule wherever appropriate and possible. We considered scientific publications and other literature recommended by peer reviewers and others. This information was incorporated, as appropriate, into this final rule.

Issue 2: Some comments noted that the population estimates provided would be more accurately described as minimum population estimates because the method of only counting confirmed wolves underestimates the wolf population. A few comments noted that more wolves exist in Wyoming than show up on our description of abundance and illustrations of distribution (i.e., Figures 1 and 2 in the proposed rule (76 FR 61872, October 5, 2011)). Similarly, the peer reviewers suggested that, while these data are indicative of trends, they should not be used to characterize or quantify small year-to-year changes in the population. One peer reviewer recommended that Wyoming's monitoring protocols incorporate detection probabilities into its methodology. Other comments questioned the methods used to estimate population levels (particularly in Montana and Idaho) and suggested the resulting estimates were flawed. A few comments suggested our population estimates in Montana and Idaho were likely too optimistic given the ongoing hunts. Some comments suggested erroneous population estimates undermined the legitimacy of hunting quotas.

Response 2: We agree that end-of-year population estimates should be referred to as population minimums as we only count confirmed wolves, packs, and reproduction. Furthermore, we recognize that while our population data are a reasonably good indicator of relative changes and general trends over time, they should not be used to indicate exact year-to-year changes. We have modified our discussion of population estimates and changes over time throughout the rule to reflect these facts. Similarly, our illustration of wolf packs and their home range only illustrates confirmed packs and their home range if known. Thus, should any undocumented packs or lone wolves exist, they would not be illustrated in Figures 1 and 2. Additionally, because the population is measured in mid-winter when the wolf population is near its annual low point (note the absolute low point occurs in April just before spring litters are born), the average annual wolf population will be higher than these minimal estimates. Although there have been some criticisms of the methods Montana and Idaho employ to estimate minimum wolf abundance, distribution, and trends, we have the utmost confidence these numbers are reliable and, if anything, underestimate actual abundance and distribution at the end of the year. The monitoring methods for each State are further described below.

Montana wolf packs are monitored year round. Common wolf monitoring techniques include direct observational counts, howling and track surveys, use of trail cameras, and public wolf reports. Montana Fish, Wildlife, and Parks seeks to document pack size and breeding pair status of known packs, to verify wolf activity in new areas that can result in new packs forming, to document dispersal to the extent possible and assess connectivity, to determine pack territories, and to identify potentially affected private landowners and livestock producers. Montana Fish, Wildlife, and Parks conducts ground tracking and aerial telemetry 1 to 2 times per month to locate radio-collared animals, determine localized use throughout the year, and document the number of wolves traveling together. Den and rendezvous sites are visited to document reproduction. Additional information is collected, such as identification of private lands used by wolves, identification of public land grazing allotments where conflicts could occur, and common travel patterns. Monthly or semimonthly telemetry flights throughout summer and fall keep track of wolf numbers and status.

At the end of the year, Montana Fish, Wildlife, and Parks compiles information gathered through field surveys, telemetry, and public reporting to estimate the minimum number of wolves in each pack, lone dispersing animals, and successful breeding pairs (an adult male and a female wolf that have produced at least two pups that survived until December 31). The total number of packs is determined by counting the number of packs with two or more individual animals that existed on the Montana landscape on December 31. If a pack was removed because of livestock conflicts or otherwise did not exist at the end of the calendar year (e.g. as the result of disease, natural/illegal mortality, or dispersal), it is not included in the year-end total or displayed on the Montana wolf pack distribution map for that calendar year. The statewide minimum wolf population is estimated by adding up the number of observed wolves in verified packs and known lone animals as of December 31 each year. This is a minimum count and has been reported as such since wolves first began recolonizing northwest Montana in the mid-1980s. Suspected wolf packs are those that could not be verified with confidence. They are not included in the final minimum estimated count. Suspected packs may or may not persist. This information is used to make decisions to address wolf-livestock conflicts, to set wolf hunting and trapping regulations, and to set harvest quotas. We conclude that Montana's monitoring methods and resulting minimum population estimates is more than adequate to inform wolf management decisions, and as a reliable indicator of the population's recovered status.

The Idaho Department of Fish and Game and the Nez Perce Tribe use wolf observation reports from agencies and the public to locate areas of suspected wolf activity and verify wolf presence. Field crews may decide to capture and radio-collar wolves. Radio-collared wolves are then located from the air one or more times per month dependent on a host of factors including funding, personnel, aircraft availability, weather, and other priorities. At the end of the year, they then compile agency-confirmed wolf observations to estimate the minimum number and location of adult wolves and pups that were likely alive on December 31 of that year. The Idaho Department of Fish and Game and the Nez Perce Tribe estimate minimum wolf numbers, distribution, and breeding success by radio-collaring selected packs from representative areas across the State. Wolves are captured through foothold trapping in summer or helicopter darting in winter, and monitored one or more times per month via aerial telemetry. In addition, in recent years Idaho has been placing 20 or more GPS collars on wolves each year; these collars record locations and mortality status several times per day. Pack size and movements are monitored throughout the summer and fall via telemetry. Potential dens and rendezvous sites are identified through telemetry flights (2+ locations in the same area) during summer months (May-September) or ground telemetry and ground searches. Once identified, biologists investigate on the ground to confirm reproduction and count pups.

In winter (December–January), the Idaho Department of Fish and Game and the Nez Perce Tribe increase flight frequencies to twice monthly to obtain pack counts and document breeding pairs. If four or more wolves are counted and reproduction was confirmed in summer, the pack is confirmed as a successful breeding pair unless additional information suggests otherwise (e.g., documented mortality that reduced pack size below two adults and two pups). To estimate state-wide minimum population numbers, the number of wolves detected in documented packs with complete counts is added to an estimate of wolves in documented packs without complete

counts, plus the number of wolves documented in wolf groups that do not qualify as a pack, and adjusted for lone wolves. We conclude that the monitoring methods employed in Idaho and resulting minimum population estimates are more than adequate to inform wolf management decisions and are a reliable indicator of the population's recovered status.

In Wyoming, the WGFD will continue to implement existing protocols and techniques employed by the Service and YNP, which have provided adequate documentation of wolf population status, to determine whether the recovery criteria have been met (WGFC 2011, p. 19). These methodologies are further described in the ''Post-Delisting Monitoring'' section of the rule below and the ''Population Monitoring'' section of the Wyoming Wolf Management Plan (WGFC 2011, pp. 17–21).

The above techniques have proven a reliable indicator of distribution, abundance, and trends, are more than adequate to inform wolf management decisions, and are a reliable indicator of the population's recovered status. That said, we fully recognize and anticipate that monitoring techniques may change through time as new knowledge becomes available and as the parties responsible for monitoring gain additional experience at wolf management and conservation. For example, we anticipate parties responsible for monitoring may use other survey methods and data that are biologically equivalent to the breeding pair definition. Similarly, new techniques may allow for incorporation of a detection probability as part of the abundance estimation protocol.

The Delisting Process and Compliance With Applicable Laws, Regulations, and Policy

Issue 3: A few comments requested that we provide additional opportunities for public comment by holding additional public hearings or extending the public comment period. Some comments objected to the proposed delisting rule's reliance on Wyoming's wolf management plan when Wyoming laws and regulations, which trump the management plan, had not yet been revised. These comments suggested we must reopen the comment period on the proposal once these revised documents were finalized.

Response 3: We provided ample opportunity for public comment on our proposed rule. This included an initial 100-day public comment period, an informational meeting and public hearing, and an additional 15-day public comment period starting May 1, 2012 (76 FR 61782, October 5, 2011; 77 FR 25664, May 1, 2012). All opportunities to comment were announced in the **Federal Register**, posted on our Web site and in our monthly wolf reports, and publicized in local and national press releases. An informational meeting and a public hearing were both held in Riverton, Wyoming, on November 15, 2011 (76 FR 61782, October 5, 2011). Riverton was selected because of its central location and proximity to the portions of Wyoming most affected by decisions on wolf management. Given the fact that we satisfied section 4(b)(5)(E)'s statutory requirement for public hearings on this rule, the limited interest the Riverton hearing garnered (only 10 individuals offered formal testimony at the hearing), and the substantial expense related to conducting public hearings, we declined requests for additional public hearings (Thabault 2011). Furthermore, we reopened the comment period to ensure the public had an opportunity to review and comment on the proposal in light of Wyoming's final regulatory documents, including revised State statutes, revised gray wolf management regulations (chapter 21), new gray wolf hunting season regulations (chapter 47), and an Addendum to the Wyoming Gray Wolf Management Plan (77 FR 25664, May 1, 2012). Collectively, the opportunities provided for public comment ensured all members of the public, including peer reviewers, had sufficient time to review and comment on the proposal in light of all relevant materials. All comments, whether presented at a public hearing or provided in another manner, received the same review and consideration. Approximately 250,000 comments were received during the public comment periods. This significant effort satisfies our statutory responsibility.

Issue 4: Several commenters observed that Wyoming was not a DPS, and suggested that it was a violation of the Act to attempt to delist the Wyoming wolf population alone because the Act precludes listing and delisting entities smaller than DPSs. Specifically, these comments suggested that our analysis of threats improperly focused on the Wyoming wolf population, when we should have considered threats to the entire NRM DPS. Some comments further specified that Congress's recent directive to reissue our 2009 delisting rule, which delisted the NRM DPS except Wyoming, did not grant us the authority to address Wyoming separately. These comments went on to suggest that it would be unlawful to delist wolves in Wyoming if wolves were endangered by any of the five factors in any portion of the NRM DPS at the time of this final rule. These comments went on to assert that wolves in Montana and Idaho were endangered by a variety of factors, most notably inadequate regulation of human-caused mortality affecting both population size and genetic exchange. Idaho's suspension of its 2008–2012 step-down wolf management plan and Montana's and Idaho's hunting seasons were most often mentioned as changes in management threatening the NRM DPS. These comments suggested that all States in the NRM DPS needed to develop enforceable mechanisms to maintain the population's recovered status before delisting in Wyoming could move forward.

Response 4: The approach taken in this final rule is appropriate given the Congressional directive to reissue our 2009 delisting, which created a remnant piece of the NRM DPS. This approach is also consistent with our 2009 delisting determination which stated that ''if Wyoming were to develop a Service-approved regulatory framework it would be delisted in a separate rule'' (74 FR 15123, April 2, 2009, p. 15155). While this rulemaking focuses on Wyoming because it is the only portion of the NRM DPS that remains listed, we consider other portions of the NRM DPS as appropriate. Thus, the conclusions of the previous delisting and the information supporting this determination are incorporated by reference. This information is updated, where necessary, to consider new developments (e.g., Idaho's suspension of its 2008–2012 step-down wolf management plan and Montana's and Idaho's hunting seasons).

Overall, the best scientific and commercial information available overwhelmingly indicates wolves are recovered in Wyoming, the GYA, and throughout the NRM DPS. We strongly disagree with the assertion that wolves in Montana and Idaho are endangered or threatened by inadequate regulation of human-caused mortality or any other factor (singularly or in combination). Similarly, we reject that threats in these areas endanger wolves in Wyoming, the GYA or the NRM DPS. Despite changes in guiding management documents, both Idaho and Montana remain committed to maintaining a healthy wolf population well above minimum recovery levels (also see response on the adequacy of the recovery goals below) (Idaho Legislative Wolf Oversight Committee 2002, pp. 4–5, 18–19; Idaho Fish and Game Commission 2011, pp. 1, 7; Idaho Fish and Game Commission

2012, pp. 8–9; Montana Wolf Management Advisory Council 2003, pp. i,1; Montana Fish, Wildlife and Parks 2012b, pp. 2–3, 8–9, 13–15, 22). State management of this recovered population in Montana and Idaho since delisting has been consistent with our expectations and does not place the population at a meaningful risk of extinction now or within the foreseeable future (Cooley 2011; Jimenez 2012b). In fact, the minimum population estimate for the NRM DPS was greater at the end of 2011 than at the end of 2010 (Service 2012, Tables 4a and 4b). This information validates our determination that State-regulated hunting and trapping has been and will continue to be conducted in a responsible manner (74 FR 15123, April 2, 2009). While we expect population decreases will occur, these reductions will be carefully managed to maintain a recovered gray wolf population throughout the northern Rocky Mountains. In consideration of all threats including those evaluated in our 2009 delisting rule and all new information available since this rule was published, we conclude that the NRM DPS continues to face an extremely low risk of extinction within the foreseeable future, does not meet the definition of threatened or endangered, and therefore, does not warrant listing under the Act.

Nevertheless, this rulemaking is separate and independent from, but additive to, the previous action delisting wolves in the NRM DPS. Wolves in the NRM DPS outside of Wyoming are not protected under the Act; therefore, there is no regulatory need to determine whether the Act's protections should be removed for these wolves. Thus, this rule in no way reopens the status of wolves within the NRM DPS and outside of Wyoming. While we continue to monitor the status of wolves in accordance with the post-delisting monitoring plans discussed in the delisting rule, such a reopening of the wider NRM DPSs status also would be inconsistent with the Congressional direction to proceed with that delisting action. This rule does not affect the status of gray wolves in other states within the NRM DPS or the legal protections provided under state laws.

Since our previous delisting action, the State of Wyoming has addressed the only reason that wolves in Wyoming warranted continued listing under the Act—the adequacy of the State's regulatory measures. By delisting the Wyoming wolf population after wolves in the larger NRM DPS were delisted, we are doing exactly what we said we would do in our previous delisting rule. In our 2009 rule publication, the Service said that ''if Wyoming were to develop a Service-approved regulatory framework it would be delisted in a separate rule'' (74 FR 15123, April 2, 2009, p. 15155). This was also referenced in our proposed rule (76 FR 61782, Oct. 5, 2011, p. 61783). The Service is now doing just that—delisting Wyoming wolves in a separate rule following its approval of Wyoming's management framework.

Issue 5: Several comments suggested that we should prepare an Environmental Assessment or an Environmental Impact Statement pursuant to the National Environmental Policy Act.

Response 5: As a regulation adopted under section 4(a) of the Act, this delisting rule is exempt from National Environmental Policy Act procedures. The Service's decision that the National Environmental Policy Act does not apply in making 4(a) determinations is based on the reasoning in *Pacific Legal Foundation* v. *Andrus,* 657 F.2d 829 (6th Cir. 1981). In this case, the court determined that a National Environmental Policy Act document cannot serve the purposes of the Act, because the Secretary must make listing decisions based only on the five factors set forth in section 4(a) of the Act. The Secretary lacks the discretion to consider environmental impacts beyond those encompassed by the five factors and may use only the best scientific and commercial data in assessing the five factors. Following the *Pacific Legal Foundation* ruling and upon the recommendation of the Council on Environmental Quality, the Service officially determined that National Environmental Policy Act documents are not required for regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). Here, the delisting decision is based on the same five factors used in making listing determinations under section 4(a).

Issue 6: A few comments indicated we must consider the direct and indirect impacts of this decision on other threatened and endangered species. One comment indicated that delisting could result in wolf trapping (as is occurring in Idaho and now being planned in Montana), which could affect Canada lynx (*Lynx canadensis*) or wolverine (*Gulo gulo*). Another comment suggested an unchecked ungulate population would graze on and decimate the Colorado butterfly plant (*Gaura neomexicana* var. *coloradensis*). Similarly, one comment suggested cascading ecological effects would be hindered by State efforts to reduce the wolf population, which in turn would affect water quality for the downstream Colorado pikeminnow (*Ptychocheilus lucius*) and the Razorback sucker (*Xyrauchen texanus*).

Response 6: The Act requires that we base listing and delisting decisions solely on the best available information concerning the status of and threats to the subject species and does not give us discretion to alter listing and delisting decisions because of possible impacts to other species. Moreover, other distinct statutory provisions address the potential effects of the States' management actions on listed species, such as the Act's prohibitions against ''take'' of listed wildlife species or the requirement of Federal agencies to ensure their actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify a listed species' critical habitat.

Nevertheless, we conclude that this decision will not negatively affect other threatened or endangered species. While one comment mentioned trapping and its potential to affect other regional carnivores like Canada lynx (listed as threatened) and wolverine (a candidate for listing), Wyoming has not proposed a trapping season and has no plans to pursue a trapping season within the Trophy Area (Bruscino 2011b). If such a season is considered in the future, it would be regulated by the WGFD and the WGFC and would be limited as such mortality would further limit Wyoming's hunt quotas, which are already expected to be modest once desired population reductions are achieved. Moreover, the State must comply with applicable laws in performing any trapping actions: if any potential incidental take of listed species were to occur in connection with trapping, the State must comply with the Act's prohibition against ''take'' or obtain an incidental take permit through the permitting provisions of section 10.

Furthermore, the other listed species mentioned by the commenter (Colorado butterfly plant, Colorado pikeminnow, and razorback sucker) occur far from occupied wolf range. For example, Colorado butterfly plant occurs in southeastern Wyoming and north-central Colorado. Similarly, neither the Colorado pikeminnow nor the razorback sucker occurs above Flaming Gorge in Wyoming's share of the Green River. Thus, any theoretical cascading ecological effects caused by the wolf delisting (e.g., increased herbivory and impacts to water quality) would be extremely unlikely to affect these species.

Northern Rocky Mountain (NRM) Gray Wolf Recovery Goals

Issue 7: Some comments expressed confusion about our minimum recovery criteria and the minimum management targets.

Response 7: The Service's current recovery goal for the NRM gray wolf population is 30 or more breeding pairs (an adult male and an adult female that raise at least two pups until December 31) comprising 300+ wolves in a metapopulation (a population that exists as partially isolated sets of subpopulations) with genetic exchange between subpopulations (Service 1994; Fritts and Carbyn 1995). Within this overall goal, Idaho, Montana, and Wyoming are each responsible for maintaining at least 10 breeding pairs and at least 100 wolves in mid-winter. To provide that these minimums are not compromised, we required Montana and Idaho to each manage for a safety margin of at least 15 breeding pairs and at least 150 wolves in mid-winter. In Wyoming, we agreed that the State could manage for a population floor of at least 10 breeding pairs and at least 100 wolves outside YNP and the Wind River Indian Reservation in mid-winter, and allow YNP and the Wind River Indian Reservation to provide the remainder of the buffer above the minimum recovery goal. In order to meet these goals and allow for continued management flexibility, all three States intend to manage for a population comfortably above their minimum management targets.

Issue 8: Numerous comments questioned the adequacy of the NRM DPS's recovery goals referring to them in such terms as ''outdated'' and ''unscientific.'' These comments further suggested that delisting based on these goals violated the Act's requirement to rely on the best available science. Some of these comments offered their own assessment of what constitutes an acceptable recovery goal (ranges from around current population levels to 6,000 wolves were most frequently mentioned). Others suggested smaller localized population levels were acceptable within a larger, connected metapopulation structure. Some comments questioned the adequacy of the NRM DPS's recovery goals by noting that these goals are lower than the Western Great Lakes population when it was listed, lower than the Western Great Lakes recovery goals, and lower than Western Great Lakes potential status review triggers. Some comments opined that the population meets the International Union for the Conservation of Nature's (IUCN) standard for a ''vulnerable'' species and, therefore, concluded our recovery criteria are inadequate and that the population is still endangered.

Response 8: Our recovery and post-delisting management goals were designed to provide for the long term conservation of the NRM gray wolf population by ensuring sufficient representation, resilience, and redundancy. As we described earlier in this final rule, we have expended considerable effort to develop, repeatedly reevaluate, and, when necessary, modify, these recovery goals (Service 1980; Service 1987; Service 1994, appendix 8 and 9; Fritts and Carbyn 1995; Bangs 2002, entire).

The Service contracted for an independent peer review of our proposed delisting and four of the five reviewers concurred with our determination that the Wyoming wolf population, whose management is to be driven by the recovery goals, would continue to be a viable population after delisting (Atkins 2011, pp. 6, 10; Atkins 2012, p. 3). The dissenting reviewer's primary issue was not with the recovery criteria, but rather with Wyoming's management structure and whether the recovery criteria would be met (an issue discussed elsewhere in this rule). Those reviewers who specifically addressed the recovery criteria were unanimously supportive of the criteria (Atkins 2011, appendix B). For example, Dr. Scott Mills stated that the thresholds for delisting are consistent with current state-of-the-art viability analysis science and are an appropriate standard for delisting (Atkins 2011, p. 60). Similarly, Dr. David Mech concluded the recovery criteria still seem adequate (Atkins 2011, p. 73). None of the reviews provided by the independent peer reviewers challenged the adequacy of the recovery criteria (Atkins 2011, appendix B).

Although numerous comments offered alternative recovery goals, we do not find the information presented to be persuasive, and do not feel revision to the recovery goals is warranted at this time. Most of these comments indicated a need for an effective population of at least 500 breeding individuals long term and a total population of ~1,500 to 6,000 individuals long term either within the NRM DPS or the western United States. However, these comments were based upon minimum viable population theories and models that assume an isolated population. This underlying premise is inappropriate within the NRM region, because NRM wolves are not isolated and are instead genetically connected to vast wolf populations north of the United States-Canadian border.

Specifically, the NRM DPS represents a 650-km (400-mi) southern range extension of a vast contiguous wolf population that numbers over 12,000 wolves in western Canada and about 65,000 wolves across all of Canada and Alaska (Committee on the Status of Endangered Wildlife in Canada 2001, pp. iii, v–vi, 13, 21–22, 30–32, 38, 42, 44–46; Boitani 2003, p. 322). This connectivity is demonstrated by the fact that recovery in the NRM DPS began when wolves from Canada naturally dispersed into the northwestern Montana recovery area and recolonized this area (Ream *et al.* 1989; Boyd *et al.* 1995; Pletscher *et al.* 1997; Boyd and Pletscher 1999). Routine dispersal of wolves has been documented among NRM wolves and adjacent Canadian populations since then demonstrating that wolves in these areas are demographically and genetically linked (Pletscher *et al.* 1991, pp. 547–548; Boyd and Pletscher 1999, pp. 1105–1106; Sime 2007; vonHoldt *et al.* 2010, p. 4412; Jimenez *et al.* In review, entire). Connectivity to the GYA is discussed in more detail below, but is also sufficient to demonstrate and maintain the region's metapopulation structure.

Taking into account connectivity to adjoining Canadian populations, the effective population targets mentioned above have been greatly exceeded. While some contend that these effective population targets should be achieved strictly within the NRM DPS or the western United States, we conclude that it is biologically appropriate to consider the contribution of these connected wolf populations to the NRM DPS's long term viability. Connectivity to Canadian wolf populations has long been a central consideration in developing, revising, and validating our recovery goals (Service 1994, pp. 41–42 of appendix 9; Bangs 2002, p. 3).

Furthermore, model predictions should be used cautiously due to the poor quality of data used in most models, inaccuracies in estimating changes in demographic rates, and insufficient dispersal data (Beissinger and Westphal 1998, p. 821). To estimate a minimum viable population accurately, a population viability analysis must be able to overcome the likelihood that measures of potential threats to persistence are likely to be imprecise (Soule 1987, pp. 1–10; Boyce 1992, 1993). Reed et al. (2002, p. 7) also cautioned that model structure and data quality can affect the validity of population viability analysis models, and that population viability analysis should not be used to determine

minimum viable population or to estimate specific probability of extinction. Population viability analysis could more appropriately be used to analyze relative rates of extinction (Beissinger and Westphal 1998, p. 821) or how population growth and persistence may be affected by management actions (Reed et al. 2002, p. 7). Therefore, the available modeling data do not persuade us that the recovery criteria we are using are incorrect.

Some comments asserted that the NRM gray wolf recovery goals are inadequate because they are lower than population levels in the Western Great Lakes when that population was listed (32 FR 4001, March 11, 1967; 43 FR 9607, March 9, 1978). We do not find such arguments persuasive because listing decisions are not based on abundance and are instead based on extinction risk informed by threats and population trajectory. For example, although whitebark pine (*Pinus albicaulis*) likely numbers in the millions, the Service recently found this species to be warranted for listing due to the severe threats it faces and its resulting population trajectory (76 FR 42631, July 19, 2011). Similarly, the decisions in 1978 to list wolves in the Great Lakes as endangered and to reclassify the Minnesota population as threatened were based on ongoing threats, population trends, and the desire for additional population redundancy (Service 1978, pp. 7, 8, 10; 43 FR 9607, March 9, 1978). Neither decision cited the overall population level as an important factor to justify the threatened or endangered determination. Therefore, we do not agree with the assertion that Western Great Lakes wolf population levels at the time of listing as endangered or threatened provide any evidence that our recovery criteria for wolves within the NRM are too low.

Similarly, some comments opined the NRM gray wolf recovery goals are inadequate because they are lower than the Western Great Lakes population's recovery goals. Again, we do not find this argument compelling. The Western Great Lakes recovery plan indicated recovery would be achieved when: (1) The survival of the wolf in Minnesota is assured, and (2) at least one viable population (as defined below) of eastern timber wolves outside Minnesota and Isle Royale in the contiguous 48 States is reestablished. The recovery plan did not establish a specific numerical criterion for the Minnesota wolf population. While the plan did identify a goal ''for planning purposes only'' of 1,251–1,400 wolves for the Minnesota population (Service 1992, p. 28), the plan explicitly states that the region's total goals ''exceed what is required for recovery and delisting of the eastern timber wolf'' (Service 1992, p. 27). This planning goal was driven not by minimum estimates of viability, but instead by: Existing populations of 1,550 to 1,750 wolves in Minnesota (Service 1992, p. 4); the plan's objective to maintain existing populations (Service 1992, p. 24); and existing planning goals by other land managers within Minnesota (Service 1992, p. 27). However, population viability and sustainability are explicitly discussed in the plan. The plan states a ''viable population'' includes either: (1) An isolated, self-sustaining population of 200 wolves for 5 successive years; or (2) a self-sustaining population of 100 wolves within 100 miles of [the other] Western Great Lakes population (Service 1992, pp. 4, 25–26). Furthermore, the plan stated that ''a healthy, self-sustaining wolf population should include at least 100 interbreeding wolves * * * [which would] maintain an acceptable level of genetic diversity'' (Service 1992, p. 26). Based on the above, we find there is no basis for concluding that the NRM and Western Great Lakes recovery goals are somehow contradictory. Instead, we find that the recovery criteria for the NRM and Western Great Lakes populations are similar in regards to the minimum number of wolves needed to maintain a viable population, their reliance on multiple, adjoining connected populations, and the relative proximity between subpopulations.

Furthermore, some comments asserted that our recovery goals and our relisting criteria are inadequate because they are lower than the status review triggers for Western Great Lakes wolves. However, the Western Great Lakes status review triggers were selected, not because they are indicative of population viability (again, the plan's conclusion regarding viability is discussed above), but rather because they would represent significant declines, which could be evidence of a serious problem (Service 2008, pp. 10–11; Ragan 2012). Given the above, we do not find persuasive the assertion that our recovery goals or our status review triggers are too low because they are lower than other wolf population's triggers for relisting consideration. To the extent that these comments advocate for a more responsive status review trigger in the NRMs, we offer our strongest assurance that we will consider relisting if we ever obtain sufficient evidence that the species may meet the definition of threatened or endangered and, as required by section 4(g)(2) of the Act, we will make prompt use of the Act's emergency listing provisions if necessary to prevent a significant risk to the well-being of the population.

Finally, we find unfounded the assertions that the standards of the IUCN indicate that the NRM population currently meets the IUCN's ''vulnerable'' standard or that IUCN standards indicate our recovery criteria are inadequate. First, the IUCN assessed the gray wolf's status in 2010 and determined the species fell into the ''species of least concern'' category (Mech & Boitani 2010, p. 1). While such assessments routinely provide localized status determinations, no such determination was bestowed upon wolves in the NRM region. Furthermore, following receipt of this comment, we contacted Dr. Mech, who led the team that performed IUCN's 2010 North American gray wolf assessment. Dr. Mech disagreed with the assertion that the NRM population satisfies IUCN's ''vulnerable'' standard (Mech 2012). Dr. Mech went on to indicate that any application of the IUCN's standards to the NRM DPS was inappropriate without considering the large, adjoining, and connected Canadian wolf populations, and that if such populations were included in the assessment, the NRM region's wolf population would fall into the ''species of least concern'' category (Mech 2012). Given the available information, we conclude that the IUCN standards do not indicate that our recovery criteria warrant revision.

After evaluating all available information, we conclude that the best scientific and commercial information available continues to support the ability of these recovery goals to provide that the population does not again become in danger of extinction.

The Geographic Scope of Recovery and the Impact of This Decision on Range

Issue 9: Some comments suggested we should have pursued a single lower-48-State recovery plan instead of regional recovery plans in the NRMs, the Western Great Lakes, and the Southwest. These comments suggested our approach to recovery planning focused only on easy to recover areas and improperly wrote off more difficult to recover regions. A few comments suggested our recovery plans were inadequate because they did not cover or include specific criteria for ''significant wolf habitat'' (e.g., Colorado). Some comments suggested we should reintroduce wolves across

numerous regions of the country to reestablish them across their historical range. Suggested areas for reintroduction included potentially suitable habitat like the southern Rockies, the Pacific Northwest, the Sierra Nevadas, and New England, as well as unsuitable habitat like Central Park in New York City. Other comments supported the national delisting of wolves. A number of comments suggested wolves should not have been listed or recovered anywhere in the lower 48 States, because the species (*Canis lupus*) is abundant in Canada, Alaska, and across Eurasia and the reintroduced population's subspecies (*Canis lupus occidentalis*) is abundant across western Canada and into Alaska.

Response 9: Possible future wolf recovery efforts, particularly any additional efforts outside of the NRM DPS, are beyond the scope of this rulemaking because such actions are not part of this listing (NRM DPS) and not necessary to provide for a NRM DPS that is neither endangered nor threatened throughout all or a significant portion of its range.

Nevertheless, we will clarify our position on these issues. Gray wolves were originally listed as subspecies or as regional populations of subspecies in the coterminous United States and Mexico, including populations in the Western Great Lakes region, the NRM region, and the Southwest (32 FR 4001, March 11, 1967; 38 FR 14678, June 4, 1973; 39 FR 1171, January 4, 1974; 41 FR 17740, April 28, 1976; 41 FR 24064, June 14, 1976). When the science began to cast doubt on the validity of the subspecific taxonomy, we reclassified these listings into a single unit of the species (43 FR 9607, March 9, 1978). This approach was undertaken to ''most conveniently'' handle this listing, and was not intended to signal an intention to pursue recovery across the entire lower 48 States (43 FR 9607, March 9, 1978). In fact, the 1978 reclassification stated that ''biological subspecies would continue to be maintained and dealt with as separate entities'' (43 FR 9607, March 9, 1978). Accordingly, regional recovery plans were developed and implemented in the Western Great Lakes in 1978 (revised in 1992) (Service 1978, entire; Service 1992, entire), the NRM region in 1980 (revised in 1987) (Service 1980, entire; Service 1987, entire), and the Southwest in 1982 (this plan is currently being revised) (Service 1982a, entire). This approach was an appropriate use of our discretion to determine how best to proceed with recovery actions. These recovery efforts covered all gray wolf populations confirmed in the lower 48 States since passage of the Act, and either have worked, or are working, to conserve all of the genetic diversity remaining in wolves south of Canada after their widespread extirpation (Leonard *et al.* 2004, entire). Although we have satisfied our recovery planning and implementation responsibilities, and any additional recovery planning and implementation (beyond that already underway) would be discretionary, this issue is being evaluated further by the Service on a larger, national scale and will likely be addressed in a separate action in the future.

Similarly, the Act does not require us to restore wolves to a majority of their U.S. historical range or to a majority of the available suitable habitat. Instead, the Act requires that we work to recover species to levels that no longer meet the definition of threatened or endangered. For some species, this level may require range expansion, but the amount of expansion is driven by a species' biological needs affecting viability and sustainability, and not by an arbitrary percent of a species' historical range or suitable habitat. Many other species may be recovered in portions of their historical range by removing or addressing the threats to their continued existence. Other species may be recovered by a combination of range expansion and threats reduction. There is no set formula on how recovery must be achieved. Within the NRM DPS, each of the States and each of the recovery areas meaningfully contributes to the population's viability by providing resiliency, redundancy, and representation (these terms are described further later in this rule; see also Shaffer and Stein 2000, entire). Across the lower 48 States, 2 other wolf populations (Western Great Lakes DPS and Mexican wolf) provide additional resiliency, redundancy, and representation (Shaffer and Stein 2000, entire). To the extent that additional restoration beyond that required by the Act is desired by some members of the public, we recommend working with State or Tribal wildlife agencies and other land managers to achieve these objectives.

Conversely, we do not agree with comments that the gray wolf should not have been listed because of its abundance outside of the lower 48 States. When Congress created the Act, it sought to provide for ''the possibility of declaring a species endangered within the United States where its principal range is in another country, such as Canada or Mexico, and members of that species are only found in this country insofar as they exist on the periphery of their range'' (H.R. Rep. No. 93–412, at 10 (1973)). Moreover, in authorizing the listing of DPSs under the Act, Congress recognized ''that there may be instances in which the Service should provide for different levels of protection for populations of the same species. For instance, the U.S. population of an animal should not necessarily be permitted to become extinct simply because the animal is more abundant elsewhere in the world'' (S. Rep. No. 96–151, 96th Cong., 1st Sess. (1979), reprinted in A Legislative History of the Endangered Species Act, 97th Cong., 2d Sess. 1397 (1982)). Recovering gray wolves in multiple populations within the lower 48 States satisfies this Congressional intent.

Issue 10: A number of comments provided other reasons why our approach to designating and delisting in the NRM DPS was erroneous, having accomplished recovery over only a small portion of the species' historical range. Some comments suggested the NRM DPS was too expansive and should not have included unrecovered habitat (e.g., eastern Montana and southern or eastern Wyoming). These comments expressed the concern that our decision to delist this expansive DPS would preclude wolf recovery in these areas. Others thought the NRM DPS should include additional surrounding areas and that recovery and recolonization should occur across the entire DPS before delisting is allowed to move forward (e.g., northern Colorado should be included in the DPS, but delisting anywhere should be precluded until Colorado is also recovered). Other comments suggested areas like southern and eastern Wyoming once supported viable wolf populations and represented ''a significant portion of range.'' A number of comments disputed our designation of most of these areas as unsuitable habitat, stated that we have failed to show that these areas could not biologically support wolves, and suggested that our definition of suitable habitat improperly focused on regulatory, sociological, economic, and political factors, instead of purely biological factors. A few comments noted that wolves and wolf packs can and do occasionally occupy these areas. Some comments asserted that recovery in these historically occupied areas was important to preserve unique localized adaptations that contribute to the species' long term persistence. These comments opined that wolves are endangered in this ''significant portion of range'' and, therefore, must continue to be listed as endangered statewide.

Response 10: As described in our 2009 final rule, we determined the NRM DPS was biologically based,

appropriate, and developed in accordance with the Act and the Distinct Vertebrate Population Segment Policy (74 FR 15123, April 2, 2009). In essence, the boundaries included all gray wolves that were reasonably assumed to be part of the NRM population at the time of its designation (74 FR 15123, April 2, 2009). No animals that have dispersed within the United States beyond the boundaries of the DPS have ever returned, meaning those animals are, essentially, lost to and no longer part of the population. The DPS boundaries are also further supported by the fact that they are consistent with over 30 years of recovery efforts in the NRMs in that: (1) The DPS approximates the U.S. historical range of the originally listed NRM gray wolf subspecies (39 FR 1171, January 4, 1974; Service 1980, p. 3; Service 1987, p. 2); (2) the DPS boundaries are inclusive of the areas focused on by both NRM recovery plans (Service 1980, pp. 7–8; Service 1987, p. 23) and the 1994 Environmental Impact Statement (Service 1994, Ch. 1 p. 3); and (3) the DPS is inclusive of the entire Central-Idaho and Yellowstone Nonessential Experimental Population areas (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 50 CFR 17.84 (i) & (n)).

We based our definition of suitable habitat on the best scientific and commercial information available regarding pack persistence (this issue is discussed in more detail in Factor A below). Although wolves historically occupied the entire area of the DPS, these distant peripheral areas (e.g., eastern Montana and southern or eastern Wyoming) have been modified for human use and are no longer suitable habitat to support wolf packs and wolf breeding pairs. These distant peripheral areas do not support extant wolf populations and do not play a meaningful role in achieving or sustaining recovery. Although some short term occupancy and use of some peripheral areas does occur, it is minimal and, consistent with our assessment of suitability, wolves have not persisted in these areas even under the Act's protective regime. The purpose of the Act is to conserve endangered species and the ecosystems on which they depend. We have recovered NRM wolf populations in areas where portions of the ecosystem on which they depend still exist or could be restored. Large portions of the historical range (e.g., eastern Montana and southern or eastern Wyoming) where the ecosystem historically supported wolves have been removed and replaced by human uses including agriculture, livestock, and urbanization. Wolf recovery in these portions of the species' historical range is unnecessary, because there is more than enough suitable habitat (e.g., mainly public lands containing abundant wild ungulates) to support many times over the minimum requirements of a recovered and viable wolf population. Therefore, additional recovery efforts in these areas are beyond what the Act requires.

Issue 11: Numerous comments expressed concern that this action, if finalized, would reduce wolf dispersal into surrounding areas. Many of these comments specifically objected to the impact Wyoming's large predator area would have on dispersal across southern Wyoming to Colorado and Utah. One comment opined that Colorado represented a significant portion of the NRM gray wolf range. Some comments stated that Mexican wolf recovery was on the brink of failure, in part due to inbreeding depression, and that Wyoming's predator designation would exacerbate the genetic isolation of the Mexican wolf population. While most of these comments focused on the impact of the predator area, some comments expressed concern related to State management intending to reduce population levels, which would in turn reduce the number of dispersing wolves and further inhibit recolonization of nearby unoccupied areas (e.g., Washington and Oregon).

Response 11: First, additional wolf restoration from NRM gray wolf stock is not necessary in any of the surrounding areas to achieve or maintain recovery of the NRM DPS because the NRM DPS is of more than adequate size and includes more than adequate habitat to achieve and maintain a recovered wolf population. This conclusion makes restoration in these areas irrelevant to this final decision. Because Colorado and Utah are both beyond the range of the NRM gray wolf population and unnecessary for viability or recovery of the NRM gray wolf population, areas like Colorado and Utah do not represent a significant portion of the NRM gray wolf's range. Additionally, listing and delisting decisions are based solely on the status of the subject species, and, because the NRM DPS is a separate listing from other U.S. wolves (a separate ''species'' as defined in section 3(16) of the Act), impacts to surrounding areas are beyond the scope of this rulemaking. Furthermore, as discussed above, the Act does not require that we recover the wolf everywhere it existed historically or even every place that currently can support wolves. Instead, the Act requires that we achieve sufficient recovery to provide for the viability of the subject species. This goal has been achieved in the NRM DPS and the Western Great Lakes DPS. This goal is still a work in progress in the Southwest. To the extent that additional restoration beyond that required by the Act is desired by some members of the public, we recommend working with State or Tribal wildlife agencies and other land managers to achieve these objectives.

In fact, State leadership is facilitating wolf restoration in Oregon and Washington. Despite not being identified as a focus for wolf recovery in any one of the Service's existing recovery plans, both States are allowing and facilitating wolf restoration (Oregon Department of Fish and Wildlife 2010, entire; Wiles *et al.* 2011, entire). As of this writing, Washington now has seven confirmed packs and four additional suspected packs including five confirmed and three suspected packs within the delisted NRM DPS and two confirmed and one suspected packs west of the DPS (Cooley 2012). Similar trends are also occurring in Oregon, which has four confirmed packs within the delisted NRM DPS and a few dispersers outside of the DPS (Cooley 2012). State protections are the primary mechanism contributing to wolf recovery in eastern Oregon and eastern Washington because Federal protections have been removed in these areas. Wolf restoration in the delisted eastern portions of these States will likely contribute to recovery in the remainder of these States. We expect dispersal into Oregon and Washington to continue unimpeded by this decision.

Wolf restoration into Colorado and Utah has been slower with only a few confirmed dispersers and no confirmed packs forming or reproducing to date. In order for dispersal into surrounding unoccupied habitat to be biologically meaningful, both a male and a female disperser must cross expansive areas of suitable and unsuitable habitat, enter the same area and find each other before continuing on to other areas, and survive long enough to reproduce and successfully raise young. Unlike dispersal into Oregon and Washington, wolves must cross greater distances to get to Colorado and Utah, and dispersing wolves traversing unsuitable habitat, even under the Act's protections, tend to have lower survival rates (Smith *et al.* 2010, p. 627; Jimenez *et al.* In review, entire). These obstacles precluded natural recolonization even when Federal protections were in place. After delisting, we expect existing

trends to continue (i.e., occasional dispersers with the odds being against pack formation and reproduction).

Regarding Mexican wolf conservation, at this point in time, we are managing the Mexican wolf population without infusion of genes from other sources and do not see isolation from other wolves as a negative (Brown 2012). If infusion of genes from northern wolves is determined to be beneficial in the future, we would want to carefully evaluate both the process and the effect (Brown 2012).

General Comments on Whether To Delist

Issue 12: We received comments from many people expressing either support for, or opposition to, delisting. Many of these comments (including people on both sides of the issue) stated a belief that their opinion was the majority and that we should do a better job of listening to the wants and desires of the American people. Some suggested that their comment should count more or less than other similar comments.

Response 12: The decision whether to finalize this action is not a vote. Listing and delisting decisions must be made based solely on the best scientific and commercial data available. In this case, the best scientific and commercial data available demonstrate that the Wyoming wolf population and the greater NRM gray wolf DPS is recovered, is likely to remain recovered, and is unlikely to again become threatened with extinction within the foreseeable future. Therefore, we are finalizing our proposal.

Issue 13: Some comments objecting to the delisting noted that the results of an independent scientific peer review, contracted by the Service to review the proposed delisting and the supporting documents, found issues with the Wyoming Gray Wolf Management Plan. This report stated, ''The Plan, as written, does not do an adequate job of explaining how wolf populations will be maintained, and how recovery will be maintained'' (Atkins 2011, p. iii). A few comments questioned the objectivity of the peer review suggesting we selected reviewers that we knew would support our proposal.

Response 13: Following the release of the first peer review report (Atkins 2011, entire), Wyoming developed a series of documents to clarify its management authorities, responsibilities, and intentions. Wyoming specifically considered and responded to concerns expressed by peer reviewers when developing these documents (Atkins 2012, p. 4; WGFC 2012, p. 1). In this regard, Wyoming's management intentions and processes are more clearly defined and laid out today because of this review (Atkins 2012, p. 4; WGFC 2012, entire). Thus, we conclude that management of wolves after delisting has been improved and has a greater likelihood of always meeting minimum management targets as a result of this review. Additionally, the final rule was improved through careful consideration of all comments and information provided. We appreciate the work of the peer reviewers on this issue.

Although not unanimous, most of the reviewers ultimately supported our conclusion that the Wyoming wolf population is likely to be maintained above recovery levels (Atkins 2012, Table 1). While our rulemaking process does not depend on the ''vote'' of the peer reviewers, and instead reflects our determination of what the best scientific and commercial information available indicates, on the whole, we view the final peer review report (Atkins 2012, entire) as an endorsement of our conclusions (caveats noted).

Regarding the selection of the peer reviewers, a third-party contractor, Atkins Global, selected the reviewers based on qualifications and experience related to gray wolf life history and biology, predator/wildlife management, population viability, genetics, and subpopulation integration within metapopulations (Atkins 2011, pp. 9–10). Reviewers selected were also free from any conflict of interest and independent of the Service; the Idaho Department of Fish and Game; Montana Fish, Wildlife, and Parks; and all Wyoming State agencies. These peer reviewers were not selected to achieve a certain position, nor did they reach a consensus. Instead, the diversity of perspectives, experience, and qualifications achieved the desired outcome of ensuring a comprehensive and critical evaluation of the available information, our proposal, and our conclusions. This process and the report it generated benefitted the rulemaking process, improved this final rule, and more than satisfied applicable peer review standards.

Issue 14: A number of comments accused us of accepting a Wyoming management plan that was nearly identical to the previously rejected plan. A few comments noted that we previously determined the old regulatory framework would meaningfully affect the NRM DPS's resiliency, redundancy, and representation, and decrease the ability to conserve the species. Other comments maintained that previous Wyoming post-delisting regulatory frameworks were adequate and rejected on political, rather than, scientific grounds. Some of these comments pointed to the November 18, 2010, Wyoming District Court ruling as evidence that the previous wolf management plan was sound (*Wyoming et al.,* v. *U.S. Department of the Interior, et al.,* 2010 U.S. Dist. LEXIS 122829). A few comments accused us of changing the requirements for Wyoming after an agreement was reached and expressed frustration with our unwillingness to defend the 2008 NRM DPS delisting, which included Wyoming (73 FR 10514, February 27, 2008). Others suggested that previous issues with the State's post-delisting regulatory framework have been resolved and delisting must again proceed. More specific criticisms related to this issue are discussed in more detail in subsequent comments below.

Response 14: While Wyoming's approach to wolf management may seem similar to previously rejected Wyoming wolf plans, Wyoming's revised approach to wolf management provides substantially more protection for wolves over previous versions. The April 2009 rule noted three primary areas of concern with Wyoming's previous management plan including: (1) The size and permanency of Wyoming's Trophy Area; (2) conflicting language within the State statutes concerning whether Wyoming would manage for at least 15 breeding pairs and at least 150 wolves, exactly 15 breeding pairs and 150 wolves, or only 7 breeding pairs and 70 wolves; and (3) liberal depredation control authorizations and legislative mandates to aggressively manage the population down to minimum levels (74 FR 15123, April 2, 2009). Our conclusions on several of these issues were challenged in the Wyoming District Court. Although the Wyoming District Court disagreed with our determinations on several of these issues, it did not determine the previous Wyoming wolf management framework was adequate and did not order us to accept the plan. Instead, it ordered us to reconsider our position on Wyoming's approach to wolf management in light of several conflicts within the record (including our position that a statewide Trophy Area should be pursued in Wyoming). Subsequent to this order, the Service and the State reinitiated discussions on revisions to Wyoming's wolf management framework that would satisfy the standards of the Act and allow delisting to again move forward. The results of this process led to development of a revised wolf

management plan, and are incorporated in this rule. Through this process, Wyoming improved its management plan in each of the major areas of concern outlined above.

In 2008, we determined Wyoming's Trophy Area was adequate (73 FR 10514, February 27, 2008). However, a 2009 Montana District Court decision correctly noted that Wyoming had retained the ability to diminish the size of this unit and to revise its boundaries in a manner the Service had previously determined to be unacceptable (71 FR 43410, August 1, 2006; *Defenders of Wildlife, et al.,* v. *Hall, et al.,* 565 F.Supp.2d 1160 (D. Mont. 2008)). In response, the State statute was revised, and the existing Trophy Area was made permanent in 2012. As discussed in more detail in subsequent sections of this rule, the permanent Trophy Area is of sufficient size to support a recovered wolf population in Wyoming, under the management regime developed for this area. Furthermore, in response to concerns about gene flow and genetic connectivity, the Wyoming statute was revised to expand the trophy game portion of the State approximately 80 kilometers (km) (50 miles (mi)) south for 4 and a half months during peak wolf dispersal periods. This additional protected area will benefit natural dispersal. The adequacy of this area to meet the wolf population's biological needs is discussed in more detail in subsequent comments.

Another major difference between the previous management plan and the current one is Wyoming's firm commitment to the minimum recovery goals. Wyoming's previous wolf management framework contained conflicting language within the State statutes concerning whether Wyoming would manage for at least 15 breeding pairs and at least 150 wolves, exactly 15 breeding pairs and 150 wolves, or only 7 breeding pairs and 70 wolves outside of YNP. The revised approach commits Wyoming to maintaining a population satisfying the entire minimum recovery goal outside of YNP and the Wind River Indian Reservation, and to maintain a buffer above these minimum levels, in order to provide that the minimum targets are not compromised (WGFC 2011, p. 24; WGFC 2012, pp. 3–5). These statewide totals will be further buffered by wolves in YNP, which have ranged from 96 to 174 wolves and from 6 to 16 breeding pairs from 2000 to the end of 2011 (the most recent official wolf population estimates available). In the future, YNP wolf populations are predicted to settle between 50 to 100 wolves and 5 to 10 packs with 4 to 6 of these packs meeting the breeding pair definition annually (Service *et al.* 2000–2010, Table b; Smith 2012). This wolf management strategy is a vast improvement over the previous agreement and provides adequate assurances that the minimum recovery goal will not be compromised. Wyoming's numeric minimum management targets are discussed in more detail in subsequent comments.

Additionally, Wyoming's management framework has corrected what we had concluded was an overly aggressive management regime. After our 2008 delisting became effective, the State issued regulations that treated the entire Trophy Area as a chronic depredation area and allowed significant take across the entire region until the population outside YNP was reduced to 6 breeding pairs. This, and related concerns, have been addressed. The State statute now mandates that limits on human-caused mortality be put in place to ensure that minimum agreed-upon management targets and minimum recovery levels are not compromised.

Other significant improvements include a commitment to monitor and manage to provide adequate levels of genetic exchange; defense-of-property regulations that are similar to our nonessential experimental population rules; and a change in the State statute that ensures wolves in the permanent trophy game portions of Wyoming will not be treated as predatory animals.

Given the above changes, we conclude that Wyoming's revised wolf management framework is adequate and will maintain the population's recovered status.

Issue 15: Many commenters expressed their opinion that NRM and Wyoming wolves remained endangered, were teetering on the edge of extinction, or would again become endangered if the Act's protections were removed. One comment indicated this decision would jeopardize the wolf population and, thus, violated section 7 of the Act. Many comments objected to removing protections regardless of extinction risk. Other commenters suggested delisting was in order and that they supported compromise, but that this did not represent an acceptable compromise. A number of commenters noted a desire to continue to be able to hear wolves in the wild and for their grandchildren to be able to have the same experience. Several comments opined that delisting could cause irreversible harm. Many comments asserted we had abandoned sound science in our decision-making process, and had instead taken anti-wildlife policies by yielding to political and stakeholder pressure. A few comments asserted that political pressure was responsible for our agreement with Wyoming's plan. Other comments noted our support for hunting as evidence of our anti-wolf bias. A few comments suggested allowing us to make this decision was a conflict of interest, and asserted that we get a major portion of our budget from hunting-related revenue. Some of these comments offered specific legal or policy arguments supporting their position (these comments are discussed in more detail below), while others were based on moral or ethical positions or general distrust for our agency. Many comments suggested we should reengage Wyoming to negotiate a better deal for wolves. Many other comments viewed Wyoming's approach to managing the wolf population as a good compromise balancing the needs of ranchers, hunters, wolves, and other wildlife. Many comments supported delisting, suggesting wolf populations are well above recovered levels, that delisting is long overdue, and that State management will maintain the wolf population's recovered status.

Response 15: By nearly any measure, the NRM gray wolf population and all of its subpopulations are recovered and will remain recovered under the management frameworks now in place in Wyoming, Idaho, and Montana. Wolves are no longer in danger of extinction either now or in the foreseeable future and will not meet the definitions of a threatened or an endangered species if delisting occurs. We are proud to say that successful recovery efforts and State, Tribal, and Federal management after delisting ensures that the public will continue to be able to hear NRM wolves howl in the wild for countless future generations to come. In short, the regulatory frameworks now in place give us great confidence that this success story for American conservation and the Act will be maintained.

The most recent official minimum population estimate shows that the NRM wolf population contains more than 1,774 adult wolves and more than 109 breeding pairs. Most of the suitable habitat is now occupied and likely at, or above, long term carrying capacity (excluding Oregon and Washington, which are only beginning to be reoccupied). This population has exceeded recovery goals for 10 consecutive years. Although population decreases are expected in Idaho, Montana, and Wyoming, we expect that these reductions will be carefully managed so that populations are maintained well above recovery levels (perhaps around 1,000 wolves will be

maintained across the NRM DPS long term). Our expectation for gradual reductions was verified in 2009 and 2011 (the first 2 years of State management including a hunting season) where the population remained relatively stable (technically, slight increases were documented each year) even in the face of substantial mortality levels. Measurable declines across the region are expected to begin to occur in 2012. In Wyoming, we expect the total statewide population will be reduced between 10 to 20 percent in 2012 with continued gradual reductions thereafter, if appropriate. Given the species' reproductive capacity, such declines are not irreversible; instead, populations would rebound rapidly if human-caused mortality is reduced.

The basis for our determination, as required by the Act, is the best scientific and commercial information available, which indicates that the Wyoming, GYA, and NRM gray wolf populations are recovered and do not meet the definition of threatened or endangered. This decision is not based on political and stakeholder pressure, nor has our support for hunting biased our decision. Furthermore, very little of the Service's budget and none of the Endangered Species program's budget comes from hunting revenue. While we respect the moral and ethical reasons some members of the public may have for disapproving of this decision, delisting is the appropriate decision based on the statutory requirements of the Act. Additionally, delisting a recovered species is a non-discretionary duty and not subject to the provisions of section 7(a)(2) of the Act.

Issue 16: Some comments expressed concern that if the Service accepted the Wyoming Gray Wolf Management Plan, as written, it would set a precedent allowing Idaho and Montana to change their management plans.

Response 16: We have no indication that Idaho or Montana have a desire to change their management plans to mirror Wyoming's. Both States appreciate the sovereignty they now enjoy to manage wolves as a recovered species under State jurisdiction and are unlikely to reopen this issue. Furthermore, both States recognize that a change as significant as, for example, designating wolves as predators in large portions of the States could trigger a status review under our post-delisting monitoring criteria because such an action could be perceived as significantly increasing the threat to the wolf population (depending on the specifics). Idaho and Montana have expressed a strong interest in avoiding a Service status review and any relisting consideration.

Human-Caused Mortality

Issue 17: Many comments expressed concern about the amount of human-caused mortality and possible direct and indirect impacts. Some questioned the amount of human-caused mortality that the population can withstand in the short term (as populations are being reduced from current levels) and in the longer term once minimum management targets are achieved. Many comments took issue with statements taken from the Wyoming wolf management plan that indicated Wyoming wolves could tolerate up to 36 percent annual mortality. One commenter expressed concern that Wyoming has only a narrow margin for error because the number of wolves in the Trophy Area are only a little above minimum management targets. This comment asserted that our data from the last 5 years indicated that the population had stabilized with less than 20 percent mortality associated with livestock depredation control efforts, but that Wyoming may exceed these and other human-caused mortality rates after delisting. Some comments suggested that we must set firm standards for acceptable levels of human-caused mortality in different circumstances. Numerous comments indicated that the many sources of human-caused mortality allowed by the Wyoming regulatory framework could easily and routinely exceed tolerable levels of mortality. Several comments suggested management assumptions were incorrect in that hunting-related mortality was not compensatory for other human-caused mortality, was more likely additive or ''super-additive,'' and that overall population impacts would exceed direct reported mortality levels because of impacts to pack structure and reproduction. Some of these comments asserted hunting would cause psychological trauma or other indirect effects to surviving wolves. Other comments indicated that wolves have proven resilient to human-caused mortality, that our description of wolf susceptibility to human-caused mortality was exaggerated, and that such mortality would be limited and adequately regulated. Some comments asserted wolves will become less susceptible to human-caused mortality as they ''relearn their fear of man.'' Many of these comments emphasized the ability of wolves to respond quickly to population reductions noting, for example, reports of wolf packs with more than one female with pups.

Response 17: Human-caused mortality is the most significant factor affecting the long term conservation status of the wolf population in Wyoming, the GYA, and the entire NRM DPS. Therefore, managing this source of mortality remains the primary factor for maintaining a recovered wolf population into the foreseeable future. The best available information indicates that wolf populations have an ample natural resiliency to high levels of human-caused mortality, if population levels and controllable sources of mortality are adequately regulated as they will be in Wyoming. For example, from 1995 to 2008, the NRM wolf population grew by an average of about 20 percent annually, even in the face of an average annual human-caused mortality rate of 23 percent (Service *et al.* 2012, Table 4; Smith *et al.* 2010, p. 620; also see Figure 3 above). Similarly, in 2009 and in 2011, more than 600 NRM wolves died each year from all sources of mortality (agency control including defense of property, regulated harvest, illegal and accidental killing, and natural causes), and the population showed little change (technically, slight increases in minimum population levels were documented each year) (Service *et al.* 2012, tables 4a, 4b).

While some authors have suggested human-caused mortality is additive or ''super-additive,'' and have predicted significant impacts to wolf populations from modest levels of human-caused mortality (Creel and Rotella 2010; Atkins 2011, p. 81; Vucetich and Carroll In review), other researchers disagree (Gude *et al.* 2011). Overall, the literature indicates wolf populations can maintain themselves despite human-caused mortality rates of 17 to 48 percent (Fuller *et al.* 2003, pp. 182–184 [22 percent]; Adams *et al.* 2008 [29 percent]; Creel and Rotella 2010 [22 percent]; Sparkman *et al.* 2011 [25 percent]; Gude *et al.* 2011 [48 percent]; Vucetich and Carroll In review [17 percent]). Furthermore, wolf populations have been shown to increase rapidly if mortality is reduced after severe declines (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2012, Table 4).

After delisting, Wyoming will gradually reduce the wolf population, manage for a buffer above the State's minimum management targets, and adaptively manage human-caused mortality. Regarding the adaptive management strategy, Wyoming will limit mortality as necessary in the following order: first, Wyoming will limit control actions for unacceptable impacts to ungulates; next the State will limit harvest levels; then it will limit control for damage to private property;

and, finally, it will limit lethal take permits (WGFC 2012, p. 7). We believe that the third and fourth sources of mortality noted above will rarely need to be limited because all other sources of mortality will not likely exceed what the population can withstand, leaving some modest level of surplus wolves for harvest. However, all of these sources of human-caused mortality can be limited, if necessary. Harvest will be limited with an adaptive approach determining what the population can withstand in a given year and across years. While we expect Wyoming to reduce the wolf population in the Trophy Area and remove most resident wolves within the predator portion of the State, we conclude that the wolf population can tolerate the level of mortality expected in the short term before leveling off at a longer term equilibrium. Given the biological resilience of wolves to controlled and managed human-caused mortality, these strategies provide that Wyoming's minimum management targets will not be compromised. When combined with wolves occurring in adjoining jurisdictions and across the NRM DPS, we have high confidence that recovery will not be compromised in Wyoming, the GYA, or across the NRM DPS.

Issue 18: Numerous commenters asserted that Wyoming's wolf management framework remains flawed, in that it fails to clearly commit to managing for at least 15 breeding pairs in the State. A few comments noted that we previously stated this was a requirement, rejected Wyoming's 2003 regulatory frameworks for failing to commit to this minimum management target, and that the courts took issue with past Wyoming plans and our approval of Wyoming's 2007 regulatory framework for not clearly committing to this standard. Several comments noted that Wyoming's ''commitment'' to maintain at least 15 breeding pairs and at least 150 wolves statewide, in cooperation with YNP and the Wind River Indian Reservation, was nothing more than a non-enforceable promise. A few comments questioned whether YNP can adequately buffer the Wyoming wolf population, citing predictions that the YNP wolf population was declining into a lower long term equilibrium. One peer reviewer expressed concern that, by removing the statewide goal for Wyoming, the State's incentive to conserve wolves in protected areas is removed, and that such wolves would be vulnerable to killing when they left these areas.

Response 18: After careful consideration, we decided differences in State management authority warranted a different approach to wolf management in Wyoming versus Montana and Idaho. Nearly all wolf populations in Montana and Idaho occur in areas under State jurisdiction. Therefore, it makes sense for these States to manage for a statewide total. In Wyoming, a substantial portion of the wolf habitat and wolf population occurs in YNP, where the State has no jurisdiction (Oakleaf 2011). Thus, it would be more difficult to manage for a statewide total. In essence, the decision to split numeric targets by management authority is similar to the decision to split the overall NRM goal by State, just at a more localized level. Given this difference, we decided that a different solution was appropriate.

The recovery goal requires at least 10 breeding pairs and at least 100 wolves per State. The new approach and agreement provides that this goal is met in Wyoming outside YNP and the Wind River Indian Reservation (large areas outside of State jurisdiction). Wyoming is firmly committed to a population at least at these levels as reflected in State statute, regulations, and its management plan. In order to meet these goals and allow for continued management flexibility, Wyoming intends to manage for a population above its minimum management targets. Furthermore, the wolf populations in YNP and on the tribal lands of sovereign nations will provide an additional buffer above the minimum recovery goal intended by the previous management objective of at least 15 breeding pairs and at least 150 wolves statewide. From 2000 to the end of 2011 (the most recent official wolf population estimates available), the wolf population in YNP has ranged from 96 to 174 wolves, and between 6 to 16 breeding pairs. While a lower future population level in YNP is predicted (between 50 to 100 wolves and 5 to 10 packs with 4 to 6 of these packs meeting the breeding pair definition annually) (Smith 2012), YNP will always provide a secure wolf population providing a safety margin above the minimum recovery goal.

We conclude that the YNP wolf population can effectively buffer the rest of the Wyoming wolf population because of the significant amount of available habitat in the park, the sizable wolf population the park does now and will continue to support, and the relative security of the park population. YNP is the most protected population in the NRM DPS and least likely to be meaningfully affected by human-caused mortality. This security from human-caused mortality, the most significant threat factor facing wolves in the NRM DPS, was critical in accepting the YNP population as a buffer even though it may occasionally fall below 5 breeding pairs (although it will likely not fall below 50 wolves). In our opinion, this sizable and secure park population is a superior buffer to the simple 50 percent buffer used in the other States, and is more appropriate to the Wyoming situation given differences in management authority. Overall, while this approach represents a new strategy to maintain this recovered population, it is consistent with our overarching goal because it will maintain the statewide Wyoming wolf population well above minimum recovery levels. Furthermore, based on Wyoming's management approach (i.e., the State's commitment to maintain at least 10 breeding pairs and at least 100 wolves, which the State intends to satisfy by managing for a buffer above these minimums) and our understanding of the YNP wolf population's likely future abundance (50 to 100 wolves and 5 to 10 packs and 4 to 6 breeding pairs), the original 15-breeding-pair and 150-wolf-minimum management targets will rarely, if ever, be compromised.

While some have asserted that this new approach removes Wyoming's incentive to conserve wolves resident to protected areas and that many of these wolves could be killed when they ventured from these protected areas, we conclude that this concern is unwarranted. The peer reviewer who raised this point expressly noted concern for Grand Teton National Park wolves. However, these wolves occur within the Trophy Area and are counted in the State's totals, so Wyoming still has an incentive to consider impacts to these wolves when making management decisions. The same applies for wolves in the John D. Rockefeller, Jr. Memorial Parkway and the National Elk Refuge. While this criticism could theoretically be relevant to YNP wolves, most YNP packs rarely leave the park and most of those packs that routinely leave the park occur on the northern part of YNP, where they occasionally enter adjoining portions of southern Montana. Montana has already taken steps to limit impacts to YNP wolves in these adjoining areas. Most other YNP wolf packs are not expected to be as vulnerable to human-caused mortality in adjoining areas most years, because they generally spend less time in these adjoining areas. Furthermore, as discussed in Factor B below, all three States have an incentive to maintain a healthy YNP wolf population. For example, a healthy wolf population in YNP brings economic benefits to all three States through increased tourism. Furthermore, there is

a regulatory incentive to maintain the YNP population, since we will initiate a status review if the Wyoming statewide population, including YNP, falls below 15 breeding pairs or below 150 wolves routinely or for 3 consecutive years. Wyoming's wolf management plan confirms Wyoming's intention to coordinate with YNP to maintain a statewide total of at least 15 breeding pairs and at least 150 wolves (WGFC 2011, p. 1).

Furthermore, we have previously noted potential pitfalls with applying a simple requirement to maintain at least 15 breeding pairs and at least 150 wolves statewide in Wyoming, and conclude that the new approach is more likely to maintain the population's recovered status in Wyoming than the statewide approach employed in Montana and Idaho. Under the 15 breeding pair statewide approach, if the YNP wolf population increased to, for example, 12 breeding pairs after delisting, Wyoming could have reduced the wolf population outside the park to 3 breeding pairs. However, such a robust population in YNP would have an increased likelihood of intraspecific strife and disease, likely resulting in a population decline similar to those observed in YNP in 2005 and 2008. This park population decline (i.e., falling from 12 breeding pairs to, say, 5 breeding pairs), in combination with an allowable population reduction outside the park (to as low as 3 in the above example), could compromise the minimum recovery goal of at least 10 breeding pairs statewide. Recent analysis of this information contributed to our conclusion that a different approach was warranted in Wyoming.

The new strategy precludes this possibility by maintaining the population at least at the minimum recovery goals outside YNP and the Wind River Indian Reservation, and allows the wolf population in YNP and on the Wind River Indian Reservation to provide the additional buffer above the minimum recovery goal. In addition to preventing an unacceptable population decline, this approach is also desirable to the extent that it increases the public's understanding and expectation that some modest wolf population and wolf distribution will, and must, be maintained outside of the National Parks in order to maintain delisting and State management authority. We conclude that this public understanding of Wyoming's responsibility will result in increased public tolerance for wolves outside of National Parks. Such public tolerance will benefit wolf conservation. Finally, this approach is desirable for the WGFD, because it gives the State a consistent minimum goal that will not fluctuate across years. Such a steady goal will be easier to consistently satisfy.

Issue 19: Many comments criticized Wyoming's commitment to maintain at least 10 breeding pairs and at least 100 wolves outside YNP and the Wind River Indian Reservation. Some indicated this commitment was too low and that the area can support more wolves. Many comments expressed general concern that State management would result in significant wolf population reductions (a 40 to 60 percent reduction was most often cited). Several peer reviewers thought these goals should be met within the Trophy Area instead of across all of Wyoming given the insecurity of wolves in the predator area. Some comments complained that at the time of the draft proposal, Wyoming's commitment to these targets was not reflected in binding statutes or regulations. A few comments expressed concern that reporting mortality could occur 24 hours to 10 days after the event, during which significant mortality could occur, compromising management objectives. Numerous comments, including the peer reviewers, recommended that the Wyoming Gray Wolf Management Plan clearly commit to maintain a ''sizable'' buffer above minimum population targets. Other commenters recommended that Wyoming develop a specific numeric buffer and that this buffer needed to be enshrined in statute or regulation before delisting could occur. The peer reviewers also expressed concern over the potential rate of wolf population reduction, and recommended that the Wyoming Gray Wolf Management Plan provide a better explanation of the adaptive processes (including use of monitoring data) that will guide wolf population reductions. Many comments indicated a gradual population reduction was unlikely since Wyoming's regulatory framework authorizes numerous, competing sources of human-caused mortality. Other comments suggested State commitments to maintain numeric management objectives must be binding and enforceable. Some noted that when we accepted commitments short of this standard in the past, the States failed to meet the commitments.

Response 19: Consistent with our agreement with the State, both Wyoming statutes and regulations now require Wyoming to maintain at least 10 breeding pairs and at least 100 wolves outside YNP and the Wind River Indian Reservation at the end of the year. Wolves in the predator area will count towards these goals (i.e., they will be reported at the end of the year should they persist through that period), but will not be relied upon by the WGFD when making wolf management decisions (e.g., when setting hunting quotas) necessary to ensure the State maintains at least minimum management targets (WGFC 2012, p. 3). This approach was demonstrated this year when the WGFD and the WGFC developed hunting quotas that provide Wyoming with a substantial cushion above the minimum management targets solely within the Trophy Area and allow any resident wolves that persist in the predator area to further buffer these minimum requirements.

While Wyoming can support more wolves than the agreement requires, the Act does not require managing the species at carrying capacity. Instead, it requires achieving and maintaining recovery and providing reasonable assurance of long term viability so that the population does not again become threatened or endangered. We have determined that Wyoming's approach to wolf management after delisting will achieve these goals and, when considered in the region's larger management scheme, will maintain recovery in Wyoming, the GYA, and across the NRM DPS.

Wyoming intends to meet its statutory and regulatory standards by managing for a buffer above minimum management targets (WGFC 2012, pp. 3–5). The population will be routinely and continuously monitored to detect changes in population abundance, distribution, and demographic makeup. All mortality within the Trophy Area will be reported within 72 hours (W.S. 23–1–304(d)(iv); W.S. 23–3–115(c)) including: Take authorized by lethal take permits, which must be reported within 24 hours (chapter 21, section 7(b)(v)); harvest, which must be reported within 24 hours (chapter 47, section 4(f)(i)); and defense of property take, which must be reported within 72 hours (W.S. 23–1–304(d)(iv); W.S. 23–3–115(c); chapter 21, section 6(a)). Mortality in the predator area (which after the first year will likely be limited) must be reported within 10 days (W.S. 23–1–304(d)(iii); WGFC 2011, p. 29).

Should Wyoming's wolf population approach minimum management objectives, the State will sequentially limit: control actions for unacceptable impacts to ungulates; harvest levels; control for damage to private property; and lethal take permits (WGFC 2012, p. 7). Regarding hunting specifically, the addendum notes that Wyoming would employ an iterative, adaptive, and public process whereby season structures, hunt areas, and quotas are

evaluated and adjusted based on the response of the wolf population to prior management actions (WGFC 2012, pp. 4–7). Furthermore, the addendum notes Wyoming's authority to revise, reduce, or close hunting seasons if necessary (WGFC 2012, pp. 6–7). Such flexibility allows the State to adaptively respond to population problems should its assumptions on susceptibility to human-caused mortality prove overly optimistic. Overall, we conclude that this approach of managing, monitoring, and regulating and limiting human-caused mortality, including adjustments throughout the year as necessary, so that minimum management targets will be achieved, the population's recovered status will not be compromised, and the population will not again become endangered within the foreseeable future throughout all or a significant portion of its range.

We decided against requiring Wyoming to provide a specific numeric buffer above these minimum management targets. While Wyoming will, and must, maintain a buffer to consistently meet its minimum management targets, the buffer necessary to achieve this goal will change over time. For example, current information indicates approximately 140 wolves have a 95 percent chance of producing at least 10 breeding pairs (Bruscino 2012, p. 5). Similarly, Wyoming anticipates hunting and other sources of mortality will reduce the Trophy Area's wolf population to around 170 wolves and around 15 breeding pairs at the end of 2012 (well above Wyoming's management goals) (Mills 2012, pers. comm.). While these models are a reasonable short term predictor of population response, they are based on population data while the Act's protections were in place. After delisting, management differences will likely alter population dynamics and change the usefulness of the currently available data to predict the number of wolves needed to meet or exceed the State's breeding pair target. For example, higher mortality rates may result in fewer packs successfully raising pups through the end of the year and qualifying as breeding pairs.

The exact difference between current minimum estimates and likely future outcomes are not known and probably will not be known with any certainty until after the new management regime is implemented (likely for several years). Given this fact, we concluded that a firm commitment to the underlying minimum management target was sufficient, recognizing the State would monitor the population after delisting and adjust management over time based on this new data, including learning what the population can withstand (in terms of the amount, timing, and intensity of human-caused mortality) and how to consistently meet or exceed the State's minimum management targets long term. This approach is more appropriate biologically than us developing an arbitrary, mandatory buffer based on current data that is unlikely to be an accurate predictor of long term population response after delisting.

Regarding the rate of reduction, Wyoming has consistently indicated it intends to pursue a gradual population reduction during this learning phase. To this end, Wyoming's 2012 hunting quota (52 wolves) is anticipated to reduce the Trophy Area wolf population by about 11.5 percent and result in a Trophy Area wolf population of around 170 wolves and 15 breeding pairs at the end of 2012 (Mills 2012, pers. comm.). This initial goal is comfortably above the minimum agreed-upon population targets and is consistent with the stated intention of a gradual population reduction. In future years, hunting quotas will be set later in the year to allow full consideration of recruitment and mortality events that occurred during spring and summer. In the long term, the State has sufficient discretion to allow continued gradual population reductions as necessary and appropriate, before stabilizing the population comfortably above the minimum recovery goals.

Overall, given the biological resilience of wolves to controlled and managed human-caused mortality, these strategies will provide that Wyoming's minimum management targets are not compromised. When combined with wolves occurring in adjoining jurisdictions and across the NRM DPS, we have high confidence recovery will not be compromised in Wyoming, the GYA, or across the NRM DPS.

Issue 20: One peer reviewer expressed concern that the State's reliance on minimum population numbers, instead of estimates that incorporate detection probabilities, could result in improper assumptions about trends. This reviewer went on to indicate that if the State increased monitoring intensity as the population gets closer and closer to the minimum management targets, this increasing monitoring intensity could result in the appearance of a population increase when actual populations are declining. For example, if a raw count of 105 wolves one year detected only 80 percent of the population and a raw count of 115 wolves the next year detected 95 percent of the population, raw counts would imply an increasing population (from 105 to 115 wolves) when the actual population would have declined (from 131 wolves to 121 wolves). Such data could lead State officials to increase quotas and other take allowances even as populations are declining. Issues associated with such errors would be increasingly risky the closer the State is to its minimum population target.

Response 20: We concluded that risk associated with such potential population counting errors will be minimal because detection in Wyoming will be high under State management, year in and year out. Several factors contribute to this likely high detection rate including: WGFD's survey effort will be greater than what has been occurring under Service management because WGFD has substantially more human power dedicated to wildlife management in northwestern Wyoming than we do; and the geography and use of the area is conducive to wolf detection. These factors will result in a high detection rate, likely higher than we achieved in the past. Therefore, while estimates of abundance and trends will not be perfect, we conclude that they are likely to always be sufficiently reliable assuming maintenance of an adequate buffer above minimum recovery levels.

That said, the importance of this issue and any possible erroneous conclusions about abundance and trends is dependent on how close Wyoming manages to its minimum population targets. In 2012, Wyoming's take allowances are expected to maintain around 170 wolves and 15 breeding pairs outside of YNP and the Wind River Indian Reservation at the end of the year (Mills 2012, pers. comm.). As discussed in Issue and Response 19 above, in subsequent years the population will likely be gradually reduced, but always maintained with a sufficient buffer to allow management flexibility and preclude the possibility that relisting could occur. In most years, the wolf population within the Trophy Area will be well above the minimum management targets of at least 10 breeding pairs and at least 100 wolves. Minimum counts will verify that the State has achieved these goals (as discussed in Issue and Response 2 above). Wolves in YNP and the Wind River Indian Reservation provide an additional buffer so that the statewide minimum recovery level is not compromised. Within the larger GYA, wolves in the Montana and Idaho portion of the GYA provide additional representation, resiliency, and redundancy across the overall GYA population. Such a conservative approach sufficiently minimizes the risk

associated with erroneous conclusions about trends resulting from fluctuating detection probabilities. While we would support the development of a monitoring technique that incorporates detection probabilities, and Wyoming has indicated that it is open to such an approach if subsequent data indicate that there is a need (State law requires Wyoming to employ techniques that accurately determine the population (W.S. 23–1–304(d)(i))) (Mills 2012, pers. comm.), we conclude that current techniques are adequate, given the overall management approach that will be employed in the Trophy Area, the GYA, and the NRM region.

Issue 21: A few commenters thought it problematic that the agreed-upon strategy places the burden of meeting the minimum recovery goal (at least 10 breeding pairs and at least 100 wolves) on areas outside of YNP. These comments pointed out that the proposed rule appeared to view YNP as merely playing ''a supporting role'' in maintaining recovery, rather than the central role the park is likely to play, given its abundance of high-quality suitable habitat. These comments note this approach is a complete reversal from previous Wyoming wolf management plans, which relied primarily on YNP to meet the minimum recovery levels, with Wyoming providing the buffer above the minimum levels. Some comments maintained YNP should bear a greater burden for wolf recovery and commit to maintain specific numbers of wolves. Others wanted clarification that the agreement with Wyoming in no way obligates the State of Wyoming to manage for more than 10 breeding pairs and more than 100 wolves at any time.

Response 21: Our discussion of YNP was not intended to downplay or undermine the importance of YNP for the conservation of the GYA or NRM gray wolf population. YNP represents a secure block of suitable habitat, which has supported between 96 and 174 wolves and from 6 to 16 breeding pairs since 2000. While a lower long term future population level in YNP is predicted (Smith 2012), YNP will continue to be important to the regional wolf population and will play an important role in maintaining the regional wolf population's recovered status. We agree that this approach is a modification from that used in previous Wyoming wolf management plans, but it is an approach that we requested as a remedy to our previous determination that the Wyoming management plan was inadequate. In fact, recovery in Wyoming depends both on having healthy populations within YNP as well as the additional 100 wolves and 10 breeding pairs outside the YNP. The combination of these two conservation areas will provide for wolf recovery in Wyoming.

Issue 22: Numerous comments objected to Wyoming's approach to lethal take permits. Some objected to the State's statutory mandate to issue lethal take permits as long as population objectives are not likely to be compromised. Others objected to the issuance of lethal take permits for ''harassing'' livestock or domestic animals. These comments indicated that harassment is not defined and could include, for example, causing dogs to bark or cattle to move from one grazing area to another. These comments went on to indicate that because an area would be categorized as a chronic wolf depredation area if there are two harassment episodes within a 2-month period, this could allow large portions of Wyoming to be designated as a chronic wolf depredation area, which, in turn, would authorize liberal mortality over most of the Trophy Area. One comment suggested that this ''flimsy standard'' could result in the issuance of hundreds of permits (perhaps more permits than wolves exist in the Trophy Area). Some commenters wondered how long it would take the WGFD to figure out whether there was a need to suspend or cancel permits and whether this could endanger the ability of the State to maintain the population above agreed-upon targets. A few comments noted there was not a quantitative limit on the size of a chronic depredation area or the number of permits in such areas indicating resulting take could be significant. Other comments noted safeguards and limits on lethal take permit issuance designed to minimize population-level impacts and prevent this source of mortality from compromising management objectives.

Response 22: Wyoming law (W.S. 23–1–304(n)) states that permits ''shall be issued'' to landowners or livestock owners in cases where wolves are harassing, injuring, maiming, or killing livestock or other domesticated animals, and where wolves occupy geographic areas where chronic wolf predation occurs. Numerous safeguards limit the potential of these permits to detrimentally affect the population. For example, State statute requires that permits be issued, and renewed as necessary, in 45-day increments (W.S. 23–1–304(n)), and State regulations limit the take allowance for each permit to a maximum of 2 gray wolves, and specify that each permit can only apply to a specified limited geographic or legally described area (chapter 21, section 7(b)(ii)). These requirements provide that application of this source of take is limited in time and geography. Similarly, State regulations indicate that purported cases of wolf harassment, injury, maiming, or killing must be verified by the WGFD (chapter 21, section 6(b)). We conclude that this requirement for WGFD verification would limit potential abuse for this source of mortality. Regarding the issuance of lethal take permits for wolves ''harassing'' livestock or domestic animals, Wyoming will require that WGFD staff verify that wolves were present and involved in activities that would directly indicate an actual attack was likely (Mead 2012b). Such activity must be an activity, such as chasing or molesting, that is an immediate precursor to actual biting, wounding, grasping, or killing (Mead 2012b). Similar allowances are incorporated in our experimental population rules (50 CFR 17.84(n)(3)).

Finally, and most importantly, State law (W.S. 23–1–304(n)) and the implementing regulations (chapter 21, section 7(b)(iii)) clarify that existing permits would be cancelled, and issuance of new permits would be suspended, if the WGFD determines further lethal control could compromise the State's ability to maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of YNP and the Wind River Indian Reservation at the end of the calendar year. Importantly, the word ''could'' (as opposed to would or will) provides authority for the WGFD to manage for a buffer above the minimum target and limit control from lethal take permits, if necessary, to maintain an adequate minimum buffer. However, the Addendum to the Wyoming Gray Wolf Management Plan explains that the State law's mandatory approach to issuance of lethal take permits requires that Wyoming's adaptive management framework limit other discretionary sources of mortality before it limits this source of mortality (WGFC 2012, p. 7).

On the whole, the available information indicates that Wyoming's approach to lethal take permits may affect population abundance (particularly at a localized level where wolf-livestock conflict is high), but that Wyoming has instituted sufficient safeguards so that this source of mortality would not compromise the State's ability to maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of YNP and the Wind River Indian Reservation at the end of the calendar year.

Issue 23: We received many comments on the permanent Trophy Area and the predator area. Many of these comments asserted this line was arbitrary and not scientifically derived. A few comments ridiculed an approach that assumed wolves would adhere to human-made boundaries. Most of these comments thought that the WGFD should be given management authority statewide (note that the WGFD does not have management authority over wolves in the predator area). Some comments noted that Wyoming treats other predators (e.g., mountain lions and black bears) as trophy game animals statewide, while others noted that wolves are not managed as predators in any other State in the country. Many suggested a predator designation was unnecessary because State management provides plenty of management flexibility to address wolf problems as evidenced by the Wyoming gray wolf plan's long list of lethal options.

Some comments asserted that Wyoming's new strategy including the Trophy Area and the flex zone was almost the same or only marginally better than previously rejected State regulatory frameworks and accused the Service of reversing itself on this issue. These comments noted that our 2009 delisting determination had stated support for a state-wide trophy game status and provided numerous reasons why we felt such an approach was ''advisable'' and ''the best way for Wyoming to provide adequate regulatory mechanisms.'' Some noted that we previously found statewide trophy game status would provide WGFD more flexibility to devise an adaptive management strategy that allows the State to respond to population declines and still maintain its numeric objectives. Others thought areas like the Big Horn Mountains, Wind River Range, Wyoming Range, and Salt Range could support wolves and should be protected (not designated as a predator area) so recovery can eventually take hold in these areas. Still other comments supported State management and indicated the State's Trophy Area was adequate because it includes most of the suitable habitat.

One peer reviewer noted that there was no functional difference between Wyoming's predator status across largely unsuitable habitat and management in eastern Montana and southern Idaho (today or while listed) that precluded wolf pack establishment in these areas. A number of comments indicated that we must approve Wyoming's dual status approach, because we had previously concluded such an approach was acceptable (Hall 2007; 73 FR 10514, February 27, 2008), noting only minor issues that needed to be remedied (Gould 2009; 74 FR 15123, April 2, 2009). A few comments advocated for a smaller Trophy Area, asserting that all wolves outside of National Parks should be considered predators.

Response 23: We recognize our position on this issue may have led people to view our perspective as changing over time without reasoned justification. We clarify our position here. A statewide Trophy Area has long been our preferred approach to sustain wolf conservation, but that something less than a statewide trophy game designation (i.e., the current Trophy Area) can satisfy the species' biological needs and maintain Wyoming's share of a recovered wolf population assuming adequate management within this area.

This issue is important because designation of an area as a predator area or a Trophy Area strongly influences the likelihood of wolf and wolf pack persistence within the area. ''Trophy game'' status allows the WGFC and WGFD to regulate methods of take, hunting seasons, types of allowed take, and numbers of wolves that can be killed. All other States within the NRM DPS manage wolves as a game species statewide. ''Predatory animals'' in Wyoming are regulated by the State's Department of Agriculture under title 11, chapter 6 of the Wyoming Statutes. Under these regulations, wolves in predator areas can be killed by anyone with very few restrictions. Coyotes are managed in Wyoming in this manner. The nature of this taking means it is unlikely that wolf packs or breeding pairs will persist in the predator area of Wyoming. While some lone wolves and dispersing wolves from both within the GYA and from other metapopulations will be killed, lone wolves and dispersers will likely be less prone to take than resident packs, whose locations are easily detected and ranges are easily determined.

Given these impacts, our assessment of adequacy analyzed whether the Trophy Area is of sufficient size to support and maintain a recovered wolf population in Wyoming over the long term, assuming adequate management within this area. This assessment compared Wyoming's Trophy Area to past assessments of where we thought wolf recovery would occur, subsequent modeling exercises showing where wolves are most likely to occur and persist, and actual wolf distributional data of where wolves persisted under the Act's protections. In total, Wyoming wolves will be managed as game animals year-round or protected in about 38,500 km^2 (15,000 mi^2) in the northwestern portion of the State (15.2 percent of Wyoming (Lickfett 2012)), including YNP, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, adjacent U.S. Forest Service, designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and most of the Wind River Indian Reservation. Wolves will be designated as predatory animals in the remainder of the State (predator area).

The above protected and permanent game areas (see Figure 1) include: 100 percent of the portion of the GYA recovery area within Wyoming (Service 1987, Figure 2); approximately 79 percent of the Wyoming portion of the primary analysis area used in the 1994 Environmental Impact Statement (areas analyzed as potentially being impacted by wolf recovery in the GYA) (Service 1994, Figure 1.1); the entire home range for 24 of 27 breeding pairs (88 percent), 40 of 48 packs (83 percent), and 282 of 328 individual wolves (86 percent) in the State at the end of 2011 (Service *et al.* 2012, Tables 2, 4, Figure 3; Jimenez 2012a; Jimenez 2012, pers. comm.); and approximately 81 percent of the State's suitable habitat (including over 81 percent of the high-quality habitat (greater than 80 percent chance of supporting wolves) and over 62 percent of the medium-high-quality habitat (50 to 79 percent chance of supporting wolves) (Oakleaf 2011; Mead 2012a)). Based on the above analysis, it is clear that this is the portion of Wyoming where wolf recovery was always envisioned to occur, that wolves have failed to persist in large numbers outside of this area, that the vast majority of the State's suitable habitat is contained within this portion of Wyoming, and that this portion of Wyoming has a demonstrated history of being able to support a wolf population that exceeds agreed-upon minimum management targets. While a statewide trophy game designation would allow for more management flexibility, Wyoming's current Trophy Area is of sufficient size to support and maintain a recovered wolf population in Wyoming over the long term, assuming adequate management within this area.

To understand our position on the Trophy Area, it is useful to review our past positions on this issue. Prior to 2003, the gray wolf was designated by W.S. 23–1–101(a)(viii) as a predatory animal statewide in Wyoming. In 2003, Wyoming passed a State law that designated wolves as ''trophy Game'' in YNP, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, and the adjacent USFS-designated Wilderness areas (Wyoming House Bill

0229) once the wolf is delisted from the Act. This State law also allowed the WGFC to increase the Trophy Area if certain population targets were not achieved. The 2003 permanent Trophy Area totaled about 7 percent of Wyoming (Lickfett 2011). Wyoming's 2003 post-delisting regulatory framework was rejected because of several flaws including (but not solely because of) an insufficiently small Trophy Area (Williams 2004c). Our 2006 petition finding clarified that ''a large portion of the area permanently designated as 'trophy game' actually has little to no value to wolf packs because it is not suitable habitat for wolves and, thus, is [seasonally] used * * * because of their high elevation, deep snow, and low ungulate productivity'' (71 FR 43410, August 1, 2006). Overall, we concluded that a larger Trophy Area was necessary because maintenance of wolf populations above recovery levels would likely depend on wolves living outside the National Parks and wilderness portions of Wyoming (71 FR 43410, August 1, 2006). In 2007, Wyoming adopted new legislation that increased the Trophy Area. This new Trophy Area, comparable to the current protected and trophy areas, was deemed sufficient to provide for the conservation of Wyoming's share of a recovered wolf population (Hall 2007; 73 FR 10514, February 27, 2008). However, this approval was later retracted, in part, because Wyoming's 2007 legislation allowed the WGFC to diminish the Trophy Area to the 2003 line if it determines the diminution would not impede the delisting of gray wolves (*Defenders of Wildlife, et al.,* v. *Hall, et al.,* 565 F.Supp.2d 1160 (D. Mont. 2008); Gould 2009; 74 FR 15123, April 2, 2009).

The current Trophy Area improves upon the 2003 Trophy Area as it is significantly larger and not subject to WGFC expansion or reduction. The current Trophy Area improves upon the 2007 Trophy Area in that: (1) It is permanent and cannot be diminished; and (2) it will be seasonally expanded approximately 80 km (50 mi) south (see Figure 3) (an additional 3,300 km^2 (1,300 mi^2) or 1.3 percent of Wyoming) from October 15 to the last day of February (28th or 29th) to facilitate natural dispersal of wolves between Wyoming and Idaho. While many commenters asserted that these changes were minor tweaks that do not justify a departure from past Service positions, we conclude that these changes are biologically substantive and important. These and other changes were sufficient for us to determine that the current plan rectifies the inadequacies of the previous plan.

Many comments note the Service's prior preference for statewide trophy game designation. We acknowledge that many official statements on this issue (i.e., letters from the Director or **Federal Register** notices) demonstrate that we consistently questioned past Wyoming Trophy Area designations and concluded a revision was necessary or required. However, a careful inspection of the record will show that most statements regarding a statewide trophy game designation describe this approach as advisable or recommended, rather than required. While there are exceptions to this generalized summary of our position in the record, an overall reading of the record confirms this account of our position over time.

Issue 24: Some comments expressed the opinion that predator status across most of the State would subject wolves to unsustainable levels of mortality and compromise the population's recovered status. A few comments asserted that the vast majority of wolves in Wyoming would be subjected to unlimited and unregulated taking. Some comments supported the ''very strict'' requirements for reporting wolf mortality in the predator area, while other comments questioned whether the monitoring and collection of genetic samples would be mandatory. Several comments expressed concern that wolves from YNP, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, and the National Elk Refuge would be killed when they venture outside those protected areas. These comments indicated this outcome would be exacerbated when wolves follow elk to neighboring elk feeding grounds. One comment suggested State and Federal officials develop a protocol for collaboration and coordination before wolf removal occurs on feed grounds in the Jackson area, in light of potential impacts to Grand Teton National Park and National Elk Refuge wolves. Use of nonlethal take was particularly recommended on elk feedgrounds. A few comments recommended a 20-mile buffer around the Trophy Area to protect wolf parents during the denning and pup rearing season. Other comments objected to the Trophy Area being set in statute, to the extent it prevents an expansion of the Trophy Area, even if it becomes necessary to protect wolf populations.

A few comments noted occupancy rarely persisted in the predator areas even when wolves were listed, so all the predator status does is change the form of mortality these wolves endure from agency control when they kill livestock to preemptive landowner control. Still other comments disputed our assertion that wolves in the predator area would likely not persist. These comments asserted take in this area, once the initial novelty wears off, would likely be ''opportunistic'' rather than a ''wholesale extirpation.'' Some of these comments expressed the opinion that individual wolves, packs and breeding pairs could or would occasionally occur in less densely populated portions of eastern Wyoming. Others suggested control in the predator area is nothing new because most wolves in this area are already killed because they tend to become problem wolves. Still others expressed the view that wolves should be ''controlled by any means'' if they move outside ''their designated range.''

Response 24: Although a large predator area will result in forms of mortality that many members of the public view as inhumane or unethical (see Issue and Response 31 below), this portion of Wyoming's regulatory framework will not subject wolves to unsustainable levels of mortality or compromise the population's recovered status. In fact, few wolves currently occur in the predator area where such unlimited taking will be allowed (at the end of 2011, this included: 3 of 27 breeding pairs; 8 of 48 packs; and 46 of 328 wolves). As in eastern Montana and southern Idaho, wolf restoration will not occur in largely unsuitable habitat regardless of its management designation.

Wolf packs in the predator portions of Wyoming are easy to detect and locate and will generally not persist following delisting. However, some individuals from these packs could survive as lone animals. Because none of the packs resident to YNP or the Trophy Area are known to spend a significant portion of their time in the predator portions of Wyoming (Jimenez 2012 a; Jimenez 2012, pers. comm.), the predator designation is not expected to meaningfully affect wolves in YNP or in the Trophy Area (Jimenez 2012, pers. comm.). While a larger Trophy Area may benefit wolves and wolf conservation, protected and game portions of Wyoming are of sufficient size to support a recovered wolf population in Wyoming, under the management regime developed for this area.

Finally, State law requires that any human-caused mortality occurring in the predator area must be reported to WGFD within 10 days (W.S. 23–1–304(d)(iii)). This will assist the WGFD with monitoring mortality in the predator area and allow the State to adjust mortality within the Trophy

Area, if necessary. The State will also collect genetic samples from these animals when possible (chapter 21, section 5(a)).

Issue 25: Many comments expressed concern about the potential for the hunting of wolves on Federal land and that this delisting rule represented a new management arrangement between the Department of the Interior and the State of Wyoming for particular areas (e.g., National Parks or Wildlife Refuges) that would supersede existing law, regulations, or policy. The most frequently mentioned land ownership categories included the National Elk Refuge, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, Wilderness Areas and Wilderness Study Areas, and Forest Service lands. Many comments expressed concern that inclusion of an area in Wyoming's Trophy Area implied an intention by the State of Wyoming to hunt wolves in these areas. Specifically, some were confused by YNP's exclusion from the Trophy Area, contrasted with Grand Teton National Park's inclusion when management in these areas should be comparable, if not identical. Other comments expressed concern that Wyoming claimed jurisdiction over private lands within Grand Teton National Park and might authorize hunting within the park's boundaries. Many expressed concern for hunting in the John D. Rockefeller, Jr. Memorial Parkway, noting such hunting would sever a critical connectivity corridor between Grand Teton National Park and YNP. Other comments expressed concern that National Park system wolves would be killed when they left the park and suggested that buffers with no hunting or subunits immediately adjoining these units be established with very limited quotas to protect these wolves. Finally, a few comments expressed concern that Wyoming claimed jurisdiction for non-Indian fee title lands within the Wind River Indian Reservation, meaning any wolves on these lands would be treated as a predator.

Response 25: Nothing in this rule would alter, or in any way affect, the jurisdiction or authority of the State of Wyoming, Tribal governments, the National Park Service, the U.S. Fish and Wildlife Service, or any other entity with respect to the regulation of hunting. Whatever jurisdiction or authority to authorize, prohibit, or regulate hunting existed in such areas prior to this final rule is unchanged by the promulgation of this rule (except, of course, that this rule removes the protections of the Act for wolves in Wyoming). More specifically, inclusion of an area in the Trophy Area does not imply a delegation of management authority to the State or in any way alter existing management arrangements. Inclusion in the Trophy Area does not necessarily mean hunting or other State control actions will be allowed. Grand Teton National Park was included in the Trophy Area and YNP was not because wolves occurring in Grand Teton National Park are likely to spend significant amounts of their time in areas under State jurisdiction (including possibly denning in the Trophy Area) whereas most YNP wolf packs spend most of their time in YNP. Thus, it makes sense to count Grand Teton National Park wolves in the State's management totals, and it makes sense to exclude YNP wolves from the State's management objectives. For utmost clarity, below we summarize management authority for the most often mentioned areas within the Trophy Area.

Within the National Elk Refuge (included in the Trophy Area), the refuge retains all authority and responsibility to manage all wolves on the Refuge including, but not limited to, monitoring, research, harvest, and wolf control for depredations on domestic animals and negative impacts on wildlife. Recreational wolf hunting and trapping is not currently authorized on the refuge and is not anticipated, but could be considered in the future (Kallin 2012, pers. comm.). Regarding predator management, regional Service guidance clarifies that management decisions are the purview of the refuge manager, but that generally: Agency-directed population management activities (i.e., those intended solely to reduce or control predator populations) would not be allowed on refuge lands; ground-based control activities (but not aerial gunning) could be allowed for specific animals or family groups likely responsible for documented livestock depredations on neighboring or adjoining lands (subject to National Environmental Policy Act compliance); and requests to conduct nonlethal activities such as surveillance, live-trapping, marking, or radio-collaring by partners could be granted (Coleman 2011). The Service will continue to monitor and report on wolves located on the National Elk Refuge (Kallin 2012a). These wolves will count toward the State's objective of at least 10 breeding pairs and at least 100 wolves outside YNP and the Wind River Indian Reservation (Kallin 2012a).

Within National Park System units, hunting is not allowed unless the authorizing legislation specifically provides for it. Thus, hunting will not occur within YNP or Grand Teton National Park (Frost and Wessels 2012; Joss 2012; Mead 2012b). Although the Addendum to Wyoming's Wolf Management Plan asserts the state's authority to manage wolves on inholdings within Grand Teton National Park, hunting of wolves on those inholdings would not be allowed because hunting within Grand Teton National Park is not authorized by federal law, and is therefore prohibited. Title 36 of the Code of Federal Regulations makes clear that the hunting prohibition is applicable on all lands within the park boundary, regardless of ownership. Therefore, taking of wolves would not be allowed on any of the inholdings within the park. The exception to the hunting prohibition within the park is the elk reduction program, which is a management tool specifically included in the park's enabling legislation.

Although hunting is currently allowed for many other game species in the John D. Rockefeller, Jr. Memorial Parkway under the Parkway's enabling legislation and Wyoming law, the National Park Service has indicated a ''strong preference that wolves not be hunted in the John D. Rockefeller, Jr. Memorial Parkway'' (Frost and Wessels 2012). Wyoming's hunting regulations are clear that gray wolf hunting would not occur in the Parkway during the 2012 season, although nothing in Wyoming's regulations or Wyoming's wolf management plan would preclude wolves from being hunted in the Parkway in subsequent years. Should hunting ever occur in the John D. Rockefeller, Jr. Memorial Parkway, it would likely be very limited, would be unlikely to noticeably affect wolf gene flow or connectivity, and it would be closely coordinated with the National Park Service.

Some wolves in protected areas, such as Grand Teton National Park or the National Elk Refuge, will be vulnerable to hunting and other forms of human-caused mortality when they leave these Federal land management units. These wolves were included in the Trophy Area for exactly this reason. Because Wyoming counts these wolves in its totals, it has an incentive to minimize impacts to these wolves (e.g., more wolves, packs, and breeding pairs in these protected Federal lands means fewer wolves are needed for recovery in the remainder of the Trophy Area). Such information influenced Wyoming's intended harvest in 2012. Specifically, in 2012, Wyoming authorized a harvest of 15 wolves in all of the units adjoining Grand Teton National Park (more than 60 wolves occur in Grand Teton

National Park and the surrounding area). We expect that harvest will have a minimal impact on Grand Teton National Park wolves because: The surrounding units are fairly large; we have no reason to assume harvest in these units will be concentrated along park boundaries; and some reproduction will occur. Similar considerations will also occur in future years. Furthermore, should such mortality result in higher than expected impacts in 2012 or future years, we expect Wyoming to work with the Service and National Park Service to address the issue (Mills 2012, pers. comm.). Should it ever become necessary, Wyoming could consider smaller hunting units for areas adjoining these protected areas. Similar strategies have been successfully implemented in Montana in areas adjoining YNP.

Within Forest Service lands, including Wilderness Areas and Wilderness Study Areas (which are generally Forest Service lands), the Forest Service typically defers to States on hunting decisions (16 U.S.C. 480, 528, 551, 1133; 43 U.S.C. 1732(b)). The primary exception to this deference is the Forest Service's authority to identify areas and periods when hunting is not permitted (43 U.S.C. 1732(b)). However, even these decisions are to be developed in consultation with the States. Thus, most State-authorized hunting occurs on State and Federal public lands like National Forests, Wilderness Areas, and Wilderness Study Areas. Bureau of Land Management lands are managed similarly. This rule does not change or in any way alter this arrangement.

Regarding the Wind River Indian Reservation, we understand that Wyoming claims management authority of non-Indian fee title lands and on Bureau of Reclamation lands within the Wind River Indian Reservation's boundaries. Thus, wolves will be classified as game animals (Shoshone and Arapaho Tribal Fish and Game Department 2007, pp. 2–3, 9) within about 80 percent of the reservation and will be treated as predators on the remaining 20 percent (Hnilicka 2012). Predator status would have minimal impact on wolf management and abundance, because these inholdings tend to be concentrated on the eastern side of the reservation outside of reported areas of wolf activity (Shoshone and Arapaho Tribal Fish and Game Department 2007, Figure 1). We note that, while the Shoshone and Arapaho Tribes do not agree that Wyoming has authority over these lands, to date the Tribes have not challenged this management authority for other wildlife species. Therefore, we assume that if any wolves occur in these areas they will be treated as predators.

Issue 26: Some comments expressed concern that State management and the resulting increased human-caused mortality would negatively affect surviving wolves and packs across the region. Some comments focused on the impact to pack social structure. Others focused on psychological trauma and increased stress to survivors which in turn could affect their own likelihood of survival. A few comments noted that even in a relatively large protected area, human harvesting outside park boundaries can affect evolutionarily important social patterns within protected areas.

Response 26: Wolf packs frequently have high rates of natural turnover (Mech 2007, p. 1482) and quickly adapt to changes in pack social structure (Brainerd *et al.* 2008, p. 89). Higher rates of human-caused mortality outside protected areas will result in different wolf pack size and structure than in protected areas. However, wolf populations in many parts of the world, including most of North America, experience various levels of human-caused mortality and the associated disruption in natural processes and wolf social structure, without ever being threatened (Boitani 2003, pp. 322–323). Therefore, while human-caused mortality may alter pack structure, we have no evidence that indicates this issue, if adequately regulated (as will occur in the NRM region), is a significant concern for wolf conservation.

Issue 27: A few comments opined that Wyoming State law would allow abuse of the State's defense of property allowance. Specifically, some opined that Wyoming's chapter 21 and State statutes (W.S. 23–3–115) could allow the use of dogs or livestock as bait to encourage wolves to attack, which would in turn allow the killing of the offending wolf ''doing damage to private property.'' These comments noted this is different than our experimental population rule's allowances for defense of property, where such baiting was specifically prohibited.

Response 27: A representative from the Wyoming Attorney General's Office indicated the baiting scenario laid out above could be prosecuted under State law (Nesvik 2012). Regardless, we conclude that such a scenario is unlikely to occur and exceedingly unlikely to become a meaningful source of mortality. Should a member of the public desire to pursue wolf removal, rather than risk violating State laws and regulations, most would pursue either a hunting tag or a lethal take permit. Such permitted take would be regulated and limited as necessary. Furthermore, from a practical standpoint, such baiting is likely to be very time consuming given the difficulty of trying to actually catch a wolf ''doing damage to private property.'' In the unlikely event that this theoretical issue becomes a regular source of uncontrollable mortality, similar to legitimate defense of property allowances, it would result in a smaller harvest quota or other limits on controllable human-caused mortality as a means of compensating and ensuring the population's recovered status is not compromised. This approach is adequate to address this improbable, theoretical issue.

Issue 28: Many comments objected to killing wolves for eating their natural prey. These comments dispute the conclusion that wolves were causing unacceptable impacts to ungulate herds and instead suggested prey abundance was primarily shaped by other factors (e.g., habitat and climate). Many of these comments suggested that we should let nature achieve a natural balance over time instead of reducing wolf populations. Other comments suggested Wyoming might use its allowance to address ''unacceptable impacts to ungulate populations'' to quickly reduce wolf populations to minimum levels. These comments asserted that the vague and flexible definition of ''unacceptable impacts'' (''any decline in a wild ungulate population or herd that results in the population or herd not meeting the state population management goal or recruitment levels established for the population or herd'') could result in abuse of this provision if the State established absurd objectives for the primary purpose of justifying large-scale wolf removals.

Response 28: To date, Wyoming has not proposed any wolf control projects specifically to address unacceptable impacts to ungulate herds. At present, nearly all of Wyoming's elk herds are at levels above State objectives. While half of Wyoming's moose populations are not meeting State objectives, the science does not indicate wolves are the primary culprit for this outcome. This information indicates no immediate need for such an approach. After delisting, other management tools will reduce wolf populations from current levels, further limiting the need for control specifically to address unacceptable impacts to ungulate herds. Therefore, we expect wolf control specifically to address unacceptable impacts to ungulate herds will be rare, will be regulated should it occur, and will not compromise recovery. Instead of using this tool, we expect that

Wyoming will consider ungulate herd health when designing hunting units and quotas. This approach will allow them to use hunting (which is a far cheaper management tool) to address any perceived issues. Both hunting and projects specifically to address unacceptable impacts to ungulate herds (should any occur) will be carefully regulated so that population objectives are not compromised and recovery is maintained in Wyoming, the GYA, and across the NRM DPS.

Issue 29: Some comments expressed concern that illegal human-caused mortality might be greater once Federal protections are removed due to lower and undefined consequences of illegal wolf killing in the Trophy Area. A few comments suggested unlimited and unregulated taking in the predator area will encourage people to illegally shoot wolves in regulated portions of Wyoming. A few comments noted our previous statements that a statewide trophy game status would be easier for the public to understand and easier to regulate and enforce. Some comments noted the need for strict enforcement with strong fines and penalties.

Response 29: Upon delisting, wolves will become protected by State, Tribal, and Federal laws and regulations. In most cases, when wildlife managers have sufficient evidence to recommend prosecution, prosecution is pursued (Bruscino 2012, pers. comm.). Enforcement will keep illegal activity to a minimal level. While listed, illegal killing was estimated to be responsible for approximately 10 percent of annual mortality. This level of mortality was not a threat to the population because of the species' prolific reproductive capacity. There was no indication that illegal mortality levels increased following previous delistings. In the Midwest, it appeared that fewer wolves were illegally killed during the deer hunting season when wolves were delisted than when they were listed (Wydeven *et al.* 2008). Furthermore, we do not share the opinion that the take allowances authorized in the predator area will encourage others within the Trophy Area to break the law. To the contrary, slightly greater defense of property allowances and legal hunting opportunities may shift some illegal killing into legal mortality categories.

Finally, while enforcement of the law would have been easier under statewide trophy animal status, we conclude that human-caused mortality can be adequately regulated by Wyoming under the current regulatory framework. Under Wyoming's regulatory framework it will be incumbent upon members of the public to know their rights and responsibilities towards wolves in different parts of the State. Similar requirements would be placed upon the public even if Wyoming adopted a single statewide trophy animal designation when wolves cross into areas like National Parks, wildlife refuges, sovereign Indian land, or other States, or when hunters move from one hunting unit into another. Such differential standards governing take allowance currently exist for other State-regulated species and rarely cause confusion for the public. Furthermore, the potential for confusion is lessened because Trophy Area boundaries are set in statute. Thus, the same agency will consistently make management decisions for a set location; while management may seasonally shift between agencies in the seasonal Trophy Area, the timing and geography of this shift is set in statute and will not change across years, providing some reasonable level of predictability here, too. This contrasts with and substantially improves upon previous regulatory frameworks in Wyoming where the WGFC had authority to move the line whenever it saw fit if the State's objectives could be met in a smaller area. Thus, overall, we conclude that, while some confusion is possible, the available evidence indicates that most stakeholders will obey the law as it applies to wolves in different geographical areas.

Therefore, we conclude that while some level of illegal mortality goes on now and is likely to continue, we have high confidence that this issue, singularly or in combination with other factors, will not compromise the Wyoming, the GYA, or the NRM gray wolf population's recovered status.

Issue 30: Many other comments suggested Wyoming should employ nonlethal deterrents, birth control or sterilization, or relocation before resorting to lethal control. Some comments accepted lethal control when there was a current or imminent threat to personal property. Many comments suggested increased spending for rancher education including nonlethal approaches to deterring wolf depredation. One comment asserted that limiting lethal control methods was the best way to spur innovation in developing and increasing application of effective nonlethal options. This commenter asserted that, by limiting the amount of lethal control and who can implement it, incidents of residents killing the wrong wolf would be minimized. A few comments indicated that State compensation programs (which pay at 7 times market value) create a perverse incentive to encourage poor animal husbandry practices (things like putting livestock in known wolf-occupied areas).

Response 30: While not required by the Act, State, Tribal, and Federal managers will continue to use a combination of management options in order to reduce wolf-human conflicts, including nonlethal forms (Bangs *et al.* 2006). However, these methods are only effective in some circumstances, and no single tool is a cure for every problem. Lethal control will still be required in many circumstances. In areas with year-round high livestock density, it is almost impossible to prevent chronic livestock depredation if wolf packs form in those areas. Lethal control used in combination with nonlethal methods can improve the overall effectiveness of both management options (Bangs *et al.* 2006, p. 8; Brietenmoser *et al.* 2005, p. 70).

Issue 31: Many comments objected to various types of mortality that will be allowed in Wyoming, particularly in the predator area, as well as activities currently ongoing in Montana and Idaho, which they viewed as inhumane, unethical, or unfair. For example, some people objected to poisoning, gassing, hunting, trapping or snaring (as well as not checking traps often enough), torturing, and various other methods of killing wolves. A few suggested humane euthanasia instead of other less-humane methods of control. Others objected to any wolf killing. Many viewed wolves as intelligent, sentient beings that warrant protection. A few comments expressed the opinion that the sudden shift of wolves being protected as endangered one day to being considered vermin the next day was unprecedented, contrary to the intent of the Act, and violated the duty imposed by the Act to recover and protect at-risk species. Others opined that this approach violated the stated purpose of the Act ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' A few comments suggested Wyoming's decision to designate wolves as predators across most of the State violated six principles of the North American Wildlife Model of Conservation including: Wildlife as public trust resources; allocation of wildlife by law; wildlife should only be killed for a legitimate purpose; wildlife are considered an international resource; science is the proper tool for discharge of wildlife policy; and democracy of hunting (the 7th principle is ''elimination of markets for game'').

Response 31: We recognize and respect that many find some or all forms of human-caused wolf mortality as

morally or ethically objectionable. Some forms of wolf mortality that may occur in the predator area were not implemented while the Service was responsible for wolf management. However, the Act requires that we make our determination based on the status of the subject species (is it recovered and will State management retain that recovered status if the Act's protections are removed) and does not allow us to consider the manner in which individuals will be killed after delisting unless it would affect this overarching viability determination. The manner of take is subject to State control once wolves are delisted. Based on the available information, we do not find any persuasive information to indicate that the manner of killing will affect the viability of the Wyoming, the GYA, or the NRM gray wolf populations. Regarding viability, few wolves occur in the predator portion of Wyoming (now and likely far fewer after delisting); therefore, few wolves will be subjected to such taking. Furthermore, we cannot find any evidence that a shift from being Federally protected under the Act one day to being considered vermin the next day conflicts with Congressional intent or violates the Act. Finally, designation of large portions of Wyoming as a predator area is not inconsistent with the purposes of the Act—wolf restoration in nearly all of the predator area is unrealistic regardless of its designation; as in eastern Montana and southern Idaho, wolf restoration will not occur in largely unsuitable habitat regardless of its management designation. In other words, protection of the wolf population and maintenance of the ecosystems on which wolves depend have been, and will continue to be, protected to the extent necessary.

Gene Flow and Genetic Diversity

Issue 32: A few comments suggested that lack of genetic diversity was an issue for NRM gray wolves, that almost all wolves in Yellowstone and Idaho descended from a small reintroduced population, and that the genetic diversity of the extirpated North American gray wolf was twice that of the current population. Many comments discussed genetic connectivity and potential future genetic issues that could result from genetic isolation (e.g., inbreeding depression or reduced genetic fitness). Many comments indicated that gene flow was limited under the Act's strict regulatory framework, and would be even more limited after delisting. Specifically, these comments indicated State management would reduce the wolf population resulting in fewer dispersers, and reduce occupied range, increasing the distance a dispersal event would need to cover, which in turn would reduce both the numbers of dispersal events and increase mortality among dispersers. Various types of allowable mortality (hunting and killing in the predator area were most frequently mentioned) would result in reduced survival for wolves traveling between subpopulations (including dispersal during peak dispersal periods), and high mortality rates in unprotected areas would kill wolves that successfully traverse between subpopulations.

Some comments noted our previous conclusion that dispersal would likely ''noticeably decrease'' if populations were maintained near 150 wolves per State. Several comments apparently viewed this as an admission that management at these levels are not genetically sustainable. A few comments suggested that we should analyze this threat at minimum population levels. Some comments challenged our assertion that the population was recovered as long as human-caused mortality, the primary threat faced by the species, could impede gene flow. While the peer review report concluded that ''gene flow is likely to be adequate in the short and medium term,'' some comments expressed concern about genetic health in the long term. Still other comments indicated gene flow was unlikely to become a conservation issue for NRM and GYA wolves, given the proximity of neighboring wolf populations and the dispersal capabilities of wolves. Numerous documented long distance-dispersal events were given as examples of the species' dispersal ability (i.e., dispersal into Oregon, Washington, California, South Dakota, Nebraska, Colorado, and Utah). A few comments noted that most of the peer reviewers viewed genetic connectivity and potential genetic issues as a ''non-issue.''

Response 32: NRM wolves are as genetically diverse as their vast, secure, healthy, contiguous, and connected populations in Canada (Forbes and Boyd 1997, p. 1089; vonHoldt *et al.* 2007, p. 19; vonHoldt *et al.* 2010, pp. 4412, 4416–4421), and, thus, genetic diversity is not a wolf conservation issue in the NRM DPS at this time (Hebblewhite *et al.* 2010, p. 4383; vonHoldt *et al.* 2010, pp. 4412, 4416, 4421). Wolves have an unusual ability to rapidly disperse long distances across virtually any habitat and select mates to maximize genetic diversity. Wolves are among the least likely species to be affected by inbreeding when compared to nearly any other species of land mammal (Fuller *et al.* 2003, pp. 189–190; Paquet *et al.* 2006, p. 3; Liberg 2008). Genetic and dispersal data demonstrate that minimal acceptable levels of genetic exchange between all NRM subpopulations were met or exceeded while the species was listed (including from 1995 to 2004 when the population was between 101 and 846 individuals and likely a higher rate of effective dispersal since then). While State management will almost certainly reduce genetic exchange rates from recent levels (which exceed minimal acceptable levels of genetic exchange), we find it extremely unlikely that it will be reduced to the point that the GYA wolf population will be threatened by lower genetic diversity in the foreseeable future. Similarly, the peer review report concluded ''genetic concerns (inbreeding, maintenance of gene flow) are minor'' and that ''gene flow is likely to be adequate in the short- and medium-term'' (Atkins 2012, p. iii). Overall, the best scientific and commercial information available indicates this issue is unlikely to undermine the Wyoming, the GYA, or the NRM gray wolf population's recovered status and that this issue, singularly or in combination with other factors, is unlikely to cause the population to become an endangered species within the foreseeable future throughout all or a significant portion of its range. This issue is discussed further in subsequent Issues and Responses and in Factor E below.

Issue 33: Many comments expressed the opinion that the seasonal Trophy Area expansion would not be effective in maintaining a genetic connection between wolves in Wyoming and wolves in Idaho. A few comments noted that we previously recommended a statewide Trophy Area reasoning that dispersal is more likely to lead to genetic exchange if dispersers have safe passage through the predator area. Numerous comments asserted that the seasonal Trophy Area's boundary was based on political compromise and not science. Many comments noted that we failed to present any data explaining why this geographic area and this time period are adequate to maintain genetic connectivity. Some of these comments noted that seasonal protection was inadequate because wolf dispersal takes many months and occurs at all times of the year. Other comments noted that more than half of the time the area was protected as a game area, hunting would occur, further limiting its effectiveness as a protective corridor.

A few comments suggested the effectiveness of this area would be further hindered by management in

Idaho. Specifically, during the fall 2011 to spring 2012 hunting season, Idaho's Southern Wolf Hunting Zone (adjacent to the seasonal Trophy Area) had a 7-month hunting season (August 30 to March 31) with unlimited total quotas. This comment indicated that these combined management schemes do little or nothing to prevent genetic isolation because they do not provide a single day of the year when wolves can move between this portion of Idaho and Wyoming and not face unlimited kill prospects. A few comments recommended the seasonal Trophy Area should be added to the permanent Trophy Area. Some comments suggested the southern boundary should be placed further south than the Teton County line for both scientific and economic reasons (predator status in Teton County could hurt its image as a place that honors and protects wildlife). Others suggested the entire State should be categorized as a Trophy Area (instead of the seasonal Trophy Area expansion) in order to maximize the likelihood of maintaining genetic connectivity.

Response 33: Dispersing wolves will likely use multiple routes to enter the GYA in the years to come. For example, a simple evaluation of Figure 2 in this rule would suggest the shortest and most direct path to entering the GYA is from the central Idaho region into eastern Idaho's portion of the GYA. In recognition of this likelihood, Idaho has limited hunting in this region. Similarly, some wolves could move from western Montana into south-central Montana and enter the GYA subpopulation. The distance between these areas is currently very small (a fact demonstrated by the relative difficulty in determining which subpopulation some intervening packs should be assigned to based on visual inspection alone; i.e., pack 99 or 242 in Figure 2) and is expected to remain an easily travelable distance long term. Effective migration into the GYA via these routes could be done without moving through Wyoming and would accomplish the desired connectivity goal.

Similarly, while YNP's recent high density and reproductive output appears to have limited gene flow from other subpopulations into the park (but not necessarily through the park), the lack of dispersal into YNP may change as the park's wolf population continues its decline into a lower long term equilibrium (Smith 2012). Furthermore, regardless of whether they establish in the park, future wolf population densities in YNP will not preclude dispersing wolves from traveling through the park. Given the above, dispersal around the southern end of the permanent Trophy Area is likely to be a small portion of the total number of dispersers.

Additionally, the predator area designation will not preclude dispersal. While resident packs with established home ranges and known denning sites in the predator area are expected to be removed, dispersers will be more difficult to find, resulting in some successful dispersal. Hunting data from Idaho's Southern Wolf Hunting Zone demonstrates this conclusion. During the 2009–2010 hunting season, Idaho allowed hunting from August 30th to March 31st in this zone, but only one wolf was harvested. During the 2011–2012 hunting season, Idaho allowed hunting from August 30th to March 31st with an unlimited quota in this zone, but only harvested two wolves. Much like the Wyoming predator area, few resident wolves occupy this area, so most take that occurs is opportunistic. Such take has proven minimal to date. We conclude that this trend will continue in Idaho's Southern Wolf Hunting Zone. Similarly, take of dispersers in the predator area will occur, but will be limited, and dispersal will likely continue through this area, despite the predator area's legal status and liberal take opportunities.

The seasonal expansion of the Trophy Area was designed to facilitate additional dispersal around the southern edge of the GYA population. Specifically, the permanent Trophy Area will expand approximately 80 km (50 mi) south along the western border of Wyoming from October 15 to the end of February (see Figure 1 above). This seasonal expansion covers approximately 3,300 km^2 (1,300 mi^2) (i.e., an additional 1.3 percent of Wyoming). This area was selected to provide a southern route around the Teton Range in winter when high elevation and high snow packs would limit wolf passage. The timing of this expansion was also selected to provide additional protection for wolves during peak dispersal periods in winter. Human-caused mortality will be limited during this important time period. For example, in 2012, Wyoming established a quota of 2 wolves for the seasonal Trophy Area with a season from October 15 through December 31; no hunter harvest will be allowed from January 1 through the end of February. The seasonal expansion of the Trophy Area, together with other reforms to the State's regulatory framework, will benefit dispersal and will provide that the Wyoming, the GYA, and the NRM gray wolf population's recovered status will not be compromised.

Most of the peer reviewers concurred with our assessment, noting that the Trophy Area was sufficient to maintain genetic connectivity and gene flow between subpopulations. Additionally, most peer reviewers indicated that the designation of a large predator area would not undermine this connectivity and the desired levels of gene flow.

Issue 34: Some comments questioned the basis for the goal of at least one effective migrant per generation moving into the GYA to address potential genetic issues. A few comments noted that documented effective natural migration into the Greater Yellowstone Ecosystem was less than half of the one effective migrant per generation standard (0.43 natural effective migrants per generation); one comment noted that this estimate was a minimum estimate and a rate around the minimum standard probably occurred. Some comments cited literature recommending up to 10 migrants per generation. One comment even indicated that some populations require greater than 20 migrants per generation. One of the peer reviewers noted gene flow should also occur from the GYA into the other subunits.

Response 34: As a general rule, genetic exchange of at least one effective migrant (i.e., a breeding migrant that passes on its genes) per generation is viewed as sufficient to prevent the loss of alleles and minimize loss of heterozygosity within subpopulations (Mills and Allendorf 1996, entire; Wang 2004, entire; Mills 2007, p. 193). This level of gene flow allows for local evolutionary adaptation while minimizing negative effects of genetic drift and inbreeding depression. While higher levels of genetic exchange may be beneficial (note the ''at least'' in the above standard), we conclude that a minimum of one effective migrant per generation is a reasonable and acceptable goal to avoid any degradation in the NRM DPS's current levels of genetic diversity. Even the most cautious peer reviewer, Dr. Vucetich, agreed ''existing literature suggests that this objective for immigration is appropriate'' (Atkins 2011, p. 87). As discussed further in Factor E below, this level of genetic exchange likely occurred when the population was between 101 and 846 wolves and has likely been exceeded at higher population levels (as discussed in more detail in Factor E below).

Management attention to date has focused on gene flow into the GYA from other subpopulations because this is the most isolated population, and the population where a lack of gene flow has a theoretical potential to affect the

population. The other two subpopulations are well connected to each other and Canadian wolf populations, indicating that genetic issues are not likely to be a conservation issue for the central Idaho or northwestern Montana subpopulations. While gene flow from the GYA into other subpopulations has likely occurred and will likely continue after delisting, such movement is not necessary for the preservation of GYA, central Idaho, or northwestern Montana wolf subpopulations. While such gene flow is desirable, it is not necessary to prevent the NRM DPS or any of its subpopulations from becoming threatened or endangered.

Issue 35: A few comments noted that no genetic exchange could occur for up to 20 years before remedial action would be considered. Some of these comments saw this as problematic because some modeling indicates a small, isolated population of around 170 wolves could see decreased juvenile survival within 60 years.

Response 35: As discussed elsewhere in this rule, genetic diversity is not a short term issue and will not constitute a threat to the viability of the wolf population at any time in the foreseeable future. Even for small and isolated populations (neither of which will be the case for the GYA wolf population), changes in genetic diversity take time. For example, a vonHoldt *et al.* (2007, pp. 16, 19) model suggested that even if the GYA population is maintained at about 170 animals and no effective migration occurs, the heterozygosity and inbreeding coefficients will not change for the next 10 years, would change minimally over the next 20 to 30 years (not enough to result in a phenotypic change), and that it would take 60 years before a 15 percent reduction in reproductive rates could occur (which would not likely threaten or endanger the population). However, we believe even these outcomes are overly pessimistic, because the vonHoldt *et al.* (2007) model assumes a population level about half the GYA's likely long term average (as discussed elsewhere in this rule) and, even in a worst case scenario, natural effective migration and gene flow will exceed zero (the model assumes zero effective migration).

Given the above, we conclude that it is appropriate to monitor this issue for multiple wolf generations before deciding whether to take action and what type of action to take. However, this approach does not mean this issue will be neglected as this comment seems to imply. In fact, Wyoming has agreed to pursue an extensive long term genetic monitoring program, which will be more intensive than what is undertaken for any other species in Wyoming (Mead 2012a). Should data warrant a need, the States will then implement remedial actions, as appropriate, including options like limiting the amount and timing of human-caused mortality to increase survival of dispersing wolves. Overall, this comprehensive and rigorous approach to this issue gives us confidence that genetic diversity will not become a threat to the population's recovered status.

Issue 36: Many comments objected to human-assisted migration as a strategy to address potential genetic threats associated with reduced or lost connectivity when feasible methods for ensuring natural dispersal and population connectivity exist (e.g., reducing human-caused mortality). Others thought human-assisted migration should be a last resort and that it was an inappropriate tool to overcome anthropogenic barriers to dispersal (primarily human-caused mortality). Others noted that this management approach risks unnecessarily creating a conservation-reliant species. Some suggested allowance for human-assisted migration meant the population was not recovered, because the Act requires self-sustaining wild populations to achieve recovery. Other comments argued any species that requires translocation is not recovered because section 3 of the Act defines ''recovery'' (technically ''conservation'') as ''the point at which the measures provided pursuant to this Act are no longer necessary'' and the list of measures includes relocation. Some comments expressed the view that we had no real assurance Wyoming would use translocation only as an option of last resort, and more likely, it would become ''standard procedure.''

A few comments viewed our allowance for human-assisted migration as removing State incentive to achieve the criterion via natural dispersal. Others requested clarification on when it would be used, what it would look like, and how it would be financed. These comments concluded it was counter to the Act for us to rely on the unenforceable intentions of Wyoming as grounds to dismiss this potential threat. One comment suggested the proposed rule oversimplified the feasibility of artificial translocation noting few transplanted wolves would become breeders, that artificial insemination would be technically difficult, and that such a program would be costly to the States. Still other comments suggested relocating problem wolves instead of killing them, noting the ancillary benefit of providing gene flow. Other comments insisted delisting should not occur until the population can be shown to be genetically viable under State management without translocation.

Response 36: Montana, Idaho, and Wyoming all agree that natural connectivity is the preferred approach to maintaining genetic diversity, and have indicated an intention to jointly collaborate to provide continued opportunities for natural connectivity between all three recovery areas (Groen *et al.* 2008, p. 2; WGFC 2012, pp. 6–7). Given the dispersal capabilities of wolves and the proximity of suitable habitat, we conclude that the States can, and will, achieve adequate levels of genetic exchange. Such levels likely occurred when the population was between 101 and 846 wolves and have likely been exceeded at higher population levels (as discussed in more detail in Factor E below). Although future dispersal will differ from past levels, the available data support a conclusion that human-assisted migration is unlikely to be a regular activity. Instead, translocation of wolves or other management techniques to move genes between subpopulations would only be used as a stop-gap measure, if necessary to increase genetic interchange (WGFC 2012, p. 7). In short, NRM wolves and wolves in the GYA are not expected to need or rely on human-assisted migration often, if ever, and these populations will not become ''conservation reliant'' as defined by Scott *et al.* (2005, entire). That said, should it ever become necessary, human-assisted migration is an acceptable management technique (especially when relied upon only as a measure of last resort). This conclusion is consistent with the position we took in our 1994 Environmental Impact Statement, which noted that other wildlife management programs rely upon such agency-managed genetic exchange and concluded that the approach should not be viewed negatively (Service 1994, pp. 6–75).

We recognize that the logistics of human-assisted migration, should it ever become necessary, would present a number of challenges, but we are confident that those challenges can be overcome. Source wolves could be obtained from any of the other subpopulations or adjoining populations in Canada. Wolf capturing and transporting was used for the initial reintroductions, have proven to be a feasible and successful technique, and could be used again (Fritts *et al.* 2001, p. 129). Such assisted migration efforts would take into account the fact that only a fraction of relocated wolves

would likely become breeders (35 percent of naturally dispersing wolves reproduce (Jimenez *et al.* In review, pp. 9–12); similarly, two of ten pups moved from northwestern Montana to YNP in 1997 became breeding adults (vonHoldt *et al.* 2010, p. 4421). Other unorthodox approaches to genetic migration such as artificial insemination of wild animals could also be considered, but are less likely to be used because they would present their own logistical challenges (Thomassen and Farstad 2008, entire; Payan-Carreira *et al.* 2011, entire). All such efforts would be a cooperative effort between the three States, Federal agencies and other partners as appropriate. Funding such wolf management would also be a cooperative effort with multiple parties contributing various portions as necessary and appropriate; funding wolf management is discussed further in Issue and Response 46 below.

Finally, the idea that delisting should not occur until the population can be shown to be genetically viable under State management without translocation is inconsistent with the purposes of the Act. Because delisting is a precursor to full State management (i.e., State management unrestricted by the Act and including hunting), it is impossible to require demonstrated successful State management as a precondition to delisting. This issue is true for management of genetics or any other issue.

Issue 37: We received a number of suggestions to improve the adequacy of Wyoming's commitment to maintaining natural connectivity including: That we develop objective and measurable recovery criteria or relisting triggers for natural dispersal; that we develop specific management actions to ensure the criteria remain met; that the States commit to genetic monitoring in State law or a binding management plan; and that we commit to relisting within a specific time period if the natural dispersal criteria are not met.

Response 37: Although we seriously considered developing a status review trigger related to genetic connectivity, we ultimately decided this was not appropriate because we concluded that it is extremely unlikely that declines in genetic diversity would threaten or endanger the Wyoming, the GYA, or the NRM gray wolf populations. Thus, we concluded that a status review trigger would create an issue where there was not one and, therefore, was inappropriate. Similarly, we concluded that it was not appropriate to commit to relisting if certain levels of gene flow are not achieved. Such a specific commitment would require us to demonstrate that the population would necessarily be threatened or endangered if the goals were not met. Given the available information, we did not feel we could satisfy this standard. For example, we do not believe the available information would support a conclusion that the population would be threatened or endangered if we achieved an average of 0.75 effective dispersers per generation over the next century instead of the goal of at least one effective migrant per generation. In fact, we find it very unlikely this would be the case. Therefore, we decided it would be inappropriate to commit to a specific status review or relisting trigger related to this issue. However, we will continue to work with the States on this issue so that genetic issues do not threaten the NRM gray wolf. We will also work with the States over the long term to carefully monitor any changes in genetic diversity and fitness. In the unlikely event that this issue does ever pose a significant risk to the well-being of NRM gray wolves, as required by section 4(g)(2) of the Act, we will make prompt use of the Act's emergency listing provisions.

Adequacy of Regulatory Mechanisms

Issue 38: A few comments questioned the competency of the State to manage wolves. Some comments asserted that giving Wyoming management authority was inappropriate given the State's history with this issue and public attitudes towards wolves in the State. Others expressed faith that Wyoming's wildlife professionals would do an exceptional job managing this species, as they have done with other wildlife like mountain lions, black bears, bobcats, and coyotes. Numerous comments expressed confidence the State would do a far better job than we have done.

Response 38: WGFD has a relatively large and well-distributed professional game and fish staff that have demonstrated skill and experience in successfully managing a diversity of resident species, including many large, high-profile, and controversial carnivores. WGFD staff is fully qualified to manage a recovered wolf population. State management of wolves in the Trophy Area (where most wolves reside) will be in alignment with the classic State-led North American model for wildlife management, which has been extremely successful at restoring, maintaining, and expanding the distribution of numerous populations of other wildlife species, including other large predators, throughout North America (Geist 2006, p. 1; Bangs 2008).

WGFD provided evidence of this competency when it had management authority within the Trophy Area for a few months in 2008. During 2008, the documented minimum wolf population outside YNP saw modest changes, including a total population decrease from 188 to 178 individuals, an increase in the number of packs from 25 to 30, and an increase in the number of breeding pairs from 14 to 16 (Service *et al.* 2007–2008, Wyoming chapter, p. 4). Wyoming also experienced a comparable number of livestock depredations in recent years (67 in 2008, while the area has averaged 98 since 2003) (Service *et al.* 2007–2008, Wyoming chapter). Meanwhile, agency control including defense of property take was also comparable to the long term average (46 in 2008, while the area has averaged 39 since 2003) (Service *et al.* 2007–2008, Wyoming chapter). Although Wyoming only had management authority for a few months in 2008, most agency control and defense of property mortality occurs during spring and summer, which makes these numbers informative of the WGFD's approach to management and its capacity to meet objectives. Wyoming also planned a modest hunt with a quota of 25 wolves in 2008 before this hunt was enjoined from occurring. Collectively, this information corroborates our belief that Wyoming can, and likely will, follow through on its stated management intentions.

Issue 39: We received a few comments on what constitutes an adequate regulatory mechanism and what was appropriate to consider in our analysis. Some comments pointed out that we relied on unenforceable State intentions in our 2009 delisting, which were promptly disavowed or violated. For example, some comments asserted that we relied upon Idaho's stated intention to manage for 520 wolves, but that this commitment was set aside when the State suspended their 2008–2012 step-down wolf management plan. Some comments suggested the Wyoming Gray Wolf Management Plan was not regulatory in nature and should not be considered or relied upon. Some comments suggested that State statute and regulations should not be considered adequate because they can be modified after the delisting become effective. For example, while the size and permanency of the Trophy Area is set in statute, this could be repealed or amended by the Wyoming state legislature.

Numerous comments objected to our ''unrealistically high prediction of future wolf numbers'' (''perhaps around 1,000 wolves across the NRM DPS''). A few comments questioned the basis for our statement that it was ''extremely

unlikely'' that Montana, Idaho, and Wyoming would manage their wolf populations near the minimum management targets. These comments indicated that the States' only commitment was to targets between 100 and 150 wolves per State, that it was illegal for our analysis to assume any numbers other than those that we had firm commitments to maintain, and that the States were clearly demonstrating a strong commitment to quickly reduce the wolf population. One peer reviewer expressed concern whether Wyoming had authority to manage for a buffer above minimum management targets and whether State management would push Wyoming's population closer and closer to the razor edge of 10 breeding pair and 100 wolves. This reviewer seemed concerned over numerous sources of take allowed under Wyoming's wolf management plan and repeated reference to the 10 breeding pair and 100 wolf thresholds in State statutes and regulations, rather than referring to a buffer above these minimums. Other comments indicated Wyoming's agreed-upon population targets would not be compromised because no decision-makers, managers, or stakeholders would ever want to risk relisting and the loss of State control, especially after living with a protected wolf population with limited management options for so many years.

A few comments indicated that we erroneously considered a nonbinding genetics Memorandum of Understanding (MOU) with unenforceable commitments in our 2009 delisting, that the States had since failed to deliver on these promises, and that this should serve as evidence that reliance on such nonbinding commitments is inappropriate. Numerous comments indicated that there was no guarantee that the subpopulations would continue to be connected, and thus that we lacked adequate regulatory mechanisms. Others suggested the commitment to translocate wolves was not guaranteed to occur and should not be relied upon. A few comments suggested a species can be threatened by the inadequacy of regulatory mechanisms alone, even if no other threat factor puts the population at risk. Some comments suggested binding and enforceable habitat standards must be in place as was done in the Yellowstone grizzly bear delisting. Several comments suggested we should have pressed for the development of a single, regional management plan (including all relevant State, Federal, and private interest groups) instead of separate plans for each State.

Response 39: Our primary consideration in gauging the adequacy of Wyoming's regulatory framework is that binding State statutes and implementing regulations mandate maintenance of a population at least satisfying agreed-upon minimum management targets. Wyoming's wolf management plan further clarifies that the WGFD and WGFC intends to satisfy these statutory and regulatory mandates by maintaining a buffer above minimum population targets. The approach outlined in the WGFC plan will be used, for example, by WGFD and WGFC in setting annual hunting quotas and limiting controllable sources of mortality. While it would have been desirable for Wyoming to have included reference to a buffer above minimum population targets in State statute and regulations, inclusion of such a concept or a specific numeric buffer is not required for us to consider the buffer described in Wyoming's wolf management plan. While some have questioned whether Wyoming has the legal authority to maintain a buffer, we conclude that Wyoming has the authority because: (1) Both the statute and regulations require maintaining ''at least'' these minimum population levels; and (2) meeting this statutory and regulatory mandate will require managing above this goal so that uncontrollable sources of mortality (e.g., disease and defense of property) do not compromise the mandated minimum targets.

While Wyoming statutes, implementing regulations, or its wolf management plan could theoretically be changed at any time, just as the Act could theoretically be repealed tomorrow, it is reasonable to rely on these documents as the basis to understand the State's management intentions after delisting. In short, the Act does not require documents to be permanent, for nothing is permanent. Furthermore, we cannot ignore any of these documents, as it would violate the requirement of section 4(b)1(A) to rely upon the best scientific and commercial information available and to take into account State conservation efforts. As a final safeguard against management being meaningfully modified after the delisting becomes effective, we will initiate a status review and consider relisting if there is a change in State law or management objectives that would significantly increase the threat to the wolf population. We will also make prompt use of the Act's emergency listing provisions, as required by section 4(g)(2) of the Act, if necessary to prevent a significant risk to the well-being of the population.

Our analysis must consider what is most likely to occur in light of the practical reality of the situation as informed by minimum State commitments and other information. In this case, while all three States intend to pursue population reductions, which we anticipate and to which we do not object, none of the States have indicated an interest in managing their populations at or very close to minimum agreed-upon targets (although Wyoming will likely be the closest to its minimum management targets). None of the States are likely to manage down to, or very near, minimum management targets because doing so would severely limit State flexibility to address wolf depredation issues, limit wolf harvest opportunities, and increase the risk of relisting. None of the States or any major interest group in the States would like to see any of these scenarios occur. In fact, State wildlife managers have consistently reiterated to us their desire not to come close to their floor levels in light of these factors. Such information leads us to conclude that Idaho, Montana, and Wyoming will all manage comfortably above the minimum management targets.

While we recognize that both Idaho and Montana are moving toward higher harvest and longer seasons, we conclude that these approaches are temporary as the States pursue population reductions. We expected population reductions in Montana and Idaho at the time of their delisting and conclude that such reductions are reasonable given the current size of the wolf population (which are likely at or above the suitable habitat's long term carrying capacity) and the resulting impacts (some real and some perceived; see Issue and Response 50). It should also be noted that Idaho's 2011 hunting season, which was criticized by some stakeholders for being overly aggressive, only resulted in a slight change in minimum estimated population levels in Idaho in 2011 (from a minimum Idaho population estimate of 777 wolves and 46 breeding pairs to a minimum statewide estimate of 746 wolves and 40 breeding pairs) (Service *et al.* 2012, Table 4b). After the States achieve an initial population reduction, harvest rates will moderate as the population stabilizes and the public's current angst and intense interest wanes (see Issue and Response 41). The NRM gray wolf population will then likely settle into a reasonable, long term equilibrium, well above minimum recovery levels.

Another factor that we weighed regarding likely long term population

levels is the practical challenges of reducing wolf populations down to minimum levels and maintaining such reductions long term. These factors include wolves' reproductive capacity, which will require substantial mortality to keep populations well below carrying capacity; the rugged, remote, and difficult to access landscape in which many wolves occur (particularly in central Idaho); the likelihood that wolves will become more difficult to find and kill as their numbers are reduced and as they become more wary of humans; and the likelihood that hunter and trapper interest and dedication will diminish as the wolf population is reduced, impacts are less pronounced, and success rates diminish (trapping in particular is expensive and time-intensive and would likely not be worthwhile with reduced success rates). Overall, we expect measurable population reductions over the next few years. During this initial reduction phase, populations may even fall below our long term predicted levels. However, given the above information, we conclude that such reductions would likely be temporary and, in the long term, a NRM gray wolf population more than double the minimum management targets is likely. Conversely, the scenario of achieving and maintaining population minimums across the entire NRM DPS is very unlikely.

Considering the above factors, we continue to conclude that the GYA wolf population will likely maintain a long term average of around 300 wolves and the entire NRM DPS will likely achieve a long term average of around 1,000 wolves. These numbers are based on our professional opinion after considering all of the above and evaluating various regional scenarios. For example, 200 wolves is likely a conservative estimate for the Wyoming statewide wolf population including YNP and the Wind River Indian Reservation; similarly, it is unlikely Idaho or Montana will reduce and maintain their wolf populations below 350 wolves per State. Even if all three States were to simultaneously achieve and maintain the low end of this range, an unlikely outcome, the NRM population would still total around 900 wolves, excluding dispersers and lone wolves, which typically range from 10 to 12 percent of the population (Mech and Boitani 2003, p. 170). Therefore, our conclusions regarding long term abundance are likely conservative estimates of long term averages.

Similar to our position on population numbers, our evaluation of risk associated with genetic factors must consider what is most likely to occur in light of the practical reality of the situation as informed by State commitments and other factors. Our consideration of this issue involves a number of factors, including the very high levels of genetic diversity in the GYA and the NRM DPS at present; the remarkable dispersal capabilities of wolves; wolves' ability to outbreed to maximize genetic diversity; demonstrated minimum levels of gene flow from 1995 through 2004 when the NRM region contained between 101 and 846 wolves; the high probability that actual effective migration was likely significantly higher than demonstrated minimum levels; expected population levels and distribution in the GYA and across the NRM DPS long term; and consideration of the likely impacts of State management in the initial years when populations are being reduced and longer term as populations level off. Based on these factors and other information, we continue to conclude that the best scientific and commercial information available indicates that genetic issues are extremely unlikely to threaten the wolf population in Wyoming, the GYA, or the NRM DPS within the foreseeable future.

By definition, a MOU is an agreement between parties indicating an intended common line of action. While we did not rely on the genetics MOU in reaching the above conclusion on population viability, the MOU is indicative of an intention of the States to maintain the NRM population's metapopulation structure by encouraging natural dispersal and effective migrants and implementing management practices that should foster both. Some management practices that would assist in achieving this goal include maintaining the wolf population at higher rather than minimum levels; maintaining greater rather than more restricted pack distribution throughout suitable habitat; reducing human-caused wolf mortality during key dispersing and reproductive time periods over the long term; and maintaining the integrity of the core recovery areas so that they can continue to serve as refugia and source populations. One example of where Idaho has acted consistent with the MOU was its decision in 2009 and 2011 to end its wolf hunting season on December 31st for those areas thought most important for dispersal (i.e., the Beaverhead and Island Park units) (Idaho Fish and Game Commission 2011, entire). In the 2012–2013 season, hunting ends January 31st for these units. While State management through the population reduction phase will likely reduce gene flow from current levels, we conclude that the reduction will not compromise acceptable levels of gene flow long term and find it very unlikely State management will negatively affect genetics to the point that this issue constitutes a threat that could warrant listing in the near, medium, or long term.

We do not anticipate translocation of wolves will be necessary, because we expect that natural connectivity will continue at acceptable levels after delisting. Genetic exchange is not a short or medium term issue even if no genetic exchange occurs for many generations (a very unlikely outcome). The States will monitor for genetic exchange and indications of loss of genetic diversity. This monitoring and the related results could then affect management (e.g., the timing and intensity of human-caused mortality) if the available data indicates remedial actions are needed. Translocation will only be used as a matter of last resort if adequate genetic diversity does not occur and State management is not able to otherwise remedy. While we have high confidence the States would complete such translocation and said translocation could be effective if it was ever necessary, we conclude that it is unlikely that it will ever become necessary.

Furthermore, we disagree with comments that indicate that the existing regulatory mechanisms are inadequate even if no threats put the population at risk. Post-delisting regulatory mechanisms are needed to regulate remnant threats. If there are no remnant threats, a regulatory framework would serve no purpose. In short, if there is nothing to threaten the population, nothing needs regulation after delisting. With respect to wolves, habitat protections were not necessary to achieve delisting, and will not be necessary to maintain recovery after delisting. Therefore, strict binding and enforceable habitat standards (as established for grizzly bears in the GYA) are not needed for wolves. In this case, human-caused mortality is the most significant issue to the long term conservation status of the wolf population in Wyoming, the GYA, and the entire NRM DPS and the only issue that requires regulation after delisting (in the form of binding minimum population targets by geographic area). Such protections are in place.

Regarding the shape that the regulatory framework takes, we disagree that a single cross-regional framework was necessary. In this case, separate post-delisting regulatory frameworks per

State appear adequate. We also note that Congress directed us to republish our April 2009 rule in 2011, which contained separate State regulatory approaches rather than a single regional one. To the extent cross-regional coordination is desirable, it goes on today as appropriate and is expected to continue for the foreseeable future.

Issue 40: Other comments expressed the view that while statutory changes were necessary to implement the State wolf management plan, delisting should not be contingent on adoption of conforming regulations. These comments suggested that State statute and development of an approved wolf management plan were a sufficient commitment to maintain a sustainable recovered wolf population and that State regulations should remain flexible and be defined at the sole discretion of the State, consistent with the commitments represented by State statutes and the Wyoming wolf management plan.

Response 40: As noted above, State statute, State regulations (chapter 21 and 47), and the Wyoming wolf management plan all are important pieces of the State's post-delisting management framework. All three of these documents guide and clarify the State's approach to wolf management after delisting, and ignoring any one of these three documents would violate our responsibility to rely upon the best scientific and commercial information available. By extension, a significant change to any one of these documents would prompt us to consider whether to initiate a status review. We took a similar approach in Idaho in 2011 following Idaho's suspension of its 2008–2012 wolf management plan (reverting to its 2002 Service-approved plan) and after it set its hunting plan for 2011–2012 (Cooley 2011). In that case, we determined these management decisions did not represent a significant threat to the Idaho wolf population and did not meet the threshold necessary to trigger a status review (Cooley 2011).

Public Attitudes Toward Wolves

Issue 41: Numerous comments indicated the region's ''frontier'' and ''wild west'' attitudes, including those of State officials, threatened wolves. Some comments pointed toward the Wyoming wolf management plan's negative portrayal of wolves, the decision to designate wolves outside the Trophy Area as predators, and Wyoming's apparent willingness to do only the minimum necessary to prevent relisting as evidence of negative public attitudes toward wolves. Many comments suggested the ongoing wolf killing across the NRM was evidence that negative attitudes towards wolves were a threat that could eliminate wolves from the region. Other comments indicated conservation organizations had negatively affected public attitudes toward wolves in Wyoming and across the NRM with their unrealistic expectations for wolf recovery, lack of recognition of property rights, and continued litigation. We received conflicting comments and perspectives about whether a return to State management and the resulting increased management flexibility would lead to greater acceptance of wolves and decreased animosity toward wolves. A few comments indicated that the polarizing wolf issue had become indicative of a culture clash and that extremist attitudes toward wolves (pro and con) had little to do with the realities of wolf conservation and more to do with values.

Response 41: As indicated elsewhere in this rule, human attitudes are important to the long term preservation of the gray wolf population in Wyoming, the GYA, and the NRM DPS. While there is not universal acceptance of wolves in Wyoming or the NRM DPS, we conclude that the majority of the region's residents are willing to tolerate wolves as a part of the landscape provided impacts to humans are minimized (see also Issue 50 below). Although we agree our failure to delist has negatively affected public tolerance (see Issues 50 and 53 below), we conclude that State management in Wyoming and across the NRM DPS will be successful in achieving a reasonable balance between the needs of a recovered wolf population and other public needs. We recognize and accept that achieving this balance will require reducing the wolf population in Montana, Idaho, and Wyoming from current levels. This reduction will, in turn, reduce the real and perceived impacts of the wolf population and will reduce public opposition to the species' conservation. The increased ability of members of the public to defend their property and the ability of the hunter community to harvest wolves will also increase this tolerance for wolves. Once these initial population reductions are realized, public pressure will be reduced, State harvest rates will moderate, and the species will likely settle into a reasonable equilibrium well above minimum recovery levels. As noted elsewhere in this rule (see Issue and Response 39 above), we conclude that the GYA wolf population will likely maintain a long term average of around 300 wolves and the entire NRM DPS will likely achieve a long term average of around 1,000 wolves. At these levels, impacts of the recovered wolf population will be modest. This will in turn promote public tolerance such that this issue does not materialize to the point where it might threaten the gray wolf population's long term survival.

Other Potential Threat Factors

Issue 42: A couple of comments indicated that the Wyoming wolf population was threatened by impacts to habitat and range. One comment suggested wilderness areas were not secure because Congress can undesignate them at any time. This comment also suggested that we had no guarantee that private lands will not be developed or otherwise altered so that they would no longer support wolves. This comment also suggested that wolves were at risk on public lands because livestock grazing on public lands would result in wolf mortality; poison on public lands could kill wolves; mining, mineral development, oil and gas development, and associated human traffic would cause direct mortality (increased wolf–truck collision) and cause pollution that would kill wolves or impair their reproduction; and hunting and illegal take on some public lands would kill still more wolves. This comment criticized the proposed rule for not quantifying the amount of development expected, quantifying the impact to suitable habitat and the impact to unsuitable habitat important as dispersal corridors, and the number of wolves that will be killed or otherwise adversely affected. This comment also suggested that road repairs and reconstruction in YNP was a new threat that would degrade the environment in the park, affecting prey and causing wolves to leave the protected park boundaries and be subjected to increased likelihood of dying. This comment also suggested snowmobile use can kill or injure wolves and that associated pollution could kill wolves or reduce their reproductive success.

Response 42: We have thoroughly analyzed the issue of habitat and range and conclude that it is not a threat to the population now or in the foreseeable future. The vast majority of suitable wolf habitat is secure in mountainous forested public land (wilderness and roadless areas, National Parks, and some lands managed for multiple uses by the U.S. Forest Service and Bureau of Land Management) that will not be legally available or suitable for intensive levels of human development (Service 1993, 1996, 2007; Servheen *et al.* 2003; U.S. Department of Agriculture Forest

Service 2006). While changes to the protected status of these areas is theoretically possible, such an outcome is highly improbable, especially at the scale that would be necessary to affect the viability of the Wyoming, the GYA, or the NRM gray wolf population. Although some human activities in these areas and other surrounding areas could increase human-caused mortality, we do not expect noticeable increases in such activities in the foreseeable future. Furthermore, human-caused mortality will be adequately regulated by the States so that the population's recovered status is not compromised. This rule also analyzes impacts to habitat and range as they relate to connectivity and concludes future connectivity is unlikely to be meaningfully affected by changes in habitat and range. To the extent that such development does occur, it would not threaten the recovered status of the Wyoming, the GYA, or the NRM gray wolf populations in the foreseeable future. Finally, we conclude that ongoing activities in YNP (e.g., road repair and snowmobile use) are unlikely to increase to the point where they would negatively affect wolves. Statutory, regulatory, and policy restrictions covering national parks give us great confidence that YNP will take proper precautions to ensure all activities in the park minimize impacts to wildlife, including wolves.

Issue 43: Numerous comments indicated nonnative human populations are overpopulated and a threat to the wolf population.

Response 43: Human presence and the activities associated with this presence does affect the landscape and a region's use by wolves. For example, areas like New York City have been so altered that they are unable to support a resident wolf population. Similarly, some prairie habitats in Wyoming are also no longer capable of supporting persistent wolf packs; however, more than sufficient habitat exists to support a recovered wolf population. Human population levels in Wyoming (the second least densely populated State in the country) are not a threat to the wolf population's recovered status now or in the foreseeable future. Secondary impacts related to human presence are discussed in more detail in separate sections.

Issue 44: A few comments noted that wolf numbers would soon begin to see significant natural declines if the wolf population is not reduced, because wolf overabundance is causing the native prey population, on which wolves are dependent, to drastically decline. Numerous personal accounts of ungulate population declines were offered. One comment suggested that the wolf population could be endangered by grizzly bears, black bears, mountain lions, and other wolves as wolves and other predators compete for limited food resources.

Response 44: While there have been documented declines in some ungulate populations, overall, prey numbers remain robust and more than adequate to provide for the regional wolf population's needs. The availability of prey is not a threat factor to wolf persistence now or within the foreseeable future. While intraspecific conflict can regulate wolf populations, natural predation has not threatened the NRM gray wolf population and is not likely to in the foreseeable future; future changes in prey abundance are not expected to change this conclusion.

Issue 45: A number of comments noted that climate change is expected to have a severe impact on the North American continent during the 21st century. A few comments indicated climate change would stress wild animal and plant populations and reduce survival rates. A few comments asserted it would be a mistake to delist when we do not yet know what impacts climate change will have on ungulate and wolf populations (e.g., impacts on behavior, distribution, and abundance). One comment stated that the Trophy Area might not be adequate to meet the population's needs in a climate-altered world. This comment cited a Ninth Circuit Court of Appeals ruling that suggested a need for specific management responses tied to specific triggering criteria, not a general commitment to adaptive management, in order to address threats associated with climate change. Some comments suggested wolf densities should be maintained to buffer the impacts of climate change on other species. For example, wolf killing of vulnerable elk might compensate for reduced winter elk kills, thus bolstering food availability for other animals and minimizing the impacts of climate change.

Response 45: This issue is discussed in our Factor E analysis below. We continue to conclude that wolves are unlikely to be threatened by climate change. Wolves are one of the most adaptable and resilient land mammals on earth, once ranged across most of North America from central Mexico to the Arctic Ocean and from coast to coast, and can prey on every type of ungulate in their worldwide northern hemisphere range. Thus, wolves are among the least likely species to be threatened by this factor.

Other comments on this issue are also not persuasive. For example, there is no evidence to support the idea that the Trophy Area might not be adequate to meet the population's needs in a climate-altered world. At present, the Trophy Area supports a robust prey base and a wolf population that far exceeds the agreed-upon minimum management targets. This topic is discussed in detail below in Factor E. Based on available climate change projections, it is unlikely that climate change would noticeably hinder the Trophy Area's capacity to support a wolf population well above the agreed-upon minimum management targets. Because this issue is not a meaningful factor affecting the population's viability, a detailed adaptive management framework with specific triggers and specific responses is not necessary or appropriate. Finally, the Act does not allow us to consider impacts of this decision to other species nor does it allow us to require the States to maintain wolf populations at high densities to benefit other species in the face of climate change.

Issue 46: Some comments expressed concern that all or parts of the State wolf management plan would not be implemented because of hard economic times and resulting funding limitations. These comments noted that the Wyoming Gray Wolf Management Plan does not identify definite funding sources and does not guarantee funding will be available. For example, one comment suggested population targets could be compromised if inadequate monitoring caused the State to overlook a disease event and the State then also allowed a high hunting quota. Other comments noted Wyoming's robust economy and healthy State funding for wildlife would mean adequate funding for wolf management. Conversely, these comments noted that looming Federal budget cuts would harm our ability to properly manage the Wyoming wolf population.

Response 46: It is not possible to predict with certainty future governmental appropriations, nor can we commit or require Federal funds beyond those appropriated (31 U.S.C. 1341(a)(1)(A)). Even though Federal funding is dependent on year-to-year allocations, we have consistently and fully funded wolf management. Federal funding will continue to be available in the future for State management, but certainly not to the extent while wolves were listed. The Service will continue to assist the States to secure adequate funding for wolf management. The States recognize that implementation of their wolf management plans requires funding and have committed to secure

the necessary funding to manage the wolf populations under the guidelines established by their approved State wolf management plans (Idaho Legislative Wolf Oversight Committee 2002; p. 23–25; Montana Wolf Management Advisory Council 2003, p. xiv; Wyoming 2011, pp. 42–43). In Wyoming specifically, the State indicates it will fund operational costs for the wolf management program through its regular budget, but also noted that continued Federal funding will assist in some aspects of management, e.g., direct Federal funding to the State, Federal management on some Federal lands such as National Wildlife Refuges and National Parks, and Wildlife Services assisting in control activities (WGFC 2011, pp. 42–43). Wyoming also indicated a willingness to pursue outside funding sources such as private donations, grants from foundations, assistance from nongovernmental organizations and funding partnerships with other interested entities (WGFC 2011, p. 43).

These combined State and Federal commitments are more than enough to provide for adequate management of the population after delisting. In the unlikely event that wolf management is inadequately funded to carry out the basic commitments of an approved State plan, then the promised management of threats by the States and the required monitoring of wolf populations might not be addressed. That scenario would trigger a status review for possible relisting under the Act, including possible use of the emergency listing authorities under section 4(b)(7) of the Act.

Issue 47: One comment mentioned hybridization as a threat. This comment did not elaborate on this issue and how it could threaten the population.

Response 47: The NRM wolves' genetic signature does not show signs of past or ongoing hybridization with other canid species (VonHoldt *et al.* 2011, p. 4). Unlike some other wolf populations (e.g., red wolves), hybridization is not affecting NRM gray wolf populations and is not a threat to the NRM DPS's recovered status.

Cumulative Impacts of Threats

Issue 48: Several comments questioned the validity of our conclusions for individual threat factors suggesting they were considered in isolation. These comments indicated that we needed to analyze threats in a cumulative manner. A number of comments suggested some combination of natural mortality, disease events, catastrophic events, and high human-caused mortality events could co-occur and threaten the wolf population. Some of these noted the likelihood of such an event if the population was already close to minimum population targets.

Response 48: Our assessment of threats considered potential risk factors individually and cumulatively. Our threats assessment is organized sequentially, consistent with how section 4(a) of the Act is organized. We then discuss the overall finding, which considers the cumulative impacts of all potential threat factors. We considered and weighed the cumulative effects of all known and reasonably foreseeable threat factors facing the population when reaching the conclusion that the gray wolf in Wyoming no longer meets and is unlikely to ever again meet the definition of an endangered species.

When considering the population's recovered status, it is important to remember that the minimum recovery criteria require Idaho, Montana, and Wyoming to each maintain at least 10 breeding pairs and at least 100 wolves in mid-winter. After delisting, Wyoming has committed to maintain at least 10 breeding pairs and at least 100 wolves outside of YNP and the Wind River Indian Reservation at the end of the year, and will maintain a buffer above these minimum levels so that the minimum targets are not compromised. Thus, Wyoming intends to manage for the entire recovery goal outside of YNP. These statewide totals will be further buffered by wolves in YNP which experience extremely low rates of human-caused mortality allowing the population essentially to be naturally regulated at carrying capacity. From 2000 to the end of 2011 (the most recent official wolf population estimates available), the wolf population in YNP ranged from 96 to 174 wolves, and between 6 to 16 breeding pairs. The YNP wolf population appears to be settling around the lower end of this range (Service *et al.* 2000–2010, Table b; Smith 2012). Specifically, YNP biologists expect that the park will settle between 50 to 100 wolves and 5 to 10 packs with 4 to 6 of these packs meeting the breeding pair definition annually (Smith 2012). Given the above, the minimum recovery criteria for Wyoming will always be greatly exceeded.

Additionally, the GYA wolf population will be further buffered by wolves in Idaho and Montana's portion of the GYA. Since 2002, Montana's GYA wolf population ranged from 55 to 130 wolves since recovery was achieved in 2002, and Idaho's ranged from 0 to 40 wolves in its portion of the GYA (Service *et al.* 2003–2012, Tables 1b, 2). While populations in these areas are expected to be reduced from current levels, both States have maintained, and are expected to continue to maintain, a sizable population in their portion of the GYA. Across the entire GYA, we expect the population will be managed for a long term average of around 300 wolves across portions of Montana, Idaho, and Wyoming.

Overall, the GYA's expected abundance and geographic distribution (occurring in both protected and unprotected portions of the GYA and occurring across multiple management jurisdictions) provides the GYA wolf population with substantial representation, resiliency, and redundancy. Additional representation, redundancy, and resiliency is also provided across the three connected recovery areas and three core NRM DPS States, as well as connectivity to Canada. These factors provide us with confidence the population can withstand the types of impacts mentioned in the above comments.

Wolves are very resilient and can withstand and recover from most of the specific events noted in the above comments. Such events are likely to cause localized impacts, which would not affect all or even a majority of the population in Wyoming, the GYA, or the NRM DPS. For example, when disease hit the YNP wolf population in 2005 and 2008 there were substantial, temporary impacts, but they were experienced only on a local scale and the YNP population quickly rebounded. No similar large-scale events have been documented in other portions of Wyoming.

It should be noted that wolves' natural reproductive capacity and dispersal ability, State commitments to monitoring and adaptive management, and the regional population's representation, resiliency, and redundancy would not provide total protection from catastrophic events. For example, as noted in the rule, a cataclysmic eruption underneath YNP would devastate the GYA ecosystem. However, events such as these are extremely unlikely within the foreseeable future.

Regarding management, Wyoming does not intend to manage the population at minimum agreed-upon targets. Instead, the State intends to manage for a buffer, recognizing that some unforeseen events could affect the population. Furthermore, Wyoming (like Montana and Idaho) intends to carefully monitor the population and will adjust all controllable mortality factors, such as mortality resulting from harvest and depredation control, in response to measured mortality of all causes (WGFC 2012, p. 7). For example,

Wyoming will monitor for disease and associated impacts (WGFC 2011, p. 22) and reduce controllable sources of human-caused mortality if the available information indicates such factors are causing unacceptable population declines (WGFC 2011, pp. 23–25; WGFC 2012, p. 7). These management measures provide that impacts related to human-caused mortality are appropriately managed and will not singularly, or in combination with other factors, compromise the population's recovered status.

Post-Delisting Monitoring

Issue 49: A few comments indicated our status review triggers were too low. Other comments expressed frustration with the perceived relative lack of oversight once delisting occurs, including failure to initiate status reviews in Idaho and Montana following changes to management (most often mentioned were decisions to suspend the 2008–2012 Idaho Wolf Population Management Plan and after decisions to set hunting and trapping seasons with high or no quotas).

Response 49: For Idaho and Montana, three scenarios would lead us to initiate a status review and analysis of threats to determine if relisting was warranted including: (1) If the wolf population falls below the minimum NRM wolf population recovery level of 10 breeding pairs of wolves or 100 wolves in either Montana or Idaho at the end of the year; (2) If the wolf population segment in Montana or Idaho falls below 15 breeding pairs or 150 wolves at the end of the year in any one of those States for 3 consecutive years; or (3) If a change in State law or management objectives would significantly increase the threat to the wolf population. For Wyoming, we will initiate a formal status review to determine if relisting is warranted: (1) If the wolf population falls below the minimum recovery level of 10 breeding pairs or 100 wolves in Wyoming statewide (including YNP and the Wind River Indian Reservation) at the end of any 1 year; (2) If the wolf population segment in Wyoming excluding YNP and the Wind River Indian Reservation falls below 10 breeding pairs or 100 wolves at the end of the year for 3 consecutive years; (3) If the wolf population in Wyoming falls below 15 breeding pairs or 150 wolves, including YNP and the Wind River Indian Reservation, for 3 consecutive years; or (4) If a change in State law or management objectives would significantly increase the threat to the wolf population. These status review triggers are appropriate because: The numeric status review triggers are consistent with the minimum recovery criteria and the State's minimum management targets, and the final criterion would be triggered if management veers from approved post-delisting regulatory frameworks. Some commenters, including some peer reviewers, expressed concern that the States may face pressure to manage to the ''razor's edge'' (e.g., intentionally manage below the above levels 2 out of every 3 years). This could result in a population lower than the above standards are designed to facilitate without triggering a status review. In response to this concern, we will also conduct a status review if the above standards are routinely not achieved—an outcome we do not anticipate. We have incorporated this commitment into the ''Post-Delisting Monitoring'' section of this final rule, discussed below.

We take our post-delisting monitoring commitments very seriously and will fulfill our responsibilities to monitor the population's status relative to the above triggers. Our record demonstrates this commitment—we published our annual assessments of the population's status at the end of 2009 and 2011 (Bangs 2010; Jimenez 2012b); we did not publish a similar finding in 2010 because the population was not delisted at the end of 2010. We also evaluated Idaho's decision to suspend its 2008–2012 wolf management plan at the end of 2010 (prior to Congressional action to delist this population) and revert to its Service-approved 2002 wolf management plan and its hunting plan for 2011–2012. We conducted an evaluation of the changes in Idaho and not Montana that year because only Idaho decided to authorize no quotas in large portions of the State and no overall state-wide quota. This assessment determined these management decisions did not represent a significant threat to the Idaho wolf population and did not meet the threshold necessary to trigger a status review (Cooley 2011). This assessment's determination was validated by the minimum end-of-year population numbers, which showed little change in 2011 (technically, slight increases in minimum population levels were documented; Service *et al.* 2012, tables 4a, 4b). Consistent with this past practice, similar assessments of Idaho and Montana's 2012–2013 hunting and trapping seasons are ongoing as of this writing.

Throughout the post-delisting monitoring period we will continue to publish annual assessments to determine if the status review triggers have been met. We will also conduct on-the-spot assessments (similar to our August 2011 assessment (Cooley 2011)) when the available information indicates a change in management strategy could represent a meaningful threat. Finally, as indicated above, we offer our strongest assurance that we will consider relisting if there is ever sufficient evidence that the species may meet the definition of threatened or endangered and, as required by section 4(g)(2) of the Act, we will make prompt use of the Act's emergency listing provisions if necessary to prevent a significant risk to the well-being of the population. This approach more than satisfies our post-delisting monitoring responsibilities so that the population's recovered status will not be compromised.

Positives and Negatives of Wolf Restoration

Issue 50: Some comments expressed the view that failure to delist had resulted in unchecked growth of the wolf population in Wyoming and throughout the NRM region, and that the resulting wolf abundance had caused significant negative impacts to: ungulate populations (elk, moose, deer, bison, and bighorn sheep herd declines); State game agencies (largely dependent on hunting revenue); guides and outfitters (reduced opportunity for ungulate harvest by clients); hunters (reduced recreational and sustenance opportunities); ranchers (from livestock depredation by wolves; stress to livestock affecting weight and health; and declining business opportunities for ranchers who use/lease their land for hunting); and the local economy (lost hunting and ranching revenue). Some expressed concern for wolves attacking pets and pack animals. Other comments expressed concern for habituated wolves threatening human safety. Still other comments expressed concern that wolves carry and transmit diseases and parasites harmful to both wildlife and humans (*Echinococcus granuloslls,* also known as Hydatid Disease, was most frequently mentioned). Many sportsmen noted that wolves were significantly hindering the conservation progress for other wildlife, which has been funded by sporting revenues. Some comments suggested the 1994 Environmental Impact Statement was flawed in that we underestimated the impacts wolves would cause. Many of these comments described the reintroduction in such terms as ''catastrophic'' and ''disastrous.'' Some comments asserted that Wyoming residents had been promised that the wolf population would be maintained at or below 100 or 150 animals and that excess wolves should be killed. Many comments expressed support for hunting as a

method to reduce the Wyoming wolf population and restrict its distribution.

Others suggested wolf population impacts were minimal and had been exaggerated by anti-wolf interest groups. A few noted wolves kill few livestock and that other predators kill more livestock than do wolves. Some comments noted impacts to ungulates are complex and not fully understood with some herds showing declines, some showing increases, and some showing little or no effect from wolves. A few comments asserted that hunters were erroneously blaming wolves for decimating elk populations. These comments noted that all of Wyoming's elk herds are at or above State management objectives. A few indicated ungulate herds were overpopulated and destroying native ecosystems. Numerous comments noted the positive direct and indirect economic impacts of wolf restoration through increased tourism; other comments suggested visitation to YNP had not meaningfully changed since reintroduction.

Response 50: Although we recognize that wolf restoration has resulted in both positive and negative economic impacts to the region, the Act precludes consideration of such impacts on listing and delisting determinations. Instead, listing and delisting decisions are based solely on the best scientific and commercial information available regarding the status of the subject species. In this case, the Wyoming wolf population and the greater NRM gray wolf population is recovered, and now that adequate regulatory mechanisms are in place, we have sufficient assurances the species' recovered status will be maintained. Nevertheless, after delisting, we expect Wyoming will reduce the State's wolf population, which should reduce any adverse economic impacts of the region's wolf population.

Regarding human safety, there have been no wolf-caused injuries or deaths in the NRM region since recovery efforts first began. Some individuals have reported feeling threatened by wolves, and a few wolves have been taken in such situations. Such take is allowed by both our general regulations for the Act and both experimental populations' special regulations (50 CFR 17.21(c)(2); 50 CFR 17.84(i)(3)(v); 50 CFR 17.84(n)(4)(vi)). After delisting, the States will continue to allow for take in defense of an individual's life or the life of another person.

Regarding disease, the public should treat all wildlife, including canids, as potential vectors of disease. Although wolves reintroduced to Yellowstone and central Idaho were treated with drugs to destroy *Echinococcus granulosus,* wolves in these ecosystems currently have a relatively high prevalence of the parasite. *E. granulosus* is just one of many zoonotic diseases (diseases transmissible to humans) in wildlife. When handling canids or canid feces we recommend wearing gloves, not smoking, eating, or drinking, and washing up afterwards. These simple precautions decrease exposure to a negligible level. We also recommend not feeding uncooked wild or domestic ungulate organs to dogs and maintaining proper veterinary care of dogs and their parasites. These types of public health advisories are appropriate for those engaged in wolf hunting or other wildlife pursuits that include handling of any canine species, tissues, or scat (Boyce and Samuel 2011, entire).

Issue 51: Many comments suggested both the Wyoming wolf management plan and the proposed delisting rule failed to note the value of wolves. Some commenters noted that the return of wolves had restored ecological balance to the region and that delisting would upset this balance. A number of comments pointed to the ecological role of wolves in modifying ungulate behavior, distribution, and movements and the resulting ''cascade effect'' they produce for other unrelated species and the larger ecosystem. Some contended these cascading effects also helped farming and ranching. Many comments also pointed out that wolves strengthen ungulate herds by preying on vulnerable ungulates, which allows greater numbers of healthier, more robust, and more alert animals to survive and pass on genes. Some comments suggested wolves reduce the prevalence of disease (particularly chronic wasting disease and brucellosis) by removing sick individuals from native ungulate populations. Others comments pointed out that maintaining top level predators like wolf populations resulted in fewer mesopredators like coyotes (*Canis latrans*), which has been shown to reduce impacts on pronghorn antelope (*Antilocapra americana*). Some comments suggested these positive impacts would be reduced or hindered if Wyoming was allowed to implement its wolf management plan. Others suggested recovery levels should prevent ''trophic downgrading'' and provide for ''ecological effectiveness'' (i.e., occupancy with densities that maintain critical ecosystem interactions and help ensure against ecosystem degradation).

Response 51: We recognize that wolf recovery appears to have caused trophic cascades and ecological effects in some areas that affect numerous other animal and plant communities, and their relationships with each other. These effects have been most pronounced in pristine areas, such as in YNP. While these effects may occur at varying degrees elsewhere, they are increasingly modified and subtle the more an area is affected by humans (Ripple and Beschta 2004, entire; Smith *et al.* 2003, pp. 334–338; Robbins 2004, pp. 80–81; Fortin *et al.* 2005, entire; Garrott *et al.* 2005, p. 1245; Hebblewhite *et al.* 2005, p. 2135; Campbell *et al.* 2006, pp. 747–753; Mech 2012, entire). While these purported effects are interesting (albeit still controversial; see Mech 2012, entire), such information is not considered in listing or delisting decisions. Similarly, the Act does not require that we prevent ''trophic downgrading'' (Estes *et al.* 2011, entire) or that we achieve or maintain ''ecological effectiveness'' (Soule *et al.* 2003, p. 1239). Instead, listing and delisting decisions are based upon extinction risk of the subject species. When a species no longer meets the definition of an endangered or threatened species under the Act, it is recovered, and we are to delist it.

Native American Tribal Considerations

Issue 52: A number of comments noted that many Native American tribes honored wolves; viewed wolves as sacred relatives that taught them to hunt, live in harmony, and sing to the creator; and learned how to build stronger tribes by observing wolf pack loyalty. Only one of these comments came from a self-identified Native American (the rest were speaking generally about what we could learn from Native Americans on this issue). This comment indicated wolves should be protected because they are sacred to Native Americans and important for Native American religious ceremonies.

Response 52: We take our relationships with the Tribes very seriously and are sensitive to potential conflicts with tribal cultural values. The wolf reintroduction has returned what traditional Arapaho and Shoshone stories call a helper (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 2) and assisted in restoring what the Salish & Pend d'Oreille Tribal Elders call a ''balanced ecosystem'' (Confederated Salish and Kootenai Tribes 2009, p. 3). In preparation for a return to Tribal management, we worked with the Tribes to prepare wolf management plans that allowed for self-governance. Most of these plans discuss the cultural importance of wolves, but also allow control of problem wolves and the potential for wolf hunting. Having an

approved plan allowed the Shoshone and Arapaho Tribal Fish and Game Department to manage wolves on the Wind River Indian Reservation under the more liberal 2005 and 2008 nonessential experimental populations regulations (70 FR 1286, January 6, 2005; King 2007; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)). Most recently, we contacted the Eastern Shoshone and Northern Arapaho tribes in October 2011, requesting government-to-government consultation to discuss any concerns the Tribes may have with our proposal (Guertin 2011). The Joint Council for these Tribes declined this opportunity (Greenwood 2011). Neither of these tribes nor any other Tribes formally commented on the proposal. We also funded some Tribal wolf monitoring and management through the years. Collectively, the above activities satisfy our Tribal consultation responsibilities. While some individuals may find portions of Wyoming's regulatory framework morally objectionable and in conflict with their tribal cultural values, these individual objections are not grounds to take a different course. We will continue to inform the Tribes regarding the status of wolves and to respond to any Tribal requests for government-to-government consultation.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting decisions (50 CFR 424.11(d)). However, in delisting decisions, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting and the removal or reduction of the Act's protections.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could affect a species negatively may not be sufficient to justify a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (i.e., it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

The following analysis examines the five factors affecting, or likely to affect Wyoming, GYA, and NRM wolves within the foreseeable future. We have previously concluded wolves in the remainder of the NRM DPS are recovered and warranted delisting (74 FR 15123, April 2, 2009; 76 FR 25590, May 5, 2011). Today's rulemaking is separate and independent from, but additive to, the previous action delisting wolves in the NRM DPS. While this rulemaking focuses on Wyoming, because this is the only portion of the NRM DPS that remains listed, the conclusions of the previous delisting and the information supporting this determination are incorporated by reference. This information is only updated where necessary (e.g., Idaho's suspension of its 2008–2012 step-down wolf management plan and Montana's and Idaho's hunting seasons) to consider new developments affecting the larger NRM DPS. The best scientific and commercial information available demonstrates gray wolves in Wyoming, the GYA, and the NRM DPS are recovered and are unlikely to become endangered in the foreseeable future throughout all or a significant portion of their range.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

This section evaluates the entire State of Wyoming, and within Wyoming we focus primarily on suitable habitat, currently occupied areas, and the Trophy Area. Within Wyoming, we also examine unsuitable habitat. Habitat suitability is based on biological features that affect the ability of wolf packs to persist. Outside of Wyoming, this analysis looks at areas between the three recovery areas to inform our understanding of current and future connectivity, with particular focus on the central Idaho to GYA dispersal corridor. For an analysis of other portions of the NRM DPS relative to this factor, see our 2009 delisting determination (74 FR 15123, April 2, 2009). We analyze a number of potential threats to wolf habitat including increased human populations and development (including oil and gas), connectivity, ungulate populations, and livestock grazing.

Suitable Habitat—Wolves are habitat generalists (Mech and Boitoni 2003, p. 163) and once occupied or transited all of Wyoming. However, much of the wolf's historical range within this area has been modified for human use. While lone wolves can travel through, or temporarily live, almost anywhere (Jimenez *et al.* In review, p. 1), much of Wyoming is no longer suitable habitat to support wolf packs and wolf breeding pairs (Oakleaf *et al.* 2006, p. 559; Carroll *et al.* 2006, p. 32). We have reviewed the quality, quantity, and distribution of habitat relative to the biological requirements of wolves. In doing so, we reviewed two models, Oakleaf *et al.* (2006, pp. 555–558) and Carroll *et al.* (2003, pp. 536–548; 2006, pp. 27–31), to help us gauge the current amount and distribution of suitable wolf habitat in Wyoming. Both models ranked habitat as ''suitable'' if they had characteristics that indicated they might have a 50 percent or greater chance of supporting wolf packs. Suitable wolf habitat was typically characterized in both models as public land with mountainous, forested habitat that contains abundant year-round wild ungulate populations, low road density, low numbers of domestic livestock that are only present seasonally, few domestic sheep, low agricultural use, and few people. Unsuitable wolf habitat was typically just the opposite (i.e., private land, flat open prairie or desert, low or seasonal wild ungulate populations, high road density, high numbers of year-round domestic livestock including many domestic sheep, high levels of agricultural use, and many people). Despite their similarities, these two models had differences in the area analyzed, layers, inputs, and assumptions. As a result, the Oakleaf *et al.* (2006, p. 559) and Carroll *et al.* (2006, p. 33) models predicted different amounts of theoretically suitable wolf habitat in areas examined by both models.

Oakleaf's model was a more intensive effort that looked at potential wolf

habitat in the NRM region (Oakleaf *et al.* 2006, p. 555). To comprise its geographic information system layers, the model used roads accessible to two-wheel and four-wheel vehicles, topography (slope and elevation), land ownership, relative ungulate density (based on State harvest statistics), cattle and sheep density, vegetation characteristics (ecoregions and land cover), and human density. Oakleaf analyzed the characteristics of areas occupied and not occupied by NRM wolf packs through 2000 to predict what other areas in the NRM region might be suitable or unsuitable for future wolf pack formation (Oakleaf *et al.* 2006, p. 555). In total, Oakleaf *et al.* (2006, p. 559) ranked 28,725 km² (11,091 mi²) as suitable wolf habitat in Wyoming.

Carroll's model analyzed a much larger area (all 12 western States and northern Mexico) in a less specific way than Oakleaf's model (Carroll *et al.* 2006, pp. 27–31). Carroll's model used density and type of roads, human population density and distribution, slope, and vegetative greenness to estimate relative ungulate density to predict associated wolf survival and fecundity rates (Carroll *et al.* 2006, p. 29). These factors were used to develop estimates of habitat theoretically suitable for wolf pack persistence. In addition, Carroll predicted the potential effect of increased road development and human density expected by 2025 on suitable wolf habitat (Carroll *et al.* 2006, pp. 30–31). In total, Carroll *et al.* (2006, pp. 27–31) ranked 77,202 km² (29,808 mi²) in Wyoming as suitable habitat. According to the Carroll model, approximately 30 percent of Wyoming would be ranked as suitable wolf habitat (Carroll *et al.* 2006, pp. 27–31).

The Carroll *et al.* (2006, pp. 31–34) model tended to be more generous than the Oakleaf *et al.* (2006, pp. 558–560) model in identifying suitable wolf habitat. Based on empirical wolf data over our 17 years of experience in Wyoming, we have determined Oakleaf's projections were more realistic. Unlike the Oakleaf model, the Carroll model did not incorporate livestock density into its calculations (Carroll *et al.* 2006, pp. 27–29; Oakleaf *et al.* 2006, p. 556). Thus, the Carroll model did not consider those conditions where wolf mortality is high and habitat unsuitable because of chronic conflict with livestock. During the past 17 years, Wyoming wolf packs have been unable to persist in areas intensively used for livestock production, primarily because of agency control of problem wolves and illegal killing. However, due to the large area analyzed, the Carroll model provided a valuable relative measure across the western United States upon which comparisons could be made.

Many of the more isolated primary habitat patches that the Carroll model predicted as currently suitable were predicted to be unsuitable by the year 2025, indicating they were likely on the lower end of what ranked as suitable habitat in that model (Carroll *et al.* 2006, p. 32). Because these areas were typically too small to support breeding pairs and too isolated from the core population to receive enough dispersing wolves to overcome high mortality rates, we conclude that these areas are not currently suitable habitat based upon our data on Wyoming wolf pack persistence for the past 17 years (Bangs 1991, p. 9; Bangs *et al.* 1998, p. 788; Service *et al.* 1999–2012, Figure 1).

Despite differences in each model's analysis area, layers, inputs, and assumptions, both models predicted that most suitable wolf habitat in Wyoming was in the GYA, which is the area currently occupied by wolves in Wyoming. These models are useful in understanding the relative proportions and distributions of various habitat characteristics and their relationships to wolf pack persistence. Both models generally support our earlier predictions about wolf habitat suitability in the GYA (Service 1980, p. 9; Service 1987, p. 7; Service 1994, p. vii). Because these two theoretical models only define suitable habitat as those areas that have characteristics with a 50 percent or greater probability of supporting wolf packs, the acreages of suitable habitat that they indicate can be successfully occupied are only estimates.

The Carroll *et al.* (2006, p. 25) model also indicated that the GYA and neighboring population centers had habitat suitable for dispersal between them, and such habitat would remain relatively intact in the future. However, the GYA is the most isolated (Oakleaf *et al.* 2006, p. 554). This conclusion is supported by dispersal and genetic exchange data (vonHoldt *et al.* 2010, p. 4420; Jimenez *et al.* In review, p. 1). We note that some surrounding habitat that is considered unsuitable for pack persistence is still important for maintaining effective migration through natural dispersal.

Overall, we evaluated data from a number of sources on the location of suitable wolf habitat in developing our estimate of currently suitable wolf habitat. Specifically, we considered the recovery areas identified in the 1987 wolf recovery plan (Service 1987, p. 23), the primary analysis areas analyzed in the 1994 Environmental Impact Statement for the GYA (63,700 km² (24,600 mi²) (Service 1994, p. iv), information derived from theoretical models by Carroll *et al.* (2006, p. 25) and Oakleaf *et al.* (2006, p. 554), our 17 years of field experience managing wolves in Wyoming, and locations of persistent wolf packs and breeding pairs since recovery has been achieved (Service *et al.* 1999–2012, Figure 1). Collectively, this evidence leads us to concur with the Oakleaf *et al.* (2006, p. 559) model's predictions that the most important habitat attributes for wolf pack persistence are forest cover, public land, high elk density, and low livestock density. Therefore, we conclude that Oakleaf's calculations of the amount and distribution of suitable wolf habitat available for persistent wolf pack formation, in the parts of Wyoming analyzed, represent a reasonable prediction of suitable wolf habitat in Wyoming (although these calculations somewhat overestimated habitat suitability in some areas such as the Big Horn mountains) (Oakleaf *et al.* 2006, p. 559).

Generally, Wyoming's suitable habitat is located in the northwestern portion of the State. A comparison of actual wolf pack distribution in 2009 and 2011 (Service *et al.* 2010; 2012, Figure 1) to Oakleaf *et al.*'s (2006, p. 559) prediction of suitable habitat indicates that nearly all suitable habitat in Wyoming is currently occupied and areas predicted to be unsuitable remain largely unoccupied. Of note, the permanent Trophy Area and protected areas contain approximately 81 percent of the State's suitable habitat (including over 81 percent of the high-quality habitat (greater than 80 percent chance of supporting wolves) and over 62 percent of the medium-high-quality habitat (50 to 79 percent chance of supporting wolves) (Oakleaf 2011; Mead 2012a).

Although Carroll determined there may be some additional suitable wolf habitat in Wyoming beyond the area Oakleaf analyzed, we conclude that it is marginally suitable at best, and is insignificant to NRM DPS, GYA, or Wyoming wolf population recovery, because it occurs in small, isolated, and fragmented areas and is unlikely to support many, if any, persistent breeding pairs. While some areas in Wyoming predicted to be unsuitable habitat by the above models have been temporarily occupied and used by wolves or even packs, we still consider these areas to be largely unsuitable habitat because wolf packs in such areas have failed to persist long enough to be categorized as breeding pairs and successfully contribute toward recovery. Therefore, we conclude that such areas are unsuitable habitat and that dispersing wolves attempting to

colonize those areas are unlikely to form breeding pairs, persist long enough to raise yearlings that can disperse to facilitate demographic and genetic exchange within the NRM DPS, or otherwise contribute to population recovery.

Unoccupied Suitable Habitat—Habitat suitability modeling indicates that the GYA and central Idaho core recovery areas are atypical of other habitats in the western United States because suitable wolf habitat in these areas occurs in much larger contiguous blocks (Service 1987, p. 7; Larson 2004, p. 49; Carroll *et al.* 2006, p. 35; Oakleaf *et al.* 2006, p. 559). Such core refugia areas provide a steady source of dispersing wolves that populate other adjoining potentially suitable wolf habitat. Some habitat ranked by models as suitable adjacent to this core refugia may be able to support wolf breeding pairs, while other habitat farther away from a strong source of dispersing wolves may not be able to support persistent packs. This fact is important when considering suitable habitat as defined by the Carroll *et al.* (2006, p. 30) and Oakleaf *et al.* (2006, p. 559) models, because wolf populations can persist despite very high rates of mortality only if they have high rates of immigration (Fuller *et al.* 2003, p. 183). Therefore, model predictions regarding habitat suitability do not always translate into successful wolf occupancy and wolf breeding pairs, just as habitat predicted to be unsuitable does not mean such areas will not support wolf breeding pairs.

Strips and smaller (less than 2,600 km^2 (1,000 mi^2)) patches of theoretically suitable habitat (Carroll *et al.* 2006, p. 34; Oakleaf *et al.* 2006, p. 559) (typically, isolated mountain ranges) often possess a higher mortality risk for wolves because of their enclosure by, and proximity to, unsuitable habitat with a high mortality risk (Murray *et al.* 2010, p. 2514; Smith *et al.* 2010, p. 620). In addition, pack territories often form along distinct geological features (Mech and Boitani 2003, p. 23), such as the crest of a rugged mountain range, so usable space for wolves in isolated, long, narrow mountain ranges may be reduced by half or more. This phenomenon, in which the quality and quantity of suitable habitat is diminished because of interactions with surrounding less-suitable habitat, is known as an edge effect (Mills 1995, pp. 400–401). Edge effects are exacerbated in small habitat patches with high perimeter-to-area ratios (i.e., those that are long and narrow, like isolated mountain ranges) and in species with large territories, like wolves, because they are more likely to encounter surrounding unsuitable habitat (Woodroffe and Ginsberg 1998, p. 2128). Implementation of wolf recovery has shown that some theoretically suitable habitat described by the available models fails to be functional (or suitable) wolf habitat because of non-modeled parameters (e.g., edge effect discussed above) that exist in those areas.

For the above reasons, we conclude that the Wyoming wolf population will be centered around YNP and the GYA. This was always the intention, as indicated by the GYA recovery area identified in the 1987 Recovery Plan and the primary analysis area identified in the 1994 Environmental Impact Statement. This core area will support the recovered Wyoming and GYA wolf population and continue to contribute to the NRM gray wolf populations' recovered status.

Currently Occupied Habitat—We calculated the currently occupied area in the NRM DPS wolf population by drawing a line around the outer points of radio-telemetry locations of all known wolf pack territories at the end of 2010 (Service *et al.* 2012, Figure 1). Since 2002, most packs have occurred within a consistent area (Service *et al.* 2003–2012, Figure 1), although the outer boundary of the entire NRM wolf population has fluctuated somewhat as peripheral packs establish in unsuitable or marginally suitable habitat and are subsequently lost (Messer 2011). We define occupied wolf habitat as that area confirmed as being used by resident wolves to raise pups, or that is consistently used by two or more territorial wolves for longer than 1 month (Service 1994, pp. 6:5–6).

The overall distribution of most Wyoming wolf packs primarily forming in mountainous forest habitat has been similar since 2000, despite a wolf population in the State that has more than doubled (Service *et al.* 2001–2012, Figure 1; Bangs *et al.* 2009, p. 104). The wolf population has saturated most suitable habitat in the State. Because packs are unlikely to persist in unsuitable habitat, significant growth in the population's distribution is unlikely. We include unoccupied areas separating areas with resident packs as occupied wolf habitat because these intervening unsuitable habitat areas contribute to demographic and genetic connectivity (vonHoldt *et al.* 2010, p. 4412). While these areas are not capable of supporting persistent wolf packs, dispersing wolves routinely travel through these areas, and packs occasionally occupy them (Service 1994, pp. 6:5–6; Bangs 2002, p. 3; Jimenez *et al.* In review, p. 1).

Occupied habitat in Wyoming occurs only in the northwestern part of the State (see Figure 1 above). Specifically, this occupied area extends slightly further east than the Trophy Area, includes about the western-third of the Wind River Indian Reservation, and extends south to about Big Piney, Wyoming. The occupied portion of Wyoming and the GYA is illustrated in Figure 1 above.

The Wyoming wolf population's relatively stable distribution is the result of the wolf population approaching biological limits, given available suitable habitat and conflict in unsuitable habitat. The remaining habitat predicted by Carroll's model is often fragmented, occurring in smaller, more isolated patches (Carroll *et al.* 2006, p. 35). These areas have only been occupied by a few breeding pairs that failed to persist (Service *et al.* 2012, Figure 1). Given the above, there is probably limited ability for the Wyoming wolf population to expand significantly beyond its current outer boundaries, even under continued protections of the Act. As demonstrated by the wolf population's demographic abundance and relatively constant geographic occupancy in northwestern Wyoming, it is clear that there is sufficient suitable habitat to maintain the Wyoming wolf population well above recovery levels.

Potential Threats Affecting Habitat or Range—Wolves are one of the most adaptable large predators in the world and are unlikely to be substantially affected by any threat except high levels of human persecution (Fuller *et al.* 2003, p. 163; Boitani 2003, pp. 328–330). Even active wolf dens can be quite resilient to nonlethal disturbance by humans (Frame *et al.* 2007, p. 316). Establishing a recovered wolf population in the NRM region did not require land-use restrictions or curtailment of traditional land uses because there was enough suitable habitat and wild ungulates and sufficiently few livestock conflicts to recover wolves under existing conditions (Bangs *et al.* 2004, pp. 95–96). Traditional land-use practices in Wyoming are not a threat to wolves in the State, and thus, do not need to be modified to maintain a recovered wolf population into the foreseeable future. We do not anticipate that habitat changes in Wyoming will occur at a magnitude that will threaten wolf recovery in the foreseeable future, because the vast majority of occupied habitat is in public ownership that is managed for uses that are complementary with the maintenance of suitable wolf habitat and viable wolf

populations (Carroll *et al.* 2003, p. 542; Oakleaf *et al.* 2006, p. 560).

The 63,714 km² (24,600 mi²) GYA is primarily composed of public lands (Service 1994, p. iv), and represents one of the largest contiguous blocks of suitable habitat within the region. Public lands in National Parks (YNP, Grand Teton National Park, and John D. Rockefeller, Jr. Memorial Parkway), wilderness (the Absaroka Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas), roadless areas, and large blocks of contiguous mountainous forested habitat are largely unavailable or unsuitable for intensive development. Within the occupied portions of Wyoming, land ownership is mostly Federal (78.6 percent, 58.1 percent of which is National Park Service or wilderness) with some State (2.6 percent), Tribal (8.4 percent), and private lands (10.5 percent) (Lickfett 2012).

The vast majority of suitable wolf habitat and the current wolf population are secure in mountainous forested Federal public land (wilderness and roadless areas, National Parks, and some lands managed for multiple uses by the U.S. Forest Service and Bureau of Land Management) that will not be legally available or suitable for intensive levels of human development (Service 1993, 1996, 2007; Servheen *et al.* 2003; U.S. Department of Agriculture Forest Service 2006). Furthermore, the ranges of wolves and grizzly bears overlap in many parts of Wyoming and the GYA, and mandatory habitat guidelines for grizzly bear conservation on public lands far exceed necessary criteria for maintaining suitable habitat for wolves (for an example, see U.S. Department of Agriculture Forest Service 2006). Thus, northwestern Wyoming will continue to provide optimal suitable habitat for a resident wolf population.

The availability of native ungulate populations is a key factor in wolf habitat and range. Wild ungulate prey species are composed mainly of elk, white-tailed deer, mule deer, moose, and bison. Bighorn sheep, mountain goats, and pronghorn antelope also are common, but are not important as wolf prey. In total, Wyoming supports about 50,000 elk and about 90,000 mule deer in northwestern Wyoming (Bruscino 2011a). All but two of Wyoming's 35 elk management units are at or above the WGFD numeric objectives for those herds; however, calf/cow ratios in several herd units are below desired levels (WGFD 2010, p. 1; Mead 2012a). The State of Wyoming has successfully managed resident ungulate populations for decades. With managers and scientists collaborating to determine the source of the potential population fluctuations and appropriate management responses, we feel confident that, although different herds may experience differing population dynamics, the GYA will continue to support large populations of ungulates, and Wyoming will continue to maintain ungulate populations at densities that will continue to support a recovered wolf population well into the foreseeable future.

The presence of cattle and sheep also affect wolf habitat and range. Cattle and sheep are at least twice as numerous as wild ungulates, even on public lands (Service 1994, p. viii). Most wolf packs have at least some interaction with livestock. Wolves and livestock can live near one another for extended periods of time without significant conflict, if agency control prevents the behavior of chronic livestock depredation from becoming widespread in the wolf population. However, whenever wolves and livestock mix, some livestock and some wolves will be killed. Conflicts between wolves and livestock have resulted in the annual removal of around 8 to 15 percent of the wolf population (Bangs *et al.* 1995, p. 130; Bangs *et al.* 2004, p. 92; Bangs *et al.* 2005, pp. 342–344; Service *et al.* 2012, Tables 4, 5; Smith *et al.* 2010, p. 620). Such active control promotes tolerance for wolf presence by responding to, and minimizing future, impacts to private property without threatening the wolf population viability.

We do not foresee a substantial increase in livestock abundance occurring across northwestern Wyoming that would result in increased wolf mortality, and in fact, the opposite trend has been occurring. In recent years, more than 200,000 hectares (500,000 acres) of public land grazing allotments have been purchased and retired in areas of chronic conflict between livestock and large predators, including wolves (Fischer 2008). Assuming adequate regulation of other potential threat factors (discussed below), the continued presence of livestock will not in any meaningful way threaten the recovered status of the Wyoming wolf population in the foreseeable future.

Although human population growth and development may affect wolf habitat and range, we expect these impacts will be minimal, because the amount of secure suitable habitat is more than sufficient to support wolf breeding pairs well above recovery levels. We expect the region will see increased growth and development including conversion of private low-density rural lands to higher density urban and suburban development; accelerated road development and increasing amounts of transportation facilities (pipelines and energy transmission lines); additional resource extraction (primarily oil and gas, coal, and wind development in certain areas); and increased recreation on public lands (Robbins 2007, entire). Despite efforts to minimize impacts to wildlife (Brown 2006, pp. 1–3), some development will make some areas of Wyoming and the GYA less suitable for wolf occupancy. In the six northwestern Wyoming counties most used by wolves, the human population is projected to increase approximately 15 percent by 2030 (from 122,787 counted in 2010 to 141,000 forecast in 2030) (Carroll *et al.* 2006, p. 536; Wyoming Department of Administration and Information Economic Analysis Division 2008, entire; U.S. Census Bureau 2010, entire). We anticipate similar levels of population growth in the other neighboring areas, because the West as a region is projected to increase at rates faster than any other region (U.S. Census Bureau 2005). As human populations increase, associated impacts will follow. However, human development will not occur on a scale that could possibly affect the overall suitability of Wyoming or the GYA for wolves, and no foreseeable habitat-related threats will prevent these areas from supporting a wolf population that is capable of substantially exceeding recovery levels.

Most types of intensive human development predicted in the future in Wyoming will occur in areas that have already been extensively modified by human activities and are unsuitable as wolf habitat (Freudenthal 2005, appendix III). Mineral extraction activities are likely to continue to be focused at lower elevations, on private lands, in open habitats, and outside of currently suitable and currently occupied wolf habitat (Robbins 2007, entire). Development on private land near suitable habitats will continue to expose wolves to more conflicts and higher risk of human-caused mortality. However, the rate of conflict is well below the level wolves can withstand, especially given the large amount of secure habitat in public ownership, much of which is protected, that will support a recovered wolf population and will provide a reliable and constant source of dispersing wolves. Furthermore, management programs (Linnell *et al.* 2001, p. 348), research and monitoring, and outreach and education about living with wildlife can somewhat reduce such impacts.

Modeling exercises can also provide insight into future land-use

development patterns. While these models have weaknesses (such as an inability to accurately predict economic upturns or downturns, uncertainty regarding investments in infrastructure that might drive development, such as roads, airports, or water projects, and an inability to predict open-space acquisitions or conservation easements), we nevertheless think that such models are useful in adding to our understanding of likely development patterns. Carroll *et al.* (2003, p. 541; 2006, p. 32) predicted future wolf habitat suitability under several scenarios through 2025, including potential threats such as increased human population growth and road development. Similarly, in 2005, the Center for the West produced a series of maps predicting growth through 2040 for the West (Travis *et al.* 2005, pp. 2–7). These projections are available at: *http://www.centerwest.org/futures/west/2040.html.* These models predict very little development across occupied and suitable portions of the NRM DPS, Wyoming, or GYA.

Based on these projections, we have determined that increased development will not alter wolf habitat suitability in the NRM DPS, Wyoming, or GYA nearly enough to cause the wolf population to fall below recovery levels in the foreseeable future. We acknowledge that habitat suitability for wolves will change over time with human development, activities, and attitudes, but not to the extent that it is likely to threaten wolf recovery. We conclude that future human population growth will not adversely affect wolf conservation. Wolf populations persist in many areas of the world that are far more developed than this region currently is, or is likely to be, in the foreseeable future (Boitani 2003, pp. 322–323). Current habitat conditions are adequate to support a wolf population well above minimal recovery levels, and model predictions indicate that development over the next 25 years is unlikely to change habitat in a manner that would threaten the wolf population (Carroll *et al.* 2003, p. 544).

Regarding connectivity between the Wyoming and the GYA wolf to the remainder of the NRM DPS, minimal change in human population growth (Travis *et al.* 2005, pp. 2–7) and habitat suitability (Carroll *et al.* 2003, p. 541; Carroll *et al.* 2006, p. 32) are expected along the Idaho-Montana border between the central Idaho wolf population and the GYA. In fact, projected development is anticipated to include modest expansions concentrated in urban areas and immediately surrounding areas (Travis *et al.* 2005, pp. 2–7). Conversely, in many surrounding rural areas, habitat suitability for wolves will be increased beyond current levels as road densities on public lands are reduced, a process under way in the entire NRM region (Carroll *et al.* 2006, p. 25; Servheen *et al.* 2003; Service 1993, 1996, 2007; Brown 2006, pp. 1–3). Wolves have exceptional dispersal abilities including the ability to disperse long distances across vast areas of unsuitable habitat. Numerous lone wolves have already been documented to have successfully dispersed through these types of developed areas (Jimenez *et al.* In review, p. 1). History proves that wolves are among the least likely species of land mammal to face a serious threat from reduced connectivity related to projected changes in habitat (Fuller *et al.* 2003, pp. 189–190).

There is more than enough habitat connectivity between occupied wolf habitat in Canada, northwestern Montana, and Idaho to provide for the exchange of sufficient numbers of dispersing wolves to maintain demographic and genetic diversity in the NRM wolf metapopulation. We have documented routine movement of radio-collared wolves across the nearly contiguous available suitable habitat between Canada, northwestern Montana, and central Idaho (Boyd *et al.* 1995, p. 136; Boyd and Pletscher 1999, pp. 1100–1101; Jimenez *et al.* In review, p. 23). No foreseeable threats put this connectivity at risk. The GYA is the most physically isolated core recovery area within the NRM DPS, but the GYA has also demonstrated sufficient levels of connectivity to other occupied habitats and wolf populations in the NRM. Within the foreseeable future, only minimal habitat degradation will occur between the GYA and the other recovery areas. Overall, we conclude that this will have only minimal impacts on foreseeable levels of dispersal and connectivity of wolves in the GYA and the State of Wyoming with other wolf populations in the NRM. In short, future connectivity is unlikely to be meaningfully affected by changes in habitat and range (genetic exchange is discussed in more detail under Factor E below), and any changes that are likely will not threaten the recovered status of the Wyoming, the GYA, or the NRM gray wolf populations in the foreseeable future. Therefore, we find present or threatened destruction, modification, or curtailment of habitat and range, singularly or in combination with other threats, will not cause the Wyoming, the GYA, or the NRM gray wolf populations to be ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Commercial or Recreational Uses—This section discusses both legal and illegal killing for commercial or recreational purposes, such as hunting and trapping. All other potential sources of human-caused mortality (e.g., legal or illegal killing for other purposes, agency or individual actions to address conflicts over wolf-livestock interactions, or wolf kills in the predator area of Wyoming) are discussed in the ''Human-caused Mortality'' section of Factor C below; potential impacts of human-caused mortality to natural connectivity and gene flow are discussed in the ''Genetic Considerations'' section of Factor E below. First, this section discusses illegal commercial or recreational use. Next, this section focuses on legal hunting and trapping in Wyoming. Finally, this section evaluates regulated hunting and trapping in Idaho and Montana because some wolves and some packs cross State boundaries. For an analysis of other portions of the NRM DPS relative to this factor, see our 2009 delisting determination (74 FR 15123, April 2, 2009). Additional consideration of such take since 2009 has verified our previous conclusions that State management of such human-caused mortality will not undermine maintenance of any portion of the NRM DPS's recovered status (Cooley 2011; Jimenez 2012b; see also Issue and Response 4 above). Additional consideration of such take in Montana and Idaho are also included in other portions of this rule as appropriate.

Since the species was listed, killing for commercial or recreational use has been prohibited. While some wolves may have been illegally killed for commercial use of the pelts and other parts, such illegal commercial trafficking is rare. Furthermore, illegal capture of wolves for commercial breeding purposes is also possible, but we have no evidence that it occurs in Wyoming, the GYA, or elsewhere in the NRM DPS. We conclude that the prohibition against ''take'' provided by section 9 of the Act has discouraged and minimized the illegal killing of wolves for commercial or recreational purposes. Post-delisting, State, tribal, and other Federal laws and regulations will continue to provide a strong deterrent to such illegal wolf killing by the public. State, tribal, and other Federal wildlife agencies have well-distributed,

experienced professional law enforcement officers to help enforce their respective wildlife regulations. Similar regulatory approaches have been effective in the conservation of other resident wildlife, such as black bears, mountain lions, elk, and deer. Most hunting and trapping that will occur post-delisting will be legal, permitted, and regulated by the State of Wyoming or the Wind River Indian Reservation.

Legal regulated harvest will be employed by Montana, Idaho, and Wyoming after delisting. Additionally, the Wind River Indian Reservation may consider legal regulated harvest. Harvest will be done in a manner compatible with wolf conservation. Wolves can maintain themselves despite human-caused mortality rates of 17 to 48 percent (Fuller *et al.* 2003, pp. 182–184 [22 percent +/− 8 percent]; Adams *et al.* 2008 [29 percent]; Creel and Rotella 2010 [22 percent]; Sparkman *et al.* 2011 [25 percent]; Gude *et al.* 2011 [48 percent]; Vucetich and Carroll In review [17 percent]).

We have long encouraged hunting as a long term strategy for wolf conservation because it is a valuable, efficient, and cost-effective tool to help manage wildlife populations (Bangs et al. 2009, pg. 113). Viable robust wolf populations in Canada, Alaska, and other parts of the world are hunted and trapped and are not threatened by this type of mortality. Furthermore, all States in the NRM DPS have substantial experience operating regulated harvest as a wildlife management tool for resident species. Regarding experience specific to wolves, in both 2009 and 2011, more than 250 NRM wolves were killed through hunting and a total of more than 600 NRM wolves died each year from all sources of mortality (agency control including defense of property, regulated harvest, illegal and accidental killing, and natural causes), and the population showed little change (technically, slight increases in minimum population levels were documented each year) (Service *et al.* 2012, tables 4a, 4b). While future population reductions are anticipated, the available information gives us every confidence that the States will run hunts such that wolf populations will not be threatened by recreational or commercial uses.

In Wyoming, wolves will be managed as game animals year-round or protected in about 38,500 km^2 (15,000 mi^2) in the northwestern portion of the State (15.2 percent of Wyoming), including YNP, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and most of the Wind River Indian Reservation (Lickfett 2012). This area is of sufficient size to support Wyoming wolf population targets, under the management regime developed for this area.

Wolves will be considered as trophy game animals within the area of northwestern Wyoming identified as the Trophy Area (see Figure 1 above). In areas under State jurisdiction, ''trophy game'' status allows the WGFC and WGFD to regulate methods of take, hunting seasons, and numbers of wolves that could be killed. The boundary and size of the Trophy Area was established by State statute and cannot be diminished through WGFC rule or regulation. The Trophy Area will be seasonally expanded approximately 80 km (50 mi) south (see Figure 1 above) from October 15 to the last day of February (28th or 29th) to facilitate natural dispersal of wolves between Wyoming and Idaho. During this timeframe, the Trophy Area will be expanded by approximately 3,300 km^2 (1,300 mi^2) (i.e., an additional 1.3 percent of Wyoming) (Lickfett 2011).

Regarding methods for regulated hunting within the Trophy Area, numerous safeguards ensure such take will be fair chase. For example, hunting regulations within the Trophy Area prohibit: Use of dogs to aid in wolf hunting (W.S. 23–3–109(a)); poisoning (W.S. 23–3–304); hunting from a road (W.S. 23–3–305); hunting with the aid of artificial light (W.S. 23–3–306(b)); hunting from snow machines, automobiles, or airplanes; and hunters receiving spotting assistance from aircraft (W.S. 23–3–306). Note that the limitations listed here are a small sample of protective measures in place and not intended to constitute a comprehensive list; parties looking for a comprehensive list of limitations on wolf hunting within the Trophy Area should consult the WGFD.

Within the Trophy Area, Wyoming intends to use public harvest of wolves to reduce wolf populations to minimize wolf impacts to livestock, ungulate herds, and humans (WGFC 2011, pp. 1, 23). Wyoming will develop an annual hunt plan that will take into consideration, but not be limited to, the following when developing a wolf hunting program or extending wolf hunting seasons: Wolf breeding seasons; short- and long-range dispersal opportunity, survival, and success in forming new or joining existing packs; conflicts with livestock; and the broader game management responsibilities related to ungulates and other wildlife (WGFC 2011, pp. 2–3, 16, 25, 53). Harvest quotas will be established through WGFD's normal season-setting process. Quotas will be based on the population status of wolves at the end of the previous calendar year, and consider wolf mortality and population growth estimated during the current calendar year (WGFC 2011, pp. 23–25). All forms of wolf mortality will be considered when setting appropriate harvest levels (WGFC 2011, pp. 23–25). Seasons will close when the mortality quota is reached or if the WGFC deems it necessary to close the season for other reasons. Importantly, the WGFD will not manage wolves at the minimum population objective (WGFC 2011, p. 24). Instead, the WGFD will set harvest levels that maintain an adequate buffer above minimum population objectives to provide management flexibility (WGFC 2011, p. 24).

Wyoming wolf hunting seasons will coincide primarily with fall big game hunting seasons (October through December), but they may be established outside of that period or extended beyond that period if necessary to achieve management objectives (WGFC 2011, pp. 23–25, 53). Wyoming's wolf management plan indicates that the State expects to delineate approximately 10 to 12 wolf hunting areas within the Trophy Area to focus harvest in specific areas (i.e., areas with high wolf-livestock conflict, high human-trafficked areas, or areas where ungulate herds are below State management objectives) (WGFC 2011, pp. 1, 16). Wyoming has 12 hunting units for the 2012 hunting season. Persons who legally harvest a wolf within the Trophy Area will be required to report the harvest to the WGFD within 24 hours, and check the harvested animal in within 5 days (WGFC 2011, pp. 3, 22–25). Reporting periods for harvested wolves may be extended after inaugural hunting seasons if it is determined that extended reporting periods will not increase the likelihood of overharvest (WGFC 2011, p. 23). Similar harvest strategies have been successful for countless other wildlife species in Wyoming.

Within the Trophy Area, at the end of 2011, there were at least 177 wolves in at least 29 packs (including 16 breeding pairs), as well as at least 4 lone wolves; within the seasonal Trophy Area, at the end of 2011, there were at least 10 wolves in at least 2 packs (including 1 breeding pair), as well as at least 5 lone wolves (Jimenez 2012a). In 2012, Wyoming will authorize a hunting quota of 52 wolves in 2012, and once reproduction is accounted for, the State estimates that this would reduce the

population by about 11.5 percent within the Trophy Area (Mills 2012, pers. comm.). Specifically, Wyoming estimates the population within the Trophy Area would be around 170 wolves and 15 breeding pairs at the end of 2012 (Mills 2012, pers. comm.). We note that this first-year goal is comfortably above the minimum agreed-upon population targets.

Commercial or recreational trapping is not currently being planned in Wyoming (Bruscino 2011b). However, an adaptive management approach, which could include trapping, may occur in the future (WGFC 2011, p. 25; Mead 2012a). If such a season is considered in the future, it would be regulated by the WGFD and the WGFC. Furthermore, take would be limited because the resultant mortality would count toward Wyoming's total harvest quotas, which are already expected to be modest once desired population reductions are achieved. If trapping is used in the future it will be conducted within the framework of the State's overall demographic targets.

Regarding past hunting seasons, in our 2009 delisting rule (74 FR 15123, April 2, 2009), we determined that Wyoming's proposed 2008 harvest strategy (that was not implemented) was well-designed, biologically sound, and, by itself, it would not have threatened Wyoming's share of the recovered NRM wolf population. Given Wyoming's strong commitment to maintain a population of at least the agreed-upon minimum population targets, its intention to consider all forms of wolf mortality when making wolf management decisions, and numerous safeguards built into its harvest strategy, we are confident that this source of mortality will not compromise the Wyoming wolf population's recovered status.

The Wind River Indian Reservation's management plan indicates wolves will be designated as a game animal post-delisting and hunting and trapping can occur (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 9). The season timing and length, harvest quota, and other specifics will be determined by the Eastern Shoshone and Northern Arapaho Tribes (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 9). Harvest strategy will depend on the number of wolves present on Wind River Indian Reservation and the management direction the Tribes wish to take (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 9). The Tribes have not designated a specific number of individuals or packs for which they will manage (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 9). Given the small number of wolves, packs, and breeding pairs supported while Act protections were in place, we expect the area will support very modest wolf population levels and distribution. Given this, we expect very limited hunting or trapping on the Wind River Indian Reservation.

No legal wolf hunting or trapping will occur within the boundaries of YNP and Grand Teton National Park. Similarly, no wolf hunting is currently planned or anticipated on the National Elk Refuge (although it could be considered in the future) (Kallin 2012, per. comm.). However, wolves in these areas may be impacted by hunting or trapping when they leave these areas to various extents depending on the unit. In Grand Teton National Park and the National Elk Refuge, wolf pack home ranges typically cross outside of these Federal boundaries, thus, hunting pressures in adjoining areas will likely impact these wolves. These wolves were included in the Trophy Area for exactly this reason. Therefore, Wyoming will manage these wolves along with other wolves within the remainder of the Trophy Area to ensure their statewide minimum management target is not compromised.

Most YNP packs rarely leave the park. However, a few packs occasionally leave the park boundaries, which could subject them to hunting in adjoining areas. This situation is most common for packs in the northern part of YNP where some of these wolves occasionally enter adjoining portions of southern Montana. Montana has responded to this situation by creating a small subquota for areas adjoining YNP. Specifically, within the large South Central Montana hunting unit, which had an overall quota of 18 wolves in 2011, Montana Fish, Wildlife and Parks created a small subunit with a subquota of 3 wolves for areas immediately adjoining YNPs northern boundary (Montana Fish, Wildlife and Parks 2011, pp. 6–7). This approach has been successful at minimizing hunting impacts to YNP packs (Smith 2012, pers. comm.). We anticipate Montana will continue such harvest limits in areas adjoining YNP in future years. Most other YNP wolf packs are not expected to be as vulnerable to human-caused mortality in adjoining areas most years because they generally spend less time in these adjoining areas. That said, these patterns will vary by year. For example, the Delta pack is generally known from southeastern YNP and its range can include adjoining portions of Wyoming, but this year it appears to be spending so much time in Wyoming that it may count as a Wyoming pack rather than a YNP pack.

Although not likely to be necessary, should hunting in other adjoining areas have a bigger impact than anticipated, we expect other adjoining States would follow Montana's lead and limit hunting in these adjoining areas to limit impacts to YNP wolves. All three States have long cooperated with YNP on wildlife management issues, a situation we expect to continue (Bruscino 2012, pers. comm.; Smith 2012, pers. comm.). Furthermore, all three States have an incentive to maintain a minimally affected wolf population in YNP both for visitor enjoyment and the resulting economic benefits. Additionally, while we doubt this issue could ever bring the Wyoming statewide population down below 15 breeding pairs or below 150 wolves, all 3 States have an incentive not to have their management actions outside YNP cause population-level impacts in the park that could lead to a Service status review (see status review trigger 3 below). Wyoming's wolf management plan confirms this intention in that it states Wyoming is committed to coordinate with YNP to contribute to maintain a statewide total of at least 15 breeding pairs and at least 150 wolves (WGFC 2011, p. 1).

Although hunting is currently allowed for many other game species in the John D. Rockefeller, Jr. Memorial Parkway under the Parkway's enabling legislation and Wyoming law, the National Park Service has indicated a ''strong preference that wolves not be hunted in the John D. Rockefeller, Jr. Memorial Parkway'' (Frost and Wessels 2012). Wyoming's hunting regulations are clear that gray wolf hunting would not occur in the Parkway during the 2012 season, although nothing in Wyoming's regulations or Wyoming's wolf management plan would preclude wolves from being hunted in the Parkway in subsequent years. Should hunting ever occur in the John D. Rockefeller, Jr. Memorial Parkway, it would likely be very limited, would be unlikely to noticeably affect wolf gene flow or connectivity, and it would be closely coordinated with the National Park Service.

Recent hunts in Idaho and Montana demonstrate wolf tolerance for hunting. Both Idaho and Montana designated wolves as game animals statewide and each State conducted conservative wolf hunts in 2009. These hunts distributed wolf harvest across occupied habitat, took into account connectivity and possible dispersal corridors, resulted in good hunter compliance, and improved hunter attitudes about wolves (Montana Fish, Wildlife and Parks 2009, entire; Dickson 2010; Service *et al.* 2010, Idaho chapter, pp. 13–14; Service *et al.* 2010,

Montana chapter, pp. 17–25). In total, Montana hunts took 72 wolves out of the 75-harvest quota and, in Idaho, hunts took 185 wolves out of 2009's quota of 220 (Montana Fish Wildlife & Parks 2009, entire). Each State closed wolf harvest in individual management zones at the end of that State's season or when as a unit (or subunit) met its quota, whichever came first. Montana closed its wolf hunt statewide November 16th. In Idaho, a few zones remained open until March 31. Despite a total harvest of 257 wolves in Montana and Idaho and other sources of human-caused mortality, the NRM population showed little change in 2009 (technically, a slight increase in minimum population levels was documented). Hunting continued in some portions of Idaho into 2010. In 2010, the minimum population estimate saw a small decline. During the 2011–2012 harvest, 379 wolves were taken in Idaho (255 by hunters and 124 by trappers), and 166 wolves were taken in Montana (Idaho Department of Fish and Game 2012, entire; Montana Fish, Wildlife and Parks 2012a, entire).

Considering all sources of mortality in 2011, the population changed minimally (minimum population estimates grew by around 3 percent across the NRM DPS including a 15 percent increase in Montana and 4 percent reduction in Idaho). Some additional reduction likely occurred during the 2012 portion of the 2011–2012 hunting season. Regardless, these data confirm wolves' capacity to withstand significant mortality. As anticipated in our 2009 delisting rule (74 FR 15123, April 2, 2009), Montana and Idaho are now planning higher harvest rates to reduce the population below current levels (which are likely at or above long term carrying capacity of the suitable habitat). After this initial population reduction phase, we anticipate that the NRM gray wolf population will then settle into a reasonable, long term equilibrium, well above minimum recovery levels.

On a more localized level, hunting in Idaho and Montana may affect Wyoming wolves because some wolves and some packs cross State boundaries. Thus, next we analyze hunting in Idaho's and Montana's portion of the GYA. During the 2009 season, Island Park hunting unit had a quota of five wolves with an October 1st to December 31st season and a limit of one wolf per person (Service *et al.* 2010, Idaho chapter, pp. 81–84). The quota for this unit was met, and the unit was closed November 2nd (Service *et al.* 2010, Idaho chapter, pp. 81–84). There is no harvest data from 2010 because wolves were not hunted in this unit in 2010. During the 2011 season, Idaho authorized a quota of 30 wolves in the Island Park hunting unit with a season from August 30th to December 31st, and limits of 1 wolf per tag with a limit of 2 tags per person (Idaho Fish and Game Commission 2011). The quota for this unit was not reached because only 10 wolves were taken. The 2012–2013 hunting seasons authorize a quota of 30 wolves with a season from August 30th to January 31st and limits of 1 wolf per tag with a limit of 2 tags per person. If the last several years are any indication, it is unlikely this quota will be achieved. Overall, the data demonstrate this modest hunting level in this unit had minimal impact. As hunting continues in this region across multiple consecutive years, it will reduce the number of wolves, packs, and breeding pairs in this area (this is the State's intention). In the long run, it is likely that this area will continue to support a modest number of wolves and packs (one to four packs) some of which will qualify as breeding pairs. This regulated taking in Idaho may minimally affect a small number of Wyoming wolves (e.g., the three Wyoming packs that cross into Idaho). In future years, once the initial desired population level is achieved, such impacts are expected to be minimal.

Idaho's other hunting unit in the GYA area is the southern Idaho unit. Potential hunting impacts in this unit are expected to be zero to low single digits. During the 2009–2010 hunting season, Idaho allowed hunting from August 30th to March 31st in this zone but did not reach its quota and only 1 wolf was harvested. During the 2011–2012 hunting season, Idaho allowed hunting from August 30th to March 31st with an unlimited quota in this zone, but only harvested 2 wolves. During 2011, no documented packs or groups occupied the Southern Idaho Zone. Furthermore, hunting in this unit is expected to have little to no impact on packs in Wyoming. Because this area is largely unsuitable habitat with no substantial wolf population, recent modest take trends in this unit are likely to continue.

Trapping was not authorized in either the Island Park unit or the southern Idaho unit (Idaho Fish and Game Commission 2011). Similarly, trapping is also not planned for the 2012–2013 season in either of these areas. Trapping was only authorized where hunting alone was not anticipated to be effective in reducing the wolf population (Idaho Fish and Game Commission 2011). Because trapping is typically reserved for more remote, inaccessible areas (Idaho Fish and Game Commission 2011), we do not expect much, if any, future trapping in this area.

Montana's wolf quota for 2011 within the GYA was 43 wolves including 19 wolves within the Gallatin/Madison unit, 6 wolves within the Highlands/Tobacco Roots/Gravelly/Snowcrest unit, and 18 wolves within the South Central Montana unit (Montana Fish, Wildlife and Parks 2011, pp. 6–7). These quotas were nearly achieved with 16, 5, and 18 wolves taken in each of the above units, respectively. In 2011, the minimum estimate was 139 wolves in 22 verified packs, 10 of which qualified as a breeding pair. This represents a slight change in the area's wolf population (technically, a slight increase in the documented wolf population) from 2010 when the minimum population estimate was 118 wolves in 19 packs in 2010, of which 6 qualified as breeding pairs. Small fluctuations also occurred following the 2009 hunting season. Thirteen wolves were taken in this unit in 2009. From the end of 2008 to the end of 2009 (the period affected by the 2009 wolf hunt), the minimum wolf population estimate in Montana's share of the GYA declined from 130 wolves in 18 packs, 11 of which met the breeding pair criteria, to 106 wolves in 17 verified packs, 9 of which qualified as a breeding pair. Both agency control (which increased in 2009) and hunter harvest were factors in these declines.

As of this writing, the Montana 2012–2013 hunting season's quota is not determined, but will be higher than past seasons and may include trapping and increased harvest. In the long run, Montana will modestly reduce the number of wolves, packs, and breeding pairs in this area. However, it is likely this area will continue to support a sizeable number of wolves, packs, and breeding pairs. Specifically, in our professional judgment, this area will support at least 8 packs long term, a significant number of which will qualify as breeding pairs. This regulated taking in Montana, in light of the quotas for areas adjacent to YNP, may affect some Wyoming wolves in some years, but is not expected to be a significant impact.

In summary, illegal commercial and recreational use will remain a negligible source of mortality, and legal and State-regulated harvest for commercial and recreational use will be managed in a manner compatible with wolf conservation. Wolves can maintain population levels despite very high sustained human-caused mortality rates. For example, in 2009 and in 2011, more than 600 NRM wolves died each year from all sources of mortality (agency control including defense of property, regulated harvest, illegal and accidental

killing, and natural causes), and the population showed little change (technically, slight increases in minimum population levels were documented each year) (Service *et al.* 2012, tables 4a, 4b). Regulated hunting and trapping are commonly used to manage wolves in Canada and Alaska without population-level negative effects (Bangs 2008), and all States in the NRM DPS have substantial experience operating regulated harvest as a wildlife management tool for resident species. In Wyoming, population levels will be carefully monitored; all sources of mortality will be used to set quotas and measure progress toward them; harvest units will be closed when quotas are met, or if otherwise needed (e.g., if overall population objectives are being approached); harvest units will be small to allow targeted control of authorized mortality; and populations will be managed with a buffer above minimum targets. This approach is consistent with the State's management of numerous other species.

On the whole, we anticipate Wyoming, Idaho, and Montana will all reduce populations in the short term and that harvest rates and season duration will be reduced over time. Long term, commercial and recreational human-caused mortality and total human-caused mortality will occur at sustainable rates that will not compromise minimum management targets or minimum recovery objectives.

Overutilization for Scientific or Educational Purposes—From 1979 to 2010, the Service and our cooperating partners captured 1,963 wolves for monitoring, nonlethal control, and research purposes with less than 3 percent experiencing accidental death. After delisting, the States, National Parks, and Tribes will continue to capture and radio-collar wolves for monitoring and research purposes in accordance with State, Federal, and tribal laws, wolf management plans, regulations, and appropriate agency humane animal care and handling policies. The capture or possession of wolves from within the Trophy Area for scientific or educational purposes will be regulated by the WGFD under rules set in chapter 10 and chapter 33 of Commission Regulations. We expect that capture-caused mortality by Federal, State, and Tribal agencies, and universities conducting wolf monitoring, nonlethal control, and research, will remain below 3 percent of the wolves captured, and will remain an insignificant source of mortality to the wolf population (Murray *et al.* 2010, p. 2519).

We are unaware of any wolves that have been removed from the wild for solely educational purposes in recent years. Wolves that are used for such purposes are typically privately held captive-reared offspring of wolves that were already in captivity for other reasons. However, we or the States and Tribes may get requests to place wolves that would otherwise be euthanized in captivity for research or educational purposes. Such requests have been, and are likely to continue to be, rare. Such requests will not substantially affect human-caused wolf mortality rates.

In summary, we find that commercial, recreational, scientific, and educational use, singularly or in combination with other threats, will not cause the Wyoming, the GYA, or the NRM gray wolf population to be ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

Factor C. Disease or Predation

This section discusses disease and parasites, natural predation, and all sources of human-caused mortality not covered under Factor B above (the Factor B analysis includes sources of human-caused mortality for commercial and recreational uses). The below analysis focuses on wolves in Wyoming, but considers adjoining portions of the GYA because some wolves and some packs cross State boundaries. Data for other regions are considered, particularly where it implies a threat that could someday affect Wyoming or GYA wolves. For an analysis of other portions of the NRM DPS relative to this factor, see our 2009 delisting determination (74 FR 15123, April 2, 2009).

Disease—Wolves throughout North America are exposed to a wide variety of diseases and parasites. Many diseases (viruses and bacteria, many protozoa and fungi) and parasites (helminthes and arthropods) have been reported for the gray wolf, and several of them have had significant but temporary impacts during wolf recovery in the 48 conterminous States (Brand *et al.* 1995, p. 428; Kreeger 2003, pp. 202–214). The 1994 Environmental Impact Statement on gray wolf reintroduction identified disease impact as an issue, but did not evaluate it further (Service 1994, pp. 1:20–21).

Infectious disease induced by parasitic organisms is a normal feature in the life of wild animals, and the typical wild animal hosts a broad multispecies community of potentially harmful parasitic organisms (Wobeser 2002, p. 160). We fully anticipate that these diseases and parasites will follow the same pattern seen for wolves in other areas of North America (Brand *et al.* 1995, pp. 428–429; Bailey *et al.* 1995, p. 445; Kreeger 2003, pp. 202–204; Atkinson 2006, pp. 1–7; Smith and Almberg 2007, pp. 17–19; Johnson 1995a, 1995b; Almberg *et al.* 2009, p. 3; 2010, p. 2058; Jimenez *et al.* 2010a, p. 1120; 2010b p. 331), and will not significantly threaten wolf population viability. Nevertheless, because these diseases and parasites, and perhaps others, have the potential to affect wolf population distribution and demographics, monitoring implemented by the States, Tribes, and National Park Service will track disease and parasite events. Should such an outbreak occur that results in a population decline, discretionary human-caused mortality (such as hunting, post-delisting) would be adjusted over an appropriate area and time period to ensure wolf population numbers are maintained above recovery levels (WGFC 2011, pp. 21–22, 24).

Canine parvovirus (CPV) infects wolves, domestic dogs (*Canis familiaris*), foxes (*Vulpes vulpes*), coyotes (*Canis latrans*), skunks (*Mephitis mephitis*), and raccoons (*Procyon lotor*). The population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (Wisconsin Department of Natural Resources 1999, p. 61). Clinical CPV is characterized by severe hemorrhagic diarrhea and vomiting; debility and subsequent mortality is a result of dehydration, electrolyte imbalances, and shock. CPV has been detected in nearly every wolf population in North America including Alaska (Bailey *et al.* 1995, p. 441; Brand *et al.* 1995, p. 421; Kreeger 2003, pp. 210–211; Johnson *et al.* 1994; Almberg *et al.* 2009, p. 2), and exposure in wolves is thought to be almost universal. Currently, nearly 100 percent of the wolves handled in Montana and Wyoming had blood antibodies indicating nonlethal exposure to CPV (Atkinson 2006; Smith and Almberg 2007, p. 18; Almberg *et al.* 2009, p. 2; Service *et al.* 2009, Wyoming chapter, p. 11). CPV might have contributed to low pup survival in the northern range of YNP in 1999. CPV was suspected to have done so again in 2005 and possibly 2008, but evidence now points to canine distemper (CD) as having been the primary cause of low pup survival during those years (Smith *et al.* 2006, p. 244; Smith 2008, pers. comm.; Almberg *et al.* 2010, p. 2058). Pup production and survival in YNP returned to normal levels after each event (Almberg *et al.* 2009, pp. 18–19).

The impact of disease outbreaks to the overall NRM wolf population has been

localized and temporary, as has been documented elsewhere (Bailey *et al.* 1995, p. 441; Brand *et al.* 1995, p. 421; Kreeger 2003, pp. 210–211). Despite these periodic disease outbreaks, the NRM wolf population increased at a rate of about 20 percent annually from 1996 to 2008 (Service et al. 2012, Table 4; Smith *et al.* 2010, p. 620; also see Figure 3 above. Mech and Goyal (2011) recently found that from 1987 to 1993, CPV reduced pup survival and subsequent dispersal and overall population growth in the Superior National Forest of Minnesota (a population at carrying capacity in suitable habitat); after that the population apparently gained resistance to CPV. It is possible that at carrying capacity CPV may affect the GYA and Wyoming wolf populations similarly, such that the overall rate of growth may be temporarily reduced.

Canine distemper (CD) is an acute, fever-causing disease of carnivores caused by a virus (Kreeger 2003, p. 209). It is common in domestic dogs and some wild canids, such as coyotes and foxes in the NRM region (Kreeger 2003, p. 209). The prevalence of antibodies to this disease in wolf blood in North American wolves is about 17 percent (Kreeger 2003, p. 209), but varies annually and by specific location. Nearly 85 percent of Montana wolf blood samples analyzed in 2005 indicated nonlethal exposure to CD (Atkinson 2006). Similar results were found in Wyoming (Smith and Almberg 2007, p. 18; Service *et al.* 2009, Wyoming chapter, p. 11; Almberg *et al.* 2010, p. 2061). Mortality in wolves has been documented in Canada (Carbyn 1982, p. 109), Alaska (Peterson *et al.* 1984, p. 31; Bailey *et al.* 1995, p. 441), and in a single Wisconsin pup (Wydeven and Wiedenhoeft 2003, p. 7). CD is not a major mortality factor in wolves, because despite high exposure to the virus, affected wolf populations usually demonstrate good recruitment (Brand *et al.* 1995, pp. 420–421). Mortality from CD has only been confirmed on a few occasions in NRM wolves despite their high exposure to it, however, we suspect it contributed to the high pup mortality documented in the northern GYA in spring 1999, 2005, and 2008 (Almberg *et al.* 2010, p. 2061).

CD is likely maintained in the NRM region by multiple hosts, and periodic outbreaks will undoubtedly occur every 2–5 years (Almberg *et al.* 2010, p. 2058). However, as documented elsewhere, CD does not threaten wolf populations, and the NRM wolf population increased even during years with localized outbreaks (Almberg *et al.* 2010, p. 2058). YNP biologists (Smith 2008, pers. comm.) documented the most severe wolf impacts from CD when the YNP population was around the historic high of 170 wolves the previous winter. That said, less severe outbreaks of CD can and do occur at lower population levels. CD impacts are typically localized. In 2008, wolf packs in Wyoming outside YNP (about 25 packs and 15 breeding pairs) appeared to have normal pup production (Jimenez 2008, pers. comm.), indicating the probable disease outbreak in 2008 was localized to YNP. The available information indicates CD mortality may be associated with high carnivore density. Thus, the wolf populations in the GYA may be more affected by CD and other diseases when wolves and other carnivores exist at high densities in suitable habitat (e.g., in YNP in 2005 and 2008). This may partially explain why no similar events have been documented in other portions of Wyoming, and may limit the future likelihood of similar events in other portions of Wyoming after delisting.

Lyme disease, caused by a spirochete bacterium, is spread primarily by deer ticks (*Ixodes dammini*). Host species include humans, horses (*Equus caballus*), dogs, white-tailed deer, mule deer, elk, white-footed mice (*Peromyscus leucopus*), eastern chipmunks (*Tamias striatus*), coyotes, and wolves. In wolf populations in the Western Great Lakes region, it does not appear to cause adult mortality, but might be suppressing population growth by decreasing wolf pup survival (Wisconsin Department of Natural Resources 1999, p. 61). Lyme disease has not been documented in the GYA or Wyoming wolf populations.

Mange is caused by a mite (*Sarcoptes scabeii*) that infests the skin. The irritation caused by feeding and burrowing mites results in intense itching, resulting in scratching and severe fur loss, which can lead to secondary infections or to mortality from exposure during severe winter weather (Kreeger 2003, pp. 207–208). Advanced mange can involve the entire body and can cause emaciation, decreased flight distance, staggering, and death (Kreeger 2003, p. 207). In a long term Alberta wolf study, higher wolf densities were correlated with increased incidence of mange, and pup survival decreased as the incidence of mange increased (Brand *et al.* 1995, pp. 427–428). Mange has been shown to temporarily affect wolf population growth rates and perhaps wolf distribution (Kreeger 2003, p. 208).

Mange has been detected in, and caused mortality to, GYA wolves (Jimenez *et al.* 2010a, p. 1120; Atkinson 2006, p. 5; Smith and Almberg 2007, p. 19). The GYA wolves likely contracted mange from coyotes or fox, whose populations experience occasional outbreaks. Between 2003 and 2008, the percentage of Montana packs with mange fluctuated between 3 and 24 percent of packs. Between 2002 and 2008, the percentage of Wyoming packs with mange fluctuated between 3 and 15 percent of packs. In these cases, mange did not appear to infest every member of the pack. For example, in 2008, manage was detected in 8 wolves from 4 different packs in YNP, one pack in Wyoming outside YNP, and a couple of packs in previously infested areas of southwestern Montana. Mange has not been confirmed in wolves in Idaho (Jimenez *et al.* 2010a, p. 1123).

In packs with the most severe mange infestations, pup survival appeared low, and some adults died (Jimenez *et al.* 2010a, pp. 1122–1123). In addition, we euthanized several wolves with severe mange for humane reasons and because of their abnormal behavior. We predict that mange in the GYA and State of Wyoming will act as it has in other parts of North America (Brand *et al.* 1995, pp. 427–428; Kreeger 2003, pp. 207–208; Jimenez *et al.* 2010a, p. 1123) and not threaten wolf population viability. Wolves are not likely to be infested with mange on a chronic population-wide level (Jimenez *et al.* 2010a, p. 1123).

Dog-biting lice (*Trichodectes canis*) commonly feed on domestic dogs, but can infest coyotes and wolves (Schwartz *et al.* 1983, p. 372; Mech *et al.* 1985, p. 404; Jimenez *et al.* 2010b, entire). The lice can attain severe infestations, particularly in pups. The worst infestations can result in severe scratching, irritated and raw skin, substantial hair loss particularly in the groin, and poor condition. While no wolf mortality has been confirmed from dog-biting lice, death from exposure or secondary infection following self-inflicted trauma caused by inflammation and itching appears possible. The first confirmed NRM wolves with dog-biting lice were members of the Battlefield pack in the Big Hole Valley of southwestern Montana in 2005 and 2006, and one wolf in south-central Idaho in 2006 and 2007; but these infestations were not severe (Service *et al.* 2006, p. 15; Atkinson 2006, p. 5; Jimenez *et al.* 2010b). The source of this infestation is unknown, but was likely domestic dogs. Lice have been documented in the NRM DPS since 2005, and infestations are likely to continue to be occasionally documented in the future. Lice may contribute to the death of some individual wolves, but they will not threaten the GYA or Wyoming wolf

population (Jimenez *et al.* 2010b, p. 332).

Rabies, canine heartworm (*Dirofilaria immitus*), blastomycosis, brucellosis, neosporsis, leptospirosis, bovine tuberculosis, canine herpesvirus (Almberg *et al.* 2010), canine coronavirus, viral papillomatosis, hookworm, tapeworm (*Echinococcus granulosus*) (Foreyt *et al.* 2008, p. 1), lice, sarcoptic mange, coccidiosis, and canine adenovirus/hepatitis have all been documented in wild gray wolves, but their impacts on future wild wolf populations are not likely to be significant (Brand *et al.* 1995, pp. 419–429; Johnson 1995a, b, pp. 5–73, 1995b, pp. 5–49; Mech and Kurtz 1999, p. 305; Wisconsin Department of Natural Resources 1999, p. 61; Kreeger 2003, pp. 202–214; Atkinson 2006, pp. 1–7; Almberg *et al.* 2010, p. 3; Jimenez *et al.* 2010a, p. 1123; 2010b, p. 332). Canid rabies caused local population declines in Alaska (Ballard and Krausman 1997, p. 242), and may temporarily limit population growth or distribution where another species, such as arctic foxes (*Alopex lagopus*), act as a reservoir for the disease. We have not detected rabies in NRM wolves. Range expansion could provide new avenues for exposure to several of these diseases, especially canine heartworm, rabies, bovine tuberculosis, and possibly new diseases such as chronic wasting disease and West Nile virus, further emphasizing the need for vigilant disease-monitoring programs.

Because several of the diseases and parasites are known to be spread by wolf-to-wolf contact, their incidence may increase if wolf densities increase. However, because wolf densities are already high and may be peaking (Service *et al.* 2012, Table 1, Figure 1), wolf-to-wolf contacts will not likely lead to a continuing increase in disease prevalence. Most NRM gray wolves will continue to have exposure to most diseases and parasites in the system. However, the impact of disease outbreaks to the overall NRM wolf population has been localized and temporary, as has been documented elsewhere (Bailey *et al.* 1995, p. 441; Brand *et al.* 1995, p. 421; Kreeger 2003, pp. 210–211). Diseases or parasites have not been a significant threat to wolf population recovery to date, and we have no reason to conclude that they will become a significant threat to the viability of recovered wolves in the foreseeable future.

In terms of future disease monitoring, States have committed to monitor the NRM wolf population for significant disease and parasite problems. State wildlife health programs often cooperate with Federal agencies and universities and usually have both reactive and proactive wildlife health monitoring protocols. Reactive strategies consist of periodic intensive investigations after disease or parasite problems have been detected through routine management practices, such as pelt examination, reports from hunters, research projects, or population monitoring. Proactive strategies often involve ongoing routine investigation of wildlife health information through collection and analysis of blood and tissue samples from all or a sub-sample of wildlife carcasses or live animals that are handled.

Overall, we conclude that diseases or changes in disease monitoring, singularly or in combination with other threats, will not cause the Wyoming, the GYA, or the NRM gray wolf population to become in danger of extinction throughout all or a significant portion of its range now or in the foreseeable future.

Natural Predation—No wild animals routinely prey on gray wolves (Ballard *et al.* 2003, pp. 259–260). From 1982 to 2004, about 3.1 percent of all known wolf mortality in the NRM DPS resulted from interspecific strife (Murray *et al.* 2010, p. 2519). Occasionally wolves have been killed by large prey such as elk, deer, bison, and moose (Mech and Nelson 1989, p. 207; Smith *et al.* 2006, p. 247; Mech and Peterson 2003, p. 134), but those instances are few. Since the 1980s, about a dozen YNP wolves have died from wounds received while attacking prey (Smith *et al.* 2006, p. 247). That level of natural mortality does not significantly affect wolf population viability or stability. Since NRM wolves have been monitored, only a few wolves have been confirmed killed by other large predators. At least two adults were killed by mountain lions, and one pup was killed by a grizzly bear (Jimenez *et al.* 2009, p. 76). Wolves in the NRM region inhabit the same areas as mountain lions, grizzly bears, and black bears, but conflicts rarely result in the death of either species. Wolves evolved with other large predators, and no other large predators in North America, except humans, have the potential to significantly affect wolf populations.

Other wolves are the largest cause of natural predation among wolves. Wherever wolf packs occur, including the NRM DPS, some low level of wolf mortality will result from territorial conflict. Such intraspecific killing has been noted in newly expanding populations or restored populations (Fritts and Mech 1981; Wydeven *et al.* 1995; Mech and Boitani 2003; Smith 2005), in wolf populations subject to human harvest (Adams *et al.* 2008), and during periods of relatively high prey abundance (Peterson and Page 1988). However, this cause of mortality does not result in a level of mortality that would significantly affect a wolf population's viability in Wyoming, the GYA, or the NRM DPS.

In summary, we find that natural predation, singularly or in combination with other threats, will not cause the Wyoming, the GYA, or the NRM gray wolf populations to be ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

Human-caused Mortality—This section discusses most sources of human-caused mortality; however, hunting and trapping are discussed in the ''Commercial and Recreational Uses'' section of Factor B above and potential impacts of human-caused mortality to natural connectivity and gene flow are discussed in the ''Genetic Considerations'' section of Factor E below. As with previous sections, this write-up focuses on Wyoming, because this is the portion of the NRM DPS that remains listed; however, the conclusions of the previous delisting and the information supporting this determination are incorporated by reference and updated below as appropriate.

Humans kill wolves for a number of reasons. For example, some wolves are killed to resolve conflicts with livestock (Fritts *et al.* 2003, p. 310; Woodroffe *et al.* 2005, pp. 86–107, pp. 345–347). Occasionally, wolf killings are accidental (e.g., wolves are hit by vehicles, mistaken for coyotes and shot, or caught in traps set for other animals) (Bangs *et al.* 2005, p. 346). Other wolf killings are intentional, illegal, and are not reported to authorities. A few wolves have been killed by people who stated that they believed their physical safety was being threatened. The overall NRM wolf mortality rate of 26 percent since reintroduction comprises illegal kills (10 percent), control actions to resolve conflicts (10 percent), natural causes including disease/parasites and intraspecific strife (3 percent), and accidental human causes such as vehicle collisions and capture mortality (3 percent). Eighty percent of the overall NRM wolf mortalities are human-caused (Murray *et al.* 2010; Smith *et al.* 2010; Service *et al.* 2011, p. 7). While human-caused mortality, including both illegal killing and agency control, has not prevented population recovery, it has affected NRM wolf distribution (Bangs *et al.* 2004, p. 93), preventing successful pack establishment and persistence in

open prairie or high desert habitats (Bangs *et al.* 1998, p. 788; Bangs *et al.* 2009, p. 107; Service *et al.* 1989–2012, Figure 1). Overall, wolf populations can maintain themselves despite human-caused mortality rates of 17 to 48 percent, indicating wolf populations are quite resilient to moderate human-caused mortality, if it is adequately regulated (Fuller *et al.* 2003, pp. 182–184 [22 percent +/− 8 percent]; Adams *et al.* 2008 [29 percent]; Creel and Rotella 2010 [22 percent]; Sparkman *et al.* 2011 [25 percent]; Gude *et al.* 2011 [48 percent]; Vucetich and Carroll In review [17 percent])

As part of the interagency wolf monitoring program and various research projects, over 20 percent of the NRM wolf population has been monitored since the 1980s (Smith *et al.* 2010, p. 620; Murray *et al.* 2010, p. 2514; Service *et al.* 1989–2012, Tables 1–5). While it is unclear if these wolves were representative of the entire population (Atkins 2011, p. 56), this information is nonetheless informative. From 1984 through 2004, annual adult survival likely averaged around 75 percent, which typically allows wolf population growth (Keith 1983, p. 66; Fuller *et al.* 2003, p. 182; Smith *et al.* 2010, p. 620; Murray *et al.* 2010, p. 2514). Wolves in the largest blocks of remote habitat without livestock, such as central Idaho or YNP, had annual survival rates around 80 percent (Smith *et al.* 2006, p. 245; Smith *et al.* 2010, p. 620). Wolves outside of large remote areas had survival rates as low as 54 percent in some years (Smith *et al.* 2006, p. 245; Smith *et al.* 2010, p. 626); the highest mortality rates are localized in areas we consider largely unsuitable for pack persistence.

Wolf mortality resulting from control of problem wolves, which includes legal take by private individuals under defense of property regulations, was estimated to remove an average of 10 percent of adult radio-collared wolves annually since reintroduction, but that rate has steadily increased as the wolf population has expanded beyond suitable habitat and caused increased conflicts with livestock (Service *et al.* 2012, Table 4, 5). Defense of property take, authorized by experimental population rules (Service 1994, pp. 2:13–14; 59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(i) & (n)), makes up a small percentage of these control actions. Specifically, such take represented about 7 percent of problem wolves legally removed from 1995 to 2010 and about 9 percent of such removals from 2008 to 2010. In spite of these mortality rates, minimum known wolf numbers increased at a rate of around 20 percent annually 1995–2008 (the period when the population was presumed below carrying capacity) (Service et al. 2012, Table 4; Smith *et al.* 2010, p. 620; also see Figure 3 above). Since 2008, the NRM population appears to have largely stabilized (see Figure 3 above).

After delisting, human-caused mortality, and its authorization or regulation, will differ in various parts of Wyoming. In total, wolves will be managed as game animals year-round or protected in about 38,500 km² (15,000 mi²) in northwestern Wyoming (15.2 percent of Wyoming), including YNP, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and most of the Wind River Indian Reservation. This area is of sufficient size to support Wyoming population targets, under the management regime developed for this area.

Within portions of the Trophy Area under State jurisdiction, wolves will be managed by the WGFD as trophy game animals. ''Trophy game'' status allows the WGFC and WGFD to regulate methods of take, hunting seasons, types of allowed take, and numbers of wolves that could be killed. The boundary and size of the Trophy Area was established by State statute and cannot be changed through WGFC rule or regulation. The Trophy Area will be seasonally expanded approximately 80 km (50 mi) south (see Figure 3) from October 15 to the last day of February (28th or 29th) to facilitate natural dispersal of wolves between Wyoming and Idaho. During this timeframe, the Trophy Area will be expanded by approximately 3,300 km² (1,300 mi²) (i.e., an additional 1.3 percent of Wyoming). Management within the Trophy Area is described below, followed by management in other portions of Wyoming.

After delisting, Wyoming will allow property owners inside the Trophy Area to immediately kill a wolf doing damage to private property (WGFC 2011, pp. 3, 4, 22, 30–31, 32). State statute defines ''doing damage to private property'' as ''the actual biting, wounding, grasping, or killing of livestock or domesticated animal, or chasing, molesting, or harassing by gray wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of domesticated animals is likely to occur at any moment'' (W.S. 23–3–115(c)). These regulations define ''owner'' as ''the owner, lessee, immediate family, employee, or other person who is charged by the owner with the care or management of livestock or domesticated animals'' (WGFC 2011, p. 22). Wolves killed under authority of these regulations shall be reported to a WGFD representative within 72 hours (WGFC 2011, pp. 22, 31). These regulations are similar to the experimental population rules in place in Montana and Idaho after the population achieved recovery levels (70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)). While in place in Montana and Idaho, these rules were sufficiently protective to allow continued population expansion (Service *et al.* 2012, Table 4). Based on our experience with these similar rules, we expect take related to this issue to be minimal. We conclude that these rules will not compromise the State of Wyoming's ability to meet the agreed-upon population objectives (at least 10 breeding pairs and at least 100 wolves outside YNP and sovereign tribal lands) assuming the State manages for an adequate buffer above these minimum levels as Wyoming intends to do (WGFC 2011, p. 24; WGFC 2012, pp. 3–5).

Additionally, Wyoming law (W.S. 23–1–304(n)) states that permits ''shall be issued'' to landowners or livestock owners in cases where wolves are harassing, injuring, maiming, or killing livestock or other domesticated animals, and where wolves occupy geographic areas where chronic wolf predation occurs. Importantly, numerous safeguards are in place that limit the potential of these permits to meaningfully and detrimentally affect the population. For example, State statute requires that permits be issued, and renewed as necessary, in 45-day increments (W.S. 23–1–304(n)), and State regulations limit the take allowance for each permit to a maximum of 2 gray wolves, and specify that each permit can only apply to a specified limited geographic or legally described area (chapter 21, section 7(b)(ii)). These requirements ensure application of this source of take is limited in time and geography. Similarly, State regulations indicate that purported cases of wolf harassment, injury, maiming, or killing must be verified by the WGFD (chapter 21, section 6(b)). This requirement for WGFD verification will limit potential abuse for this source of mortality. Regarding the issuance of lethal take permits for wolves ''harassing'' livestock or domestic animals, Wyoming will require that WGFD staff verify that wolves were present and involved in activities that would directly indicate an

actual attack was likely; such activity must be an immediate precursor to actual biting, wounding, grasping, or killing, such as chasing or molesting (Mead 2012b). Wolves killed under the authority of a lethal take permit shall be reported to the WGFD representative specified on the permit within 24 hours (WGFC 2011, pp. 3, 22–23).

Finally, and most importantly, State law (W.S. 23–1–304(n)) and the implementing regulations (chapter 21, section 7(b)(iii)) clarify that existing permits would be cancelled, and issuance of new permits would be suspended, if the WGFD determines further lethal control could compromise the State's ability to maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of YNP and the Wind River Indian Reservation at the end of the calendar year. Importantly, the word ''could'' (as opposed to would or will) provides authority for the WGFD to manage for a buffer above the minimum target and limit control from lethal take permits, if necessary, to maintain an adequate minimum buffer. However, the Addendum to the Wyoming Gray Wolf Management Plan explains that the State law's mandatory approach to issuance of lethal take permits requires that Wyoming's adaptive management framework limit other discretionary sources of mortality before it limits this source of mortality (WGFC 2012, p. 7). On the whole, the available information indicates that Wyoming's approach to lethal take permits may affect population abundance (particularly at a localized level where wolf-livestock conflict is high), but that Wyoming has instituted sufficient safeguards so that this source of mortality would not compromise the State's ability to maintain a population of at least 10 breeding pairs and at least 100 wolves in Wyoming outside of YNP and the Wind River Indian Reservation at the end of the calendar year.

Some other minor sources of human-caused mortality may also occur inside the Trophy Area. For example, accidental mortality sometimes occurs from such sources as vehicle collisions. Because these types of mortalities are rare and have little impact on wolf populations, they were authorized by our experimental population rule with little to no impact on wolf populations. Take in self-defense or defense of others has been exceedingly rare. We expect take from these sources will remain rare after delisting with little impact on the wolf population.

While wolves were listed, illegal killing removed an estimated 10 percent of the population annually. Following our previous delisting, there was no indication that illegal mortality levels increased from those occurring while wolves were delisted. After delisting, WGFD law enforcement personnel will investigate all wolves killed outside the framework established by State statute and WGFC regulations, and appropriate law enforcement and legal action will be taken. We do not expect illegal killing will increase after delisting.

Within portions of the Trophy Area under State jurisdiction, WGFD may also control wolves when it determines a wild ungulate herd is experiencing unacceptable impacts or to address wolf-ungulate conflicts at State-operated elk feedgrounds (WGFC 2011, pp. 5, 39–41). As noted by several peer reviewers, it is scientifically challenging to conclusively demonstrate that predation is causing an ungulate population decline (or what portion of a decline is being caused by predation) because numerous factors typically interact to cause the impact (Atkins 2011, pp. 67, 85–86). While any decision to remove wolves in response to ''unacceptable impacts'' to ungulate populations could be a normative, values-driven determination (e.g., one party may view any impact as unacceptable, while others may have extremely high tolerance for impacts), we expect the agency will primarily base such decisions on ungulate herd health. Specifically, Wyoming's wolf management plan indicates wolf control to address unacceptable impacts to wild ungulates will require a determination that wolf predation is a significant factor in the population or herd not meeting the State population management goals or recruitment levels established for the population or herd (WGFC 2011, pp. 5, 39–41). All but 2 of Wyoming's 35 elk management units are at or above the State's numeric objectives for those herds; however, calf/cow ratios in several herd units are below desired levels (WGFD 2010, p. 1). Five of the State's ten moose herds are below objectives (WGFD unpublished data).

Wyoming has not yet put forward any proposals to control wolves to address unacceptable impacts to ungulate herds, and we are not aware of any intentions to develop such proposals. While such proposals are possible, it is more likely Wyoming will consider ungulate herd health when designing hunting units and quotas. This approach will allow them to use hunting (which is a far cheaper management tool) to address any perceived issues. Both hunting and projects specifically to address unacceptable impacts to ungulate herds (should any occur) will be carefully regulated so that population objectives are not compromised and that recovery is maintained in Wyoming, the GYA, and across the NRM DPS.

WGFD may also take wolves that displace elk from State-operated feedgrounds in the Trophy Area if this movement by elk results in one of the following conflicts: (1) Damage to private stored crops; (2) elk commingling with domestic livestock; or (3) displacement of elk from feedgrounds onto highway rights-of-way causing human safety concerns (WGFC 2011, pp. 5, 39–41). While such authorizations may cause localized impacts, we do not expect population-level impacts in Wyoming, the GYA, or the NRM DPS. Because Wyoming will consider all forms of wolf mortality when making ungulate-related wolf control management decisions (WGFC 2011, pp. 21, 23–24), these mortality sources will not compromise the State's ability to maintain wolf management objectives nor will they compromise recovery in Wyoming, the GYA, or the NRM DPS.

In the predator area, wolves will experience unlimited human-caused mortality; mortality in this area will be monitored through mandatory reporting within 10 days of the kill (WGFC 2011, pp. 3, 8, 17, 23, 29). Wolves are unlike coyotes, in that wolf behavior and reproductive biology have resulted in wolves historically being extirpated in the face of extensive human-caused mortality. As we have previously concluded (71 FR 43410, August 1, 2006; 72 FR 6106, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009), wolf packs are unlikely to persist in portions of Wyoming where they are designated as predatory animals. This conclusion was validated in 2008 after our previous delisting became effective and most of the wolves in the predator area were killed within a few weeks of losing the Act's protection. We expect that wolf packs in the predator area of Wyoming will not persist.

Despite this anticipated mortality, the portions of Wyoming outside the predator area are large enough to support Wyoming's management goals and a recovered wolf population (Figure 1 illustrates wolf pack distribution relative to Wyoming's Trophy Area). Our 2009 delisting rule confirmed this conclusion, but expressed two concerns (74 FR 15123, April 2, 2009). First, the rule expressed concern that mortality in the predator area would be high, and this situation would inhibit natural genetic exchange. This issue is discussed in the Issues and Responses above and in ''Genetic Considerations'' portion of Factor E below.

The second concern expressed in our 2009 delisting rule (74 FR 15123, April 2, 2009) was that lone wolves, breeding pairs, or packs from the Trophy Area may periodically and temporarily travel into the predator area and suffer high mortality rates. The 2009 rule concluded that a large predator area ''substantially increases the odds that these periodic dispersers will not survive, thus, affecting Wyoming's wolf population'' (74 FR 15123, April 2, 2009). We continue to conclude that no wolf packs or breeding pairs will persist in the predator area of Wyoming and that some wolves that primarily occupy the Trophy Area will be killed when traveling into the predator area. However, Wyoming's overall management strategy has been improved to such an extent that such mortality can occur without compromising the recovered status of the population in Wyoming.

Such losses were a substantial concern when State law required WGFD to aggressively manage the population down to minimal levels. However, Wyoming has removed current statutory mandates for aggressive management down to minimum levels. Furthermore, Wyoming has agreed to maintain a population of at least 10 breeding pairs and at least 100 wolves in areas under its jurisdiction. To accomplish this, Wyoming intends to maintain an adequate buffer above minimum population objectives to accommodate management flexibility and to ensure that uncontrollable sources of mortality do not drop the population below this minimum population level (WGFC 2011, p. 24). Collectively, the plan gives us confidence that unlimited human-caused mortality in the predator area will not compromise the recovered status of the Wyoming wolf population.

The Shoshone and Arapaho Tribal Fish and Game Department will manage all wolves occurring on the Wind River Indian Reservation according to its approved wolf management plan (King 2007; Shoshone and Arapaho Tribal Fish and Game Department 2007, entire). The plan allows any enrolled member on tribal land to shoot a wolf in the act of attacking livestock or dogs on tribal land, provided the enrolled member provides evidence of livestock or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and a designated agent is able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). ''In the act of attacking'' means the actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). The plan also allows the tribal government to remove ''wolves of concern'' (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). ''Wolves of concern'' are defined as wolves that attack livestock, dogs, or livestock herding and guarding animals once in a calendar year or any domestic animal twice in a calendar year (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8).

Criteria to determine when take will be initiated are: (1) Evidence of the attack, (2) reason to believe that additional attacks will occur, (3) no evidence of unusual wolf attractants, and (4) any animal husbandry practices previously specified by the Tribes have been implemented (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). In situations with chronic wolf depredation, enrolled members may acquire written authorization from the tribes to shoot wolves on tribal land after at least two separate confirmed depredations by wolves on livestock, livestock herding or guarding animals, or dogs, and the tribes have determined that wolves are routinely present and pose a significant risk to the owner's livestock (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). Other forms of authorized human-caused mortality include take in defense of human life, take needed to avoid conflicts with human activities, incidental take, accidental take, scientific take, or take for humane reasons (such as to aid or euthanize sick, injured, or orphaned wolves) (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8).

These regulations are similar to experimental population rules currently in place on the Wind River Indian Reservation (70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)). This type of take has not proven a limiting factor for the area. Furthermore, as stated in our 2007 approval letter, suitable habitat on the Wind River Indian Reservation is occasionally used by wolves, but is not considered essential to maintaining a recovered wolf population in Wyoming, and any wolves that establish themselves on tribal lands will be in addition to those necessary for management by the State of Wyoming for maintaining a recovered wolf population (King 2007).

In National Parks units, human-caused mortality has been, and is expected to continue to be, very rare because park regulations are very protective of wildlife with few exceptions. Accidental mortality or defense of life mortality may occur, but as in the rest of Wyoming, we expect these sources of mortality will be exceedingly rare. Another rare but potential source of human-caused mortality is agency action to remove habituated wolves that pose a threat to human safety after nonlethal efforts have failed to correct the behavior. In 2003, YNP developed a plan for the management of habituated wolves (YNP 2003, entire). YNP policies indicate ''removal of nuisance animals may be undertaken to reduce a threat to public health or safety'' (YNP 2003, p. 8). Further, management policies (YNP 2003, p. 8) state: ''Where visitor use or other human activities cannot be modified or curtailed, the Service may directly reduce the animal population by using several animal population management techniques * * *.'' Those techniques include ''destruction of animals by National Park Service personnel or their authorized agents.'' This is important in YNP because the unusually high exposure that wolves have to people in YNP increases the likelihood of unpredictable wolf behavior (YNP 2003, p. 9). To address such situations, YNP has developed a management plan that calls for increased public education, monitoring, aversion conditioning, and, if necessary, wolf removal (YNP 2003, pp. 4, 9–12). This approach, endorsed by the Service in 2003 (YNP 2003, p. 13), is authorized by existing experimental population rules (50 CFR 17.84(i)(3)(v)).

State, Tribal, and Federal management in Wyoming provides that human-caused mortality will not threaten the recovered status of the population. As discussed above, wolf populations have an ample natural resiliency to high levels of human-caused mortality, if population levels and controllable sources of mortality are adequately regulated. For example, in 2009 and in 2011, more than 600 NRM wolves died each year from all sources of mortality (agency control including defense of property, regulated harvest, illegal and accidental killing, and natural causes), and the population showed little change (technically, slight increases in minimum population levels were documented each year) (Service *et al.* 2012, tables 4a, 4b). From 1995 to 2008, the NRM wolf population grew by an average of about 20 percent annually, even in the face of an average annual

human-caused mortality rate of 23 percent (Service *et al.* 2012, Table 4; Smith *et al.* 2010, p. 620; also see Figure 3 above). Overall, wolf populations can maintain themselves despite human-caused mortality rates of 17 to 48 percent (Fuller *et al.* 2003, pp. 182–184 [22 percent +/− 8 percent]; Adams *et al.* 2008 [29 percent]; Creel and Rotella 2010 [22 percent]; Sparkman *et al.* 2011 [25 percent]; Gude *et al.* 2011 [48 percent]; Vucetich and Carroll In review [17 percent]).

After delisting, most human-caused mortality in Wyoming will be similar to that which occurred under either the 1994 experimental population rules (now governing most of Wyoming) or the 2005 experimental population rules (as noted above, hunting is evaluated separately under Factor B above) (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(i) & (n)), as modified in 2008, governing management over most of Idaho and Montana in recent years. While some allowed take will be more liberal (e.g., mortality in the predator area), resulting in greater overall rates of human-caused mortality post-delisting, the increase will not compromise the State's ability to maintain the population above recovery levels. All sources of mortality will be monitored and considered in State management decisions. Many sources of authorized take can be limited, if necessary, to keep the population above recovery levels (e.g., the State can suspend lethal take permits, agency control actions, or hunting seasons). Finally, recognizing some mortality will occur from uncontrollable sources (e.g., some wolves that primarily occupy the Trophy Area will be lost when they occasionally travel into the predator area), Wyoming no longer intends to aggressively manage the population down toward minimal levels (an approach we previously indicated was unacceptable), and, in fact, intends to maintain an adequate buffer above minimum population objectives. Collectively, this information indicates that human-caused mortality will be managed to assure the Wyoming population's recovered status is not compromised.

In summary, we find human-caused mortality, singularly or in combination with other threats, will not cause the Wyoming, the GYA, or the NRM gray wolf populations to be ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

Factor D. The Inadequacy of Existing Regulatory Mechanisms

This section provides an analysis of State, tribal, and Federal regulatory mechanisms to determine if they are adequate to maintain the species' recovered status in the absence of the Act's protections. By definition, potential threats only require regulation if they represent a threat in the absence of regulation. This section focuses on likely future population levels anticipated to be maintained, noting that human-caused mortality is the most significant issue influencing these levels. In short, if human-caused mortality is adequately regulated and population targets are sufficient to allow for other potential unforeseen or uncontrollable sources of mortality, no other potential threats are likely to compromise the population's viability. This section does not go into detail about each individual threat factor or source of mortality. Instead it includes an overview with a focus on the regulatory mechanism that addresses each threat factor or source of mortality. For a more detailed discussion of any one potential threat, see the supporting discussion under the specific applicable Factor (i.e., A, B, C, or E). As with other factors above, the below analysis focuses on wolves in Wyoming because only wolves in Wyoming remain listed, however, the conclusions of the previous delisting and the information supporting this determination are incorporated by reference. To the extent that management changes have taken place, they are discussed in the applicable Factor elsewhere in this rule as well as in the Issues and Response section above.

National Park Service—Twenty percent of the currently occupied portions of Wyoming (defined in Factor A above) and 23 percent of areas that are protected or where wolves are regulated as game animals occur within a National Park (see Figure 1 above). Since 2000, the wolf population in YNP ranged from 96 to 174 wolves, and between 6 to 16 breeding pairs. While some wolves and some wolf packs also occur in Grand Teton National Park and John D. Rockefeller, Jr. Memorial Parkway, most of these wolves and wolf packs usually have a portion of their home range in areas under the State of Wyoming's jurisdiction; thus, these wolves are only subject to National Park Service regulation when on National Park Service lands.

The National Park Service Organic Act (16 U.S.C. l *et seq.*) and the National Park Service management policies on wildlife generally require the agency to conserve natural and cultural resources and the wildlife present within units of the National Park System. National Park Service management policies require that native species be protected against harvest, removal, destruction, harassment, or harm through human action, although certain parks may allow some harvest in accordance with federal law and applicable laws of the State or States in which a park is located (National Park Service 2006, pp. 44, 103). No population targets for wolves will be established for the National Parks. Instead, management emphasis in National Parks after delisting will focus on continuing to minimize the human impacts on wolf populations (YNP 2003, pp. 9–12). Thus, because of their responsibility to preserve all native wildlife, units of the National Park System are often the most protective of wildlife. In the case of the wolf, the National Park Service Organic Act and National Park Service policies will continue to provide protection following Federal delisting for wolves located within the park boundaries.

Although hunting is currently allowed for many other game species in the John D. Rockefeller, Jr. Memorial Parkway under the Parkway's enabling legislation and Wyoming law, the National Park Service has indicated a ''strong preference that wolves not be hunted in the John D. Rockefeller, Jr. Memorial Parkway'' (Frost and Wessels 2012). Wyoming's hunting regulations are clear that gray wolf hunting would not occur in the Parkway during the 2012 season, although nothing in Wyoming's regulations or the Wyoming's wolf management plan would preclude wolves from being hunted in the Parkway in subsequent years. Should hunting ever occur in the John D. Rockefeller, Jr. Memorial Parkway, it would likely be very limited, would be unlikely to noticeably affect wolf gene flow or connectivity, and it would be closely coordinated with the National Park Service.

Overall, natural sources of mortality (e.g., disease) will occasionally affect wolf populations in National Parks, but, in light of adequate regulation of intentional human-caused mortality, impacts from these occasional events will be temporary and not threaten the population.

National Wildlife Refuges—Each unit of the National Wildlife Refuge System was established for specific purposes. The National Elk Refuge was established in 1912 as a ''winter game (elk) reserve'' (37 Stat. 293, 16 U.S.C. 673), and the following year Congress designated the area as ''a winter elk refuge'' (37 Stat. 847). In 1921, all lands included in the

refuge, or that might be added in the future, were reserved and set apart as ''refuges and breeding grounds for birds'' (Executive Order 3596), which was affirmed in 1922 (Executive Order 3741). In 1927, the refuge was expanded to provide ''for the grazing of, and as a refuge for, American elk and other big game animals'' (44 Stat. 1246, 16 U.S.C. 673a). These purposes apply to all or most of the lands now within the refuge. In accordance with the National Wildlife Refuge System Administration Act of 1966 as amended (16 U.S.C. 668dd–668ee) by the National Wildlife Refuge System Improvement Act of 1997, the Service, which manages the National Elk Refuge, recently announced a notice of intent to prepare a Comprehensive Conservation Plan for the refuge. Comprehensive Conservation Plans guide management of wildlife and their habitats on refuges (75 FR 65370, October 22, 2010). This process is ongoing.

The refuge's nearly 10,000 hectares (25,000 acres) provide a winter home for one of the largest wintering concentrations of elk; in addition to the large elk herds, a free-roaming bison herd winters at the refuge (75 FR 65370, October 22, 2010). Wolves occurring on the National Elk Refuge will be monitored, and refuge habitat management will maintain an adequate prey base for them (Service and National Park Service 2007, entire; Kallin 2011, pers. comm.; Smith 2007, pers. comm. as cited by WGFC 2011, p. 18; Kallin 2012b). Recreational wolf hunting and trapping is not currently authorized and is not anticipated, but could be considered in the future (Kallin 2012, pers. comm.). Because of the relatively small size of the refuge, all of the wolves and all of the packs that occur on the refuge will also spend significant amounts of time on adjacent U.S. Forest Service lands. Thus, much like Grand Teton National Park, these wolves are only subject to National Wildlife Refuge regulation during the small portion of their time spent on the National Elk Refuge.

Tribal Lands—Wolves will be managed as game animals on the Wind River Indian Reservation. The Eastern Shoshone and Northern Arapaho Tribes govern this area and the Shoshone and Arapaho Tribal Fish and Game Department and the Service's Lander Wyoming Management Assistance Office manage wildlife occurring on the reservation. Wolf management on the Wind River Indian Reservation is guided by the Service-approved ''Wolf Management Plan for the Wind River Indian Reservation'' (King 2007; Shoshone and Arapahoe Tribal Fish and Game Department 2007, entire). Suitable habitat on the Wind River Indian Reservation supports a small wolf population. While this area sometimes supports packs, it has not supported a breeding pair. The Wind River Indian Reservation is not considered essential to maintaining a recovered wolf population in Wyoming, and any wolves that establish themselves on tribal lands will be in addition to those necessary for management by the State of Wyoming for maintaining a recovered wolf population (King 2007).

Forest Service—Federal law indicates Forest Service land shall be managed to provide habitat for fish and wildlife including wolves and their prey. Specifically, under the National Forest Management Act of 1976, as amended (16 U.S.C. 1600–1614), the Forest Service shall strive to provide for a diversity of plant and animal communities when managing national forest lands. Similarly, the Multiple Use and Sustained Yield Act (16 U.S.C. 528) indicates National Forests are to be managed for ''wildlife and fish purposes'' among other purposes, and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) says public lands are to be ''managed in a manner * * * that will provide food and habitat for fish and wildlife and domestic animals.''

Wilderness areas are afforded the highest protections of all Forest Service lands. The Wilderness Act of 1964 (16 U.S.C. 1131–1136) states the following: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircraft; (4) there can be no other form of mechanical transport; and (5) no structure or installation may be built. The following wilderness areas occur in the Trophy Area: All of the Absaroka Beartooth, Fitzpatrick, Gros Ventre, Jedediah Smith, North Absaroka, Washakie, Teton, and Winegar Hole Wilderness Areas as well as the northern half of the Bridger Wilderness Area.

Wilderness study areas are designated by Federal land management agencies (e.g., USDA Forest Service) as those having wilderness characteristics and being worthy of congressional designation as a wilderness area. The following wilderness study areas occur in the Trophy Area: The Dubois Badlands, Owl Creek, and Whiskey Mountain Wilderness Study Areas. Individual National Forests that designate wilderness study areas manage these areas to maintain their wilderness characteristics until Congress decides whether to designate them as permanent wilderness areas. This means that individual wilderness study areas are protected from new road construction by Forest Plans. Therefore, activities such as timber harvest, mining, and oil and gas development are much less likely to occur because the road networks required for these activities are unavailable. However, because these lands are not congressionally protected, they could experience changes in management prescription with Forest Plan revisions.

This regulatory framework has been adequate to achieve wolf recovery in Wyoming and across the entire NRM DPS without additional land use restrictions. The Forest Service has a demonstrated capacity and a proven history of providing sufficient habitat for wolves and their prey, and the Forest Service lands will continue to be adequately regulated to provide for the needs of wolves and their prey.

While the Forest Service manages and regulates habitat and factors affecting habitat, the Forest Service typically defers to States on hunting decisions (43 U.S.C. 1732(b)). The primary exception to this deference is the Forest Service's authority to identify areas and periods when hunting is not permitted (43 U.S.C. 1732(b)). However, even these decisions are to be developed in consultation with the States. Thus, human-caused mortality and the adequacy of the associated regulatory framework are discussed under the ''State Regulatory Mechanisms'' section below, as well as ''Commercial and Recreational Uses'' section of Factor B, and the ''Human-caused Mortality'' section of Factor C.

State Regulatory Mechanisms—Within portions of the Trophy Area under State jurisdiction, wolves will be managed as a game animal, which allows the WGFC and WGFD to regulate methods of take, hunting seasons, types of allowed take, and numbers of wolves. The boundary and size of the Trophy Area and its seasonal expansion, as set forth in the agreement between the Service and the State and reflected in Wyoming's revised wolf management plan, was established by State statute, which cannot be changed through WGFC rule or regulation. This area is of sufficient size to support Wyoming population targets, assuming implementation of Wyoming's management plan for this area. In consideration of, and to address, Service concerns about genetics and connectivity, Wyoming included a seasonal expansion of the Trophy Area in its management plan. From October 15 through the end of February, the Trophy Area will expand approximately

80 km (50 mi) south (see Figure 1 above). This seasonal expansion will benefit natural dispersal (for a more detailed discussion of genetic connectivity, see the ''Genetic Considerations'' section of Factor E below).

Wolves that occur in the remainder of Wyoming under State jurisdiction will be classified as predators. Predatory animals are regulated by the Wyoming Department of Agriculture under title 11, chapter 6 of the Wyoming Statutes. Under these regulations, wolves in predator areas can be killed by anyone with very few restrictions. As we have previously concluded (71 FR 43410, August 1, 2006; 72 FR 6106, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009), wolf packs are unlikely to survive in portions of Wyoming where they are designated as predatory animals. However, portions outside the predator area are large enough to support Wyoming's management goals and a recovered wolf population (this issue is discussed further in the ''Human-caused Mortality'' section of Factor C above as well as the ''Genetic Considerations'' portion of Factor E below).

Within portions of the Trophy Area under State jurisdiction, wolves will be managed by the WGFC and the WGFD. The WGFC will direct the management of wolves, and the WGFD will assume management authority of wolves (WGFC 2011, p. 1). The State of Wyoming has a relatively large and well-distributed professional game and fish agency that has the demonstrated skills and experience to successfully manage a diversity of resident species, including large carnivores. The WGFD and WGFC are well-qualified to manage a recovered wolf population. State management of wolves within the Trophy Area will follow the classic State-led North American model for wildlife management, which has been extremely successful at restoring, maintaining, and expanding the distribution of numerous populations of other wildlife species, including other large predators, throughout North America (Geist 2006, p. 1; Bangs 2008).

Within the Trophy Area, Wyoming statute (W.S. 23–1–304), regulations (chapter 21, section 4(a)(i)), and its management plan (WGFC 2011, p. 1) all require maintenance of at least 10 breeding pairs and at least 100 wolves. To ensure this target is not inadvertently compromised, Wyoming intends to maintain an adequate buffer above minimum population objectives (WGFC 2011, p. 24; WGFC 2012, pp. 3–5). Additionally, Wyoming is planning that any future population reduction will be gradual to ensure population targets are not compromised while the State gathers information on the vulnerability of wolves under a State management regime. All sources of mortality will be considered in management decisions and all forms of regulated take will be limited in the unlikely event that wolves approach minimum recovery criteria. These will be reflected in all WGFD and WGFC planning and management decisions.

Wolves taken outside the framework established by State statute and WGFC regulations will be considered to have been taken illegally and will be investigated by WGFD law enforcement personnel (WGFC 2011, p. 25). Appropriate law enforcement and legal action will be taken, which could include fines, jail terms, and loss of hunting privileges (WGFC 2011, p. 25). We conclude that these measures constitute adequate regulatory mechanisms to address the threat of illegal killing of wolves.

In Montana, statutes and administrative rules categorize the gray wolf as a ''Species in Need of Management'' under the Montana Nongame and Endangered Species Conservation Act of 1973 (MCA 87–5–101 to 87–5–123). Montana law defines ''species in need of management'' as ''The collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintain those levels. The term includes the entire range of activities that constitute a modern scientific resource program, including, but not limited to research, census, law enforcement, habitat improvement, and education. The term also includes the periodic or total protection of species or populations as well as regulated taking.'' Classification as a ''Species in Need of Management'' and the associated administrative rules under Montana State law create the legal mechanism to protect wolves and regulate human-caused mortality (including regulated public harvest) beyond the immediate defense of life/property situations. Some illegal human-caused mortality likely still occurs, and is to be prosecuted under State law and Commission regulations. Montana's Fish, Wildlife, and Parks Commission determine harvest quotas annually (specific harvest quotas are discussed in Factor B, and impacts on genetics are discussed in Factor E).

The Idaho Fish and Game Commission has authority to classify wildlife under Idaho Code 36–104(b) and 36–201. The gray wolf was classified as endangered by the State until March 2005, when the Idaho Fish and Game Commission reclassified the species as a big game animal under the Idaho Administrative Procedures Act (13.01.06.100.01.d). As a big game animal, State regulations adjust human-caused wolf mortality to ensure recovery levels are exceeded. Title 36 of the Idaho statutes has penalties associated with illegal take of big game animals. These rules are consistent with the legislatively adopted Idaho Wolf Conservation and Management Plan (Idaho Legislative Wolf Oversight Committee 2002) and big game hunting regulations currently in place. The Idaho Wolf Conservation and Management Plan states that wolves will be protected against illegal take as a big game animal under Idaho Code 36–1402, 36–1404, and 36–202(h). The Idaho Fish and Game Commission determines harvest quotas annually (specific harvest quotas are discussed in Factor B, and impacts on genetics are discussed in Factor E as well as in the Issues and Responses above).

Montana, Idaho, and Wyoming are committed to implement wolf management in a manner that also encourages connectivity among wolf populations (Groen *et al.* 2008, entire; WGFC 2011, pp. 26–29, 52, 54). This will include limiting human-caused mortality timing, intensity, and overall levels as necessary. Both Montana's and Idaho's 2009 and 2011 hunts consider and minimize impacts to natural connectivity. As a measure of last resort, if necessary, the States will implement agency-managed genetic exchange (moving individual wolves or their genes into the affected population segment) (Groen *et al.* 2008, entire; WGFC 2011, pp. 26–29, 52, 54). Genetics is discussed further under Factor E below as well as in the Issues and Responses above)

Overall, the regulatory frameworks of Wyoming, Montana, and Idaho are adequate and provide that potential remnant threats are sufficiently minimized. Should management needs be identified in future years, all three States have regulatory authority to modify management to meet such needs; although we did not rely upon this in making our decision, we recognized all three States have a strong incentive to maintain the NRM DPS and its subpopulations well above minimal population levels.

Environmental Protection Agency—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) provides for Federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the

United States must be registered (licensed) by the Environmental Protection Agency. Before the Environmental Protection Agency may register a pesticide, the applicant must show, among other things, that using the pesticide according to specifications ''will not generally cause unreasonable adverse effects on the environment.'' No poisons can currently be legally used to poison wolves in the United States because of Environmental Protection Agency restrictions. However, sodium cyanide (used only in M–44 devices) and Compound 1080 (sodium fluoroacetate used only in livestock protection collars) are legal toxicants for use on other non-wolf canids. Sodium cyanide was reregistered for use in M–44 devices in 1994 (Environmental Protection Agency 1994, entire). Compound 1080 (sodium fluoroacetate) was registered for use in livestock protection collars in 1995 (Environmental Protection Agency 1995, entire). The Large Gas or Denning Cartridge was registered for use in 2007 (Environmental Protection Agency 2007, entire). Although gas cartridges are beginning the reregistration process, we do not expect the product will be approved for use on wolves.

All three products have label restrictions imposed by the Environmental Protection Agency consistent with a Service 1993 Biological Opinion to protect endangered species (Environmental Protection Agency 1994, p. 4; Environmental Protection Agency 1995, pp. 27, 32–38). It is a violation of Federal law to use a pesticide in a manner inconsistent with its labeling, and the courts consider a label to be a legal document (Environmental Protection Agency 2011, p. 1). The Environmental Protection Agency's regulation of these and other toxicants has been adequate to prevent any meaningful impacts to wolf populations in Wyoming, the GYA, or the NRM DPS. These restrictions constitute an adequate regulatory mechanism of this potential issue.

Collectively, the above regulatory framework is adequate to maintain recovered wolf populations and to prevent relisting. These regulations protect wolf populations (in the case of the National Park Service) or manage them adequately above population targets so that potential unforeseen or uncontrollable sources of mortality do not compromise population targets. While no wolves are expected to persist in the predator area, this area is not necessary for wolf conservation in Wyoming. Impacts could also occur in adjacent portions of Montana and Idaho, but these impacts are expected to be minor (few wolf packs are transboundary) and can be regulated through limits on human-caused mortality, if necessary. Population reductions in Idaho and Montana are not expected to threaten the Wyoming, the GYA, or the NRM gray wolf population. Additionally, agency capacity and past practice with wolves and other game species provide confidence that minimum management targets will always be met or exceeded. Finally, the threat of relisting provides additional certainty the objectives will not be compromised, although we did not rely on this fact in reaching our conclusion.

In summary, we find existing regulatory mechanisms adequate and conclude that this issue, singularly or in combination with other threats, will not cause the Wyoming, the GYA, or the NRM gray wolf populations to be ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

This section discusses public attitudes toward wolves, genetics, poison, climate change, catastrophic events, and potential impacts of human-caused mortality to pack structure. As with previous sections, this write-up focuses on Wyoming because this is the portion of the NRM DPS that remains listed; however, the conclusions of the previous delisting and the information supporting this determination are incorporated by reference and updated below as appropriate.

Public Attitudes Toward the Gray Wolf—Human attitudes toward wolves were the main reason the wolf was listed under the Act because those attitudes resulted in Federal, State, and local governments promoting wolf extirpation by whatever means possible, including widespread poisoning, even in National Parks (see also Poisoning section below). Those attitudes were largely based on the real and perceived conflicts between humans and wolves, primarily in the context of livestock depredation, hunting of ungulates, and concerns for human safety.

Public hostility toward wolves led to the government-sanctioned persecution that extirpated the species from the NRM DPS in the 1930s. Negative attitudes toward wolves remain deeply ingrained in some individuals and continue to affect human tolerance of wolves. Many papers have addressed the concept of recent human tolerance of wolves and how those attitudes might affect wolf restoration (Kellert *et al.* 1996, p. 977; Kellert 1999; p. 167; Zimmermann *et al.* 2001, p. 137; Enck and Brown 2002, p. 16; Williams *et al.* 2002, p. 1; Ericsson and Heberlein 2003, p. 149; Fritts *et al.* 2003, pp. 289–316; Bruskotter *et al.* 2007, p. 211; Karlsson and Sjostrom 2007, p. 610; Stronen *et al.* 2007, p. 1; Heberlein and Ericsson 2008, p. 391; Bruskotter *et al.* 2009, p. 119; Wilson and Bruskotter 2009, p. 353; Bruskotter *et al.* 2010a, p. 941; Bruskotter *et al.* 2010b, p. 30; Houston *et al.* 2010, p. 2; Treves and Martin 2010, p. 1; Treves *et al.* 2009, p. 2; for additional references see Service 1994, appendix 3; 76 FR 81666, December 28, 2011).

These public attitudes began to shift in the mid-20th century because of increased urbanization and increasing national concerns about environmental issues. However, huge decreases in wolf abundance due to wolf extirpation in the last century, lack of first-hand experience with wolves and the damage they can cause, and increasing urbanization have resulted in most Americans holding favorable attitudes toward wolves and wolf restoration (Williams *et al.* 2002; Atkins 2011, p. 71). These same societal shifts in human attitudes have also occurred in other parts of the world (Boitani 2003, p. 321). The huge shift in human attitudes and the resulting treatment of wolves compared to 100 years ago is evident by the shift in policies throughout North America and other parts of the world from extirpation to restoration (Boitani 2003, pp. 322–323; Boitani and Ciucci 2010, pp. 19–21). Today, a majority of Americans view wolves favorably for a multitude of reasons, and many members of the public now consider it appropriate to reverse wolf extirpation, a perceived historic wrong (Houston *et al.* 2010, p. 27).

Despite the variety of opinions, there is little published research on what factors increase human tolerance of wolves and how those translate into conservation success by preventing excessive rates of human-caused mortality (Bath and Buchanan 1989; Williams *et al.* 2002; Ericsson *et al.* 2004; Fritts *et al.* 2003). The groups most supportive of wolf conservation are often members of environmental organizations and urban residents. These individuals often view wolf reintroduction as restoring an ecological balance. However, favorable attitudes toward wolves frequently decrease as people experience, or think they might soon experience, living with wolves (Houston *et al.* 2010, p. 1).

Typically, the groups most likely to oppose wolf recovery are livestock

producers, hunters, and rural residents within or near potential wolf habitat. These individuals face a higher probability of directly suffering competition or damage from wolves. Numerous public attitudes surveys indicate human attitudes toward wolves improve when there is local participation in wildlife management through regulated harvest and defense of life and property regulations. Surveys also show improvement in attitudes when people can pursue traditional activities, like hunting and grazing, without restrictions (For references see Service 1994, appendix 3; Williams *et al.* 2002; Idaho Department of Fish and Game 2007; Houston *et al.* 2010; 76 FR 81666, December 28, 2011). Wolf conservation can be successful even in areas with relatively high human density, if management policies factor-in human concerns (Linnell *et al.* 2001, p. 345).

A 1994 Environmental Impact Statement's summary of human values surveys (Service 1994, appendix 3) found that the overriding concern of those living with wolves is the financial and emotional loss that occurs when wolves kill livestock. Further illustrating the connection between financial cost/benefit and attitudes, one survey found Alaskan trappers (who legally harvest wolves for their pelts) had the most accurate knowledge of wolves and viewed wolves the most favorably (Kellert 1985). Toward this end, compensation programs for wolf-livestock depredations may have benefited attitudes toward wolves. Wyoming intends to continue such programs in the trophy game portions of the State (WGFC 2011, pp. 4, 31).

Allowing landowners to defend their property may have also ameliorated some of the concern related to potential wolf-livestock conflicts. For example, from 1995 through 2004, the highest rate of illegal killing occurred in northwestern Montana, where wolves were listed as endangered and legal protection was highest, compared to central Idaho and the GYA, where wolves were managed under more liberal nonessential experimental population regulations. However, the difference in habitat security might also explain the differences in rates of human-caused mortality (Smith *et al.* 2010, p. 630). Upon delisting, Wyoming intends to implement regulations similar to our experimental population regulations within the Trophy Area. State management provides a larger and more effective local organization and a more familiar means for dealing with these conflicts (Mech 1995, pp. 275–276; Williams *et al.* 2002, p. 582; Bangs *et al.* 2004, p. 102; Bangs *et al.* 2009, pp. 112–113). We anticipate this approach will continue to benefit public attitudes after delisting.

Additionally, hunters' perceptions of wolves improve when opportunity for hunting is allowed (Idaho Department of Fish and Game 2007, pp. 51, 55–56, 64–65). Idaho Department of Fish and Game and Montana Fish, Wildlife and Parks biologists (Dickson 2010; Maurier 2010; Idaho Department of Fish and Game 2007, pp. 43–47) reported that many big game hunters coming through mandatory hunter check stations in 2008 were extremely agitated and angry about wolves. In 2009, when wolves were delisted and there was a fair-chase hunting season, few hunters complained. In 2010, when the court order had relisted wolves, local frustration and negative opinions about wolves erupted to previously unforeseen levels. Hunters and most hunter organizations were again very upset and frustrated; some went as far as to call for illegal killing by shooting, and a few even called for poisoning wolves.

Similarly, in Wisconsin in 2006 (before wolves were delisted for 19 months in 2007–2008), 17 illegal kills were discovered, including 9 killed during the 9-day firearm deer season. When wolves were delisted in 2007 and lethal control of problem wolves was allowed by the State, known and documented illegal kills decreased to 11 overall with only 1 during the firearm deer season, and 5 of these were deemed to be accidental shootings outside of regular wolf range. Notably, the wolf population steadily increased throughout this period (Wydeven *et al.* 2010, Figure 3). Although the small sample size does not allow any firm conclusions, this example illustrates that local human tolerance of wolves is an important factor in long term wolf conservation. Keeping a large, recovered wolf population listed under the Act fuels negative attitudes rather than resolves them (Bangs *et al.* 2009, pp. 112–113).

Regulated public harvest has also been successfully used for a host of other species to garner local public tolerance for restoration efforts (Geist 2006, p. 285). The success of this approach is illustrated by the conservation of mountain lions and black bears, which were also once persecuted throughout most of North America. These species were recovered by State and tribal game and fish agencies and hunters with much less controversy than the recovery of wolves. The recovery of those other species included regulated public harvest from the beginning of restoration efforts. Likewise, the Canadian Provinces restored wolf populations throughout large portions of their historical range by ''harvesting'' them back to fully recovered levels (Pletscher *et al.* 1991, p. 545). In 2009 and 2010, Sweden used hunters to cap the population at 220 wolves, in part, to promote public tolerance for wolf restoration (Liberg 2009, pers. comm.; Furuholm 2011, pers. comm.).

We conclude that public tolerance of wolves will improve as wolves are delisted, local residents begin to play a role in managing wolf populations, and hunters start to see wolves as a trophy animal with value. This process has already begun in other delisted areas; however, it will likely take time for this increased control over the resource and the related sense of ownership to translate into tangible benefits in improved public opinion and less extreme rhetoric. Public acceptance is highest where wolves did not disappear and where wolf populations are typically healthy (or perhaps just with much longer periods of exposure to wolves) (Houston *et al.* 2010, pp. 19–20). However, it has not been determined whether this is due more to increased knowledge and experience dealing with wolves or relaxed local management policies (including liberal public harvest and defense of property regulations) to address local conflicts.

The State of Wyoming has developed a strategy that will not only provide for wolf recovery, but also allow consideration of the diverse opinions and attitudes of its citizens. Wyoming's plan promotes wolf occupancy of suitable habitat in a manner that minimizes damage to private property, allows for continuation of traditional western land-uses such as grazing and hunting, and allows for direct citizen participation in, and funding for, State wolf management (in the form of State defense of property and hunting regulations). With the continued help of private conservation organizations, Wyoming and the Tribes will continue to foster public support to maintain a recovered wolf population. The WGFD has staff dedicated to providing accurate and science-based public education, information, and outreach (WGFC 2011, pp. 41–42). Wyoming's comprehensive approach to wolf management provides us with confidence that human attitudes toward wolves should not again threaten wolves in Wyoming.

As noted above, wolf conservation has the potential to be affected by the degree of human tolerance for wolves (Boitiani 2003, p. 317; Fritts *et al.* 2003, p. 289). We expect that State management will

improve tolerance of wolves because the public appreciates increased State control (less Federal control), and increased management flexibility, including hunting. When one considers that current human attitudes were sufficient to achieve wolf restoration, and that we expect State management to improve these attitudes, we conclude that public attitudes are no longer a threat to wolves' recovered status in Wyoming.

Furthermore, to the extent any impact from human tolerance (or lack thereof) is realized, it will affect human-caused mortality. Wyoming's plan provides assurance that human-caused mortality will be adequately regulated so that recovery is not compromised. Thus, we conclude that human attitudes are no longer a threat to the gray wolf population's recovered status in Wyoming.

Genetic Considerations—Overall, NRM wolves are as genetically diverse as their vast, secure, healthy, contiguous, and connected populations in Canada (Forbes and Boyd 1997, p. 1089; vonHoldt *et al.* 2007, p. 19; vonHoldt *et al.* 2010, pp. 4412, 4416–4421) and, thus, genetic diversity is not a wolf conservation issue anywhere in the NRM DPS at this time (Hebblewhite *et al.* 2010, p. 4383; vonHoldt *et al.* 2010, pp. 4412, 4416, 4421). This current genetic health is the result of deliberate management actions by the Service and its cooperators since 1995 (Bradley *et al.* 2005, p. 1504). Furthermore, genetic data collected from 1995 to 2004 demonstrate that all subpopulations within the NRM DPS maintained high genetic diversity during the first 10 years after reintroduction (Hebblewhite *et al.* 2010, p. 4384; vonHoldt *et al.* 2010, p. 4423). Genetic diversity has likely changed little since 2004. Below we analyze whether genetics will become a threat to wolves in Wyoming, the GYA, or the NRM region within the foreseeable future.

Wolves have an unusual ability to rapidly disperse long distances across virtually any habitat and select mates to maximize genetic diversity. Only extremely large bodies of water or vast deserts appear to restrict wolf dispersal (Linnell *et al.* 2005). Wolves are among the least likely species to be affected by inbreeding when compared to nearly any other species of land mammal (Fuller *et al.* 2003, pp. 189–190; Paquet *et al.* 2006, p. 3; Liberg 2008). Wolves avoid inbreeding by dispersing to find unrelated mates (Bensch *et al.* 2006, p. 72; vonHoldt *et al.* 2007, p. 1). This social pattern is a basic function of wolf populations and occurs regardless of the numbers, density, or presence of other wolves (Mech and Boitani 2003, pp. 11–180; Jimenez *et al.* In review, p. 14).

As a general rule, genetic exchange of at least one effective migrant (i.e., a breeding migrant that passes on its genes) per generation is viewed as sufficient to prevent the loss of alleles and minimize loss of heterozygosity within subpopulations (Mills and Allendorf 1996, entire; Wang 2004, entire; Mills 2007, p. 193). This level of gene flow allows for local evolutionary adaptation while minimizing negative effects of genetic drift and inbreeding depression. While higher levels of genetic exchange may be beneficial (note the ''at least'' in the above standard), we conclude that a minimum of one effective migrant per generation is a reasonable and acceptable goal to avoid any degradation in the NRM DPS's current levels of genetic diversity. The northwestern Montana and central Idaho core recovery areas are well-connected to each other and to large wolf populations in Canada through dispersal (Boyd *et al.* 1995, p. 136; Boyd and Pletscher 1999, pp. 1100–1101; Hebblewhite *et al.* 2010, p. 4383; vonHoldt *et al.* 2010, pp. 4422–4423; Jimenez *et al.* In review, p. 23).

The GYA is the most isolated core recovery area within the NRM DPS (Oakleaf *et al.* 2006, p. 554; vonHoldt *et al.* 2007, p. 19). From 1992 to 2008, we documented five radio-collared wolves naturally entering the GYA, two of which are confirmed to have bred (Jimenez *et al.* In review, p. 23). The first wolf dispersed from northwestern Montana to the eastern side of the GYA in 1992 when only 41 wolves and 4 breeding pairs were in the region (Pletscher *et al.* 1997, p. 464). This wolf did not breed because it dispersed before the 1995–1996 reintroductions and there were no other wolves present in the GYA. In 2002, a central Idaho wolf dispersed to the eastern side of the GYA and became the breeding male of the Greybull pack near Meeteetse, Wyoming. In 2006, another central Idaho wolf dispersed to the northern edge of the GYA (south of Bozeman, Montana); it is unknown if this wolf bred. In 2007, two wolves from central Idaho dispersed to the eastern side of GYA. One of these dispersers joined a pack near Dubois, Wyoming; its reproductive status is unknown. The other 2007 disperser joined a pack near Sunlight Basin, Wyoming, and bred. Because only 20 to 30 percent of the NRM wolf population has been radio-collared, it is reasonable to assume several times the documented number of radio-collared wolves likely entered the GYA. On average, about 35 percent of dispersing wolves reproduce (Jimenez *et al.* In review, p. 12). Because a wolf generation is approximately 4 years, dispersal data indicate that more than one effective migrant per generation has likely entered into the GYA wolf population. Specifically, these data indicate we may have averaged around one-and-a-half effective migrants into the GYA per generation since reintroduction, with a large portion of this dispersal occurring in recent years.

Genetics data have only been analyzed from 1995 to 2004 when the NRM gray wolf population was between 101 and 846 wolves (including a minimum population estimate of 14 to 452 wolves in central Idaho) and still growing (average 27 percent annual growth rate). During this period, the NRM region demonstrated a minimum of 3.3 to 5.4 effective migrants per generation among the three subpopulations (vonHoldt *et al.* 2010, p. 4412). Within this range, the 3.3 effective migrants per generation reflect natural dispersal, while the 5.4 effective migrants per generation include human-assisted migration (Stahler 2011). Within the GYA, natural dispersal data demonstrates that six wolves in four packs appear to have descended from one central Idaho disperser (the 2002 disperser discussed in the above paragraph who was the breeding male of the Greybull pack near Meeteetse, Wyoming) (vonHoldt *et al.* 2010, p. 4412, Supporting Table S5; Stahler 2011). These data demonstrate a minimum of 0.42 natural effective migrants entering the GYA per generation from 1995 to 2004 (Stahler 2011). Because only about 30 percent of the NRM wolf population was sampled, the minimum estimate of effective migrants per generation was likely a significant underestimate (Hebblewhite *et al.* 2010, p. 4384; vonHoldt *et al.* 2010, pp. 4422–4423; Stahler 2011). While additional analysis may be needed to determine how much of an underestimate this represents (Stahler 2011), Hebblewhite *et al.* (2010, p. 4384) suggest this estimate is ''almost certainly low by at least half.''

Both of the above information sources (documented dispersal rates from 1992 to 2008 and genetic analysis from 1995 to 2004) indicate acceptable levels of effective migration occurred when the population was between 101 and 846 wolves and have likely been exceeded at higher population levels. However, numerous factors that contributed to these levels of gene flow while the species was listed will differ after delisting. For example, after delisting the population will no longer be growing, the population will likely go

through a period reduction before leveling off, and management will likely result in higher mortality rates for both dispersers and resident wolves. Thus, past dispersal data is unlikely to be an exact predictor of future effective migration rates. Below we discuss factors likely to influence future effective migration after delisting.

A more detailed look at dispersal data, although reflective of the situation while wolves were listed, may provide insights into likely dispersal after delisting. NRM gray wolf dispersal data from 1995 to 2008 indicated that: Wolves routinely dispersed at all population levels and from packs of all sizes (greater than 10 percent of the radio-collared wolf population dispersed annually); some dispersers moved long distances despite the occurrence of empty suitable habitat nearby (23 percent of these dispersers traveled greater than or equal to 100 miles, a distance that separates routinely occupied areas in the GYA and central Idaho); wolves dispersed in all directions (19 percent of dispersers traveled east as would be necessary to get from central Idaho to the GYA); dispersal occurred year round, but peaked in winter (more than half of all dispersal occurred in the 4 months of November through February); dispersal was a long, meandering process (dispersal events averaged 5.5 months); disperser survival rates were lower than for resident wolves (70 versus 80 percent); and 35 percent of dispersing wolves reproduced (Jimenez *et al.* In review, pp. 9–12).

It should be noted that the above estimates could over- or under estimate actual percentages depending on various factors related to the representativeness of the available data. For example, the estimate that 10 percent of the wolf population disperses annually may be an underestimate of the real number because yearlings and 2-year-olds in some areas have a higher dispersal rate than older wolves (Adams *et al.* 2008, Table 4), but may be underrepresented in the radio-collared wolf sample (Jimenez *et al.* In review, p. 10). Mech and Boitani (2003, p. 170) summarized North American wolf studies that suggested lone dispersing wolves comprised 10 to 15 percent of wolf populations in winter. Adams *et al.* (2008, Table 4) estimated dispersal rates for yearlings, 2-year-olds, and older Alaskan wolves as being 61 percent, 35 percent, and 11 percent, respectively; Adams suggested a dispersal rate around 30 percent may be more likely for NRM wolves given our data's bias toward older adults (Atkins 2011, p. 56; Jimenez *et al.* In review, p. 10). Furthermore, while these data could be used to model likely future effective migration, natural changes to the wolf population and post-delisting management across the NRM region will affect these variables and affect the resulting projections. Below we discuss factors that are likely to change these variables in future years.

Several geographic and biological factors influence migration in the GYA. For example, physical barriers (such as high-elevation mountain ranges that are difficult to traverse in winter) appeared to discourage dispersal through Grand Teton National Park's western boundary. Because most wolves disperse in winter, they tended to travel through low-elevation valleys where wild prey concentrations were highest due to lower snow depths. To date, the high density and reproductive output of wolves in YNP have created a unidirectional flow of effective dispersers leaving but not entering the Park's wolf population (note, we have few data regarding whether wolves traveled through the park) (vonHoldt *et al.* 2007, p. 270; vonHoldt *et al.* 2010, p. 4413; Wayne and Hedrick 2010). This is because young dispersing wolves seek to establish territories in less saturated habitats, and wolves from outside YNP are unable to establish residency inside areas that appear saturated. This does not mean wolves were precluded from traveling through the park. Long term, we expect that, at lower YNP population densities, wolves from outside YNP will be increasingly successful at dispersing into and through YNP.

Population levels across the NRM DPS could affect natural rates of gene flow. For example, because a small portion of wolves disperse annually (perhaps between 10 and 30 percent (Adams *et al.* 2008, Table 4; Atkins 2011, p. 56; Jimenez *et al.* In review)), an Idaho wolf population of 350 to 550 wolves long term (a range that is realistic long term) will produce many more dispersers than a population closer to minimum recovery targets. While the wolf population will probably be reduced after delisting, all three States in the NRM region plan to manage wolf populations comfortably above minimum recovery levels to allow for wolf hunting opportunities, in anticipation of uncontrollable sources of mortality, and to provide that relisting does not occur. Based on the available suitable habitat including remote or protected areas, management direction being employed or planned by the States, and State projections, we conclude that the overall NRM population is likely to be maintained well above recovery levels (perhaps around 1,000 wolves across the NRM DPS). Overall, conclude that State management of population levels alone is unlikely to reduce the overall rate of natural dispersal enough to threaten adequate levels of effective migration.

Human-caused wolf mortality is another key factor in determining whether dispersers become effective (i.e., a breeding migrant that passes on its genes). In short, wolves must be able to traverse suitable and unsuitable habitat between the key recovery areas and survive long enough to find a mate in suitable habitat and reproduce. While managed under the Act, dispersers had a 70 percent survival rate. However, State and Tribal wolf management is likely to reduce survival of dispersing wolves. Across the NRM DPS, we expect mortality rates to increase after delisting due to hunting, more liberal defense of property allowances (than under previous experimental population rules), and, in Wyoming, control of wolves on State-managed elk feeding grounds and some impacts to dispersers in the predator area of the State.

As noted above, wolves can maintain themselves despite human-caused mortality rates of 17 to 48 percent (Fuller *et al.* 2003, pp. 182–184 [22 percent +/− 8 percent]; Adams *et al.* 2008 [29 percent]; Creel and Rotella 2010 [22 percent]; Sparkman *et al.* 2011 [25 percent]; Gude *et al.* 2011 [48 percent]; Vucetich and Carroll In review [17 percent]). Because States intend to initially reduce wolf populations and ultimately maintain level wolf populations in balance with prey populations and reduce livestock conflicts, it seems reasonable to assume that there will be high mortality across the entire region for the next several years, but that the population will stabilize at a sustainable level over the long term.

The management approaches of all three NRM States take into account and limit hunting impacts during important dispersal periods, including the breeding, denning, and pup-rearing periods (late winter through early fall). Long term, across Montana, Idaho, and Wyoming, most hunting-related mortality will occur from October to December when big game seasons are scheduled and most big game hunters are in the field. In 2009 in Montana, 78 percent of harvested wolves were opportunistically harvested by hunters who were primarily hunting elk, deer, or both (Montana Fish, Wildlife and Parks 2009, p. 3). In both 2009 and 2011, Montana's wolf seasons were scheduled to run through the end of December, or when quotas were met (Montana Fish, Wildlife and Parks 2011,

entire). In 2009, Idaho's wolf season was open until December 31st or until the quota was met, but was extended through the end of March for all units that did not meet their quotas. The 2009 hunting season was not extended in any areas important for dispersal. In 2011, Idaho's wolf hunting season ran through March for most units, but ends December 31st for those areas thought important for dispersal (i.e., the Beaverhead and Island Park units) (Idaho Fish and Game Commission 2011, entire). During the 2012–2013 hunting season, these units will remain open until January 31st. Closing hunting in these units earlier than other units is consistent with States' commitments to preserve genetic diversity by ensuring the continuation of natural dispersal among the subpopulations through effective management of the timing and location of human-caused mortality (Groen *et al.* 2008, entire). While increased human-caused mortality, particularly hunting and trapping, is expected to continue across much of the NRM DPS in the coming years as States pursue population reductions, we expect the need for such long seasons will dwindle once desired reductions are achieved. Other sources of human-caused mortality, such as State control of problem wolves, is limited to recent depredation events, which are uncommon during peak dispersal periods.

The State of Wyoming has indicated that its hunting seasons will occur primarily in conjunction with fall hunting seasons, but may be extended beyond that period, if necessary, to achieve management objectives (WGFC 2011, pp. 2–3, 16, 25, 53). Wyoming will develop a hunting plan each year that will take into consideration, but will not be limited to, the following: Wolf breeding seasons; short- and long-range dispersal opportunity, survival, and success in forming new or joining existing packs; conflicts with livestock; and the broader game management responsibilities related to ungulates and other wildlife (WGFC 2011, pp. 2–3, 16, 25, 53).

In Wyoming, survival of dispersing wolves will also be reduced in portions of the State where wolves will be classified as predators. In the predator area, human-caused mortality will be unlimited; therefore, wolf survival rates will decline. This finding is consistent with past Service findings (71 FR 43410, August 1, 2006; 72 FR 6106, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009), and was validated in 2008 when most of the wolves in the predator area were killed within a few weeks of temporarily losing the Act's protection. However, roaming dispersers will be less prone to removal than resident packs, whose locations and ranges are easily detected.

In total, wolves will be protected or managed as game animals year-round in about 38,500 km^2 (15,000 mi^2) (15.2 percent of Wyoming) in northwestern Wyoming, including YNP, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and the Wind River Indian Reservation. The permanent Trophy Area incorporates nearly all of Wyoming's current wolf packs and includes the vast majority of the State's suitable habitat. Additionally, the Trophy Area will be seasonally expanded approximately 80 km (50 mi) south along the western border of Wyoming (see Figure 1 above) from October 15 to the end of February (28th or 29th). During this period of peak dispersal, the Trophy Area will be expanded by approximately 3,300 km^2 (1,300 mi^2) (i.e., an additional 1.3 percent of Wyoming). Maintenance of genetic exchange and connectivity were the primary considerations in Wyoming's agreement to increase protection for wolves within this area during winter months. This seasonal expansion will benefit natural dispersal.

Within the Trophy Area, Wyoming may also control wolves to address wolf-ungulate conflicts at State-operated elk feeding grounds (WGFC 2011, pp. 5, 39–41). Wyoming maintains 22 winter elk feeding grounds including 10 within the permanent Trophy Area, 3 within the seasonal Trophy Area, and 9 within the permanent predator area. These areas attract and frequently hold dispersing wolves. Many dispersing wolves in Wyoming, and several established packs, include elk feed grounds as part of their winter home range. As noted above, within the predator area, take would occur without limit. Within the Trophy Area, WGFD may take wolves that displace elk from feeding grounds in the Trophy Area if such displacement results in one of the following conflicts: (1) Elk damage to private stored crops; (2) elk commingling with domestic livestock; or (3) elk displaced from feeding grounds moving onto highway rights-of-way and causing human safety concerns. Such take will likely further reduce survival of dispersing wolves (WGFC 2011, pp. 5, 39–41).

Generally, genetic connectivity across the NRM DPS has increased with time, and it will remain a high-priority issue for the Service and our partner wildlife agencies. Processes to identify, maintain, and improve linkage of wildlife movement areas between the large blocks of public land in the region is ongoing (Servheen *et al.* 2003, p. 3). This interagency effort involves 9 State and Federal agencies working on linkage facilitation across private lands, public lands, and highways (Interagency Grizzly Bear Committee 2001, pp. 1–2; Brown 2006, pp. 1–3). Key partners include the Forest Service, National Park Service, Bureau of Land Management, U.S. Geological Survey, and the States of Idaho, Montana, Washington, and Wyoming. To date, this effort has included: (1) Development of a written protocol and guidance document on how to implement linkage zone management on public lands (Public Lands Linkage Wildlife Taskforce 2004, pp. 3–5); (2) production of several private land linkage management documents (Service 1997; Parker and Parker 2002, p. 2); (3) analyses of linkage zone management in relation to highways (Geodata Services Inc. 2005, p. 2; Waller and Servheen 2005, p. 998); and (4) periodic workshops discussing implementation of management actions for wildlife linkage. The objective of this work is to maintain and enhance movement opportunities for all wildlife species across the region. Although this linkage work is not directly associated with the wolf population, it will benefit wolves after delisting.

Wyoming's gray wolf management regulations indicate the State is committed to managing gray wolves in Wyoming so that genetic diversity and connectivity issues do not threaten the population (chapter 21, section 4(a)(ii)). These regulations state that this commitment would be accomplished by encouraging effective migrants into the population in accordance with the Wyoming Gray Wolf Management Plan (chapter 21, section 4(a)(ii)). The Addendum to the Wyoming Gray Wolf Management Plan indicates the WGFD would strive for a minimum genetic target of ~1 effective migrant per generation (WGFC 2012, pp. 6 – 7). Wyoming, in coordination with Montana and Idaho, has agreed to collect genetic samples continuously, and test the samples every 3 to 5 years to search for dispersers and their offspring as well as to detect losses in heterozygosity and changes in allele frequency (WGFC 2011, pp. 26–29). Success in achieving the objective of one effective migrant per generation will be measured over multiple generations (WGFC 2011, pp. 26–29). If this minimum target is not achieved, the WGFD would first consider changes to

the monitoring program, if the increased monitoring is likely to overcome the failure to document the desired level of gene flow (WGFC 2012, p. 6).

If the WGFD determines increased monitoring is unlikely to document adequate levels of genetic interchange, or it determines that sufficient interchange is not occurring regardless of monitoring efforts, it would alter management, including reducing mortality quotas in dispersal corridors or reducing total mortality quotas over a series of years to increase the probability that migrants into the population survive and reproduce (WGFC 2012, pp. 6–7). Outside experts will be consulted, as necessary or appropriate, to assist in identifying appropriate changes to regional management. Specifically, Wyoming will: (1) Conduct an evaluation of all sources of mortality, in coordination with other partners as appropriate, with a focus on those within Wyoming's jurisdiction (and the jurisdiction of other partners, as appropriate), to determine which sources of mortality, and the extent to which those sources, are most meaningfully affecting genetic connectivity; and (2) modify population management objectives, in coordination with other partners, as appropriate, based on the above evaluation, as necessary, to achieve the desired level of gene flow (WGFC 2011, pp. 26–29). The extent of actions taken will depend on the level of gene flow as it relates to the genetic connectivity objectives. For example, if the data indicates gene flow is close to the objective, minor modifications to management will be implemented (WGFC 2011, pp. 26–29). However, if very low levels of gene flow are documented over numerous generations, more extreme management measures will be implemented (WGFC 2011, pp. 26–29). This adaptive approach will implement specific and appropriate remedial actions as directed by the available data (WGFC 2011, pp. 26–29). Translocation of wolves between subpopulations would only be used as a stopgap measure, if necessary to increase genetic interchange (WGFC 2012, p. 7). All of the above efforts would be coordinated with Montana and Idaho (WGFC 2012, p. 7).

Maintenance of the GYA at very low population levels is unlikely to be a meaningful concern in its own right. Overall, we expect the GYA population will be managed for a long term average of around 300 wolves across portions of Montana, Idaho, and Wyoming. While exact numbers are difficult to predict and may fluctuate by area and by year, the following information provides some perspective. In Wyoming, the State will maintain a population above 100 wolves and 10 breeding pairs on lands under State jurisdiction and, in most years, will maintain a healthy buffer above this minimum population level. The wolf population in YNP has ranged from 96 to 174 wolves since 2000. However, the YNP wolf population appears to be declining toward a long term equilibrium around the lower end of this range (Service *et al.* 2000–2012, Table 2; Smith 2012). In Montana's share of the GYA, minimum population estimates have ranged from 55 to 130 wolves since recovery was achieved in 2002 (Service *et al.* 2003–2012, Table 1b). During this period, the GYA constituted between 20 to 42 percent of Montana's statewide wolf population estimate. At the end of 2010, this area included a minimum population estimate of 118 wolves. Montana's planned quota for this area in the 2011 hunting season was 43 wolves, and 39 wolves were actually taken, which appears to have allowed the population in this area to grow (by about 18 percent). In Idaho's share of the GYA, minimum population estimates have ranged from 0 to 40 wolves since recovery was achieved in 2002 (Service *et al.* 2003–2012, Table 2). At the end of 2010, this area included a minimum population estimate of 40 wolves. Idaho's planned 2011 hunt includes a quota of 30 wolves in this area, but the quota for this unit was not reached because only 10 wolves were taken (Idaho Fish and Game Commission 2011, entire). Collectively, these data suggest a long term average of around 300 wolves in the GYA, including sizable populations in YNP, other portions of Wyoming, and portions of the GYA in Montana and Idaho.

In summary, the GYA wolf population will not be threatened by lower genetic diversity in the foreseeable future. A number of biological factors support this conclusion including the current high level of genetic diversity in the NRM DPS, proven connectivity between subpopulations, wolf dispersal capabilities, the strong tendency of wolves to outbreed by choosing unrelated mates, and the likely long term population and distribution levels of wolves in the NRM DPS. In addition to these natural factors, the States of Montana, Idaho, and Wyoming have committed to monitor for natural genetic connectivity, modify management as necessary to facilitate natural connectivity, and, if necessary, implement a human-assisted migration program to achieve at least one effective migrant per generation. In fact, in our professional judgment, even if no new genes entered into the GYA (a near impossibility), genetic diversity is likely many decades, and perhaps a century or more, away from becoming an issue and even then, it would be unlikely to threaten the GYA population.

Poison—Poisoning is a potentially significant factor in maintenance of the wolf population because it can be an effective and inexpensive method to kill wolves. Wolf extirpation in the United States and many other areas of the world occurred primarily through extensive use of poisons. Wolf populations began to recover in many areas only when certain poisons were banned, despite continued human-caused mortality by shooting and trapping (Fritts *et al.* 2003, p. 311; Fuller *et al.* 2003, pp. 162–163, 189; Boitani 2003, p. 329). Poison was once commonly used by Federal and State agencies and the public throughout the western United States for control of coyotes and other predators. However, many poisons (such as strychnine, Compound 1080, cyanide, and other toxins) for predatory animal management were banned or their use severely limited (Executive Order 11643; Fagerstone *et al.* 2004).

Today, no poisons can legally be used against wolves in the United States because of Environmental Protection Agency restrictions (described above). While steps could be taken to allow registration and limited use, the process is complex, time consuming (5–10 years), and would likely not allow widespread use for a host of reasons, including public disdain for poisoning predators (Fritts *et al.* 2003, p. 311; Fagerstone *et al.* 2004, p. 76) and concerns over secondary nontarget poisoning. Furthermore, within the Trophy Area, poison is prohibited by Wyoming Statute 23–3–304(a). Sodium cyanide (only in M–44 devices), Compound 1080 (sodium fluoroacetate used only in livestock protection collars), and denning cartridges (active ingredients of sodium nitrate and charcoal) are legal toxicants for use on other canids. In all three cases, Environmental Protection Agency label restrictions preclude use on wolves (Environmental Protection Agency 1994, pp. 2, 4; Environmental Protection Agency 1995, pp. 28–29; Environmental Protection Agency 2007, p. 3). Poisons (including strychnine, Compound 1080, cyanide, and Temic (an agricultural poison used for insect control)) have occasionally illegally killed dogs and wolves in the NRM region. Such illegal killing has been exceedingly rare and has not affected the wolf population's recovery (Murray *et al.* 2010, p. 2514;

Service *et al.* 2012, Table 4, Figure 1). We believe this source of mortality will remain rare into the foreseeable future.

Only a concerted agency-driven or otherwise large-scale campaign to employ poison could threaten the recovered wolf population in Wyoming, the GYA, or the larger NRM DPS. However, this circumstance is highly unlikely in the foreseeable future. Even in areas like the predator area, widespread poisoning is unlikely in the foreseeable future because as these types of highly toxic and dangerous poisons would have to be legally registered and widely available. Overall, this potential threat is strictly theoretical in nature and is unlikely to ever again threaten this wolf population.

Climate Change—Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. For these and other examples, see IPCC 2007a (p. 30) and Solomon *et al.* 2007 (pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764, 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The 20th century was the warmest in the last 1,000 years (Inkley *et al.* 2004, pp. 2–3), with global mean surface temperature increasing by 0.4 to 0.8 degrees Celsius (0.7 to 1.4 degrees Fahrenheit). These increases in temperature were more pronounced over land masses as evidenced by the 1.5 to 1.7 degrees Celsius (2.7 to 3.0 degrees Fahrenheit) increase in North America since the 1940s (Vincent *et al.* 1999, p. 96; Cayan *et al.* 2001, p. 411). According to the IPCC, temperatures will increase 1.1 to 6.4 degrees Celsius (2.0 to 11.5 degrees Fahrenheit) by 2100 (IPCC 2007, pp. 10–11). The magnitude of warming in the NRM region has been greater, as indicated by an 8-day advance in the appearance of spring phenological indicators in Edmonton, Alberta, since the 1930s (Cayan *et al.* 2001, p. 400). The hydrologic regime in the NRM region also has changed with global climate change, and is projected to change further (Bartlein *et al.* 1997, p. 786; Cayan *et al.* 2001, p. 411; Stewart *et al.* 2004, pp. 223–224). Under global climate change scenarios, the NRM region may eventually experience milder, wetter winters and warmer, drier summers (Bartlein *et al.* 1997, p. 786). Additionally, the pattern of snowmelt runoff may also change, with a reduction in spring snowmelt (Cayan *et al.* 2001, p. 411) and an earlier peak (Stewart *et al.* 2004, pp. 223–224), so that a lower proportion of the annual discharge will occur during spring and summer.

Even with these changes, environmental, habitat, or prey changes resulting from climate change should not threaten the Wyoming wolf population. Next to humans, wolves are the most widely distributed land mammal on earth. Wolves live in every habitat type in the Northern Hemisphere that contains ungulates, and once ranged from central Mexico to the Arctic Ocean in North America. The NRM region is roughly in the middle of historical wolf distribution in North America. Because historical evidence suggests gray wolves and their prey survived in hotter, drier environments, including some near-desert conditions, we expect wolves could easily adapt to the warmer and drier conditions that are predicted with climate change, including any northward expansion of diseases, parasites, new prey, or competitors or reductions in species

currently at or near the southern extent of their range. It would be virtually impossible that environmental, habitat, or prey species changes due to the environmental effects of climate change could significantly affect such an adaptable, resilient, and generalist predator.

Environmental or habitat changes resulting from changing climatic conditions have the potential to affect wolf prey. Declining moose populations in the southern GYA may result from climate change and declining habitat quality, a conclusion that has been reached in other parts of the southern range of moose in North America (Murray *et al.* 2006, p. 25; Becker 2008, entire; Becker *et al.* 2010, p. 151). Climate change has affected elk nutrition, elk herd demographics, and the proportion of migratory and nonmigratory elk in the GYA, but not to the extent that such wolf prey could disappear (Middleton *et al.* In Press). However, the extent and rate to which most ungulate populations will be affected is difficult to foresee with any level of confidence. One logical consequence of climate change could be a reduction in the number of elk, deer, moose, and bison that die overwinter, thus maintaining a higher prey base for wolves (Wilmers and Getz 2005, p. 574; Wilmers and Post 2006, p. 405). Furthermore, increased over-winter survival would likely result in overall increases and more resiliency in ungulate populations, thereby providing more prey for wolves.

Catastrophic Events—Here we analyze a number of possible catastrophic events including fire, volcanic activity, and earthquake. Fire is a natural part of the Yellowstone system; however, 20th century forest management, which included extensive wildfire suppression efforts, promoted heightened potential for a large fire event. The 1988 fires, the largest wildfires in YNP's recorded history, burned a total of 3,213 km^2 (793,880 acres) or 36 percent of the Park. However, large mobile species such as wolves and their ungulate prey usually were not meaningfully adversely affected. Surveys after the 1988 fires found that 345 dead elk, 36 deer, 12 moose, 6 black bears, and 9 bison died in GYA as a direct result of the conflagration (YNP 2011, p. 3). YNP's fire management policy (YNP 2004, entire) indicates natural wildfires should be allowed to burn, so long as parameters regarding fire size, weather, and potential danger are not exceeded. Those fires that do exceed the standards, as well as all human-caused fires, are to be suppressed (YNP 2004, entire). Regarding impacts to wolves, YNP concluded ''wolves are adapted to landscapes strongly influenced by fire, the primary forest disturbance agent within the GYE, are highly vagile, and are adaptable to changing ecological conditions * * * [and] fires will provide significant long term benefits to gray wolves by maintaining natural ecosystem processes'' (YNP 2004, appendix I). Future fires are likely in the GYA system. Overall, we agree wolves are adaptable and will benefit from fires in the long term. Wildfires often lead to an increase in ungulate food supplies and an increase in ungulate numbers. While minor, localized, short term impacts are likely, fire will not threaten the viability of the wolf population in either the GYA or Wyoming.

The GYA has also experienced several exceedingly large volcanic eruptions in the past 2.1 million years. Super eruptions occurred 2.1 million, 1.3 million, and 640,000 years ago (Lowenstern *et al.* 2005, pp. 1–2). Such a similar event would devastate the GYA ecosystem. While one could argue ''we are due'' for such an event, scientists with the Yellowstone Volcano Observatory maintain that they ''see no evidence that another such cataclysmic eruption will occur at Yellowstone in the foreseeable future * * * [and that] recurrence intervals of these events are neither regular nor predictable'' (Lowenstern *et al.* 2005, p. 6). We agree and do conclude that such an event is not likely within the foreseeable future.

More likely to occur is a nonexplosive lava flow eruption or a hydrothermal explosion. There have been 30 nonexplosive lava flows in YNP over the last 640,000 years, most recently 70,000 years ago (Lowenstern *et al.* 2005, p. 2). During such an eruption, flows ooze slowly over the surface, moving a few hundred feet per day for several months to several years (Lowenstern *et al.* 2005, p. 2). Any renewed volcanic activity at YNP would most likely take this form (Lowenstern *et al.* 2005, p. 3). In general, such events would have localized impacts and be far less devastating than a large eruption (although such an event could also cause fires; fire as a threat is discussed above). Hydrothermal explosions, triggered by sudden changes in pressure of the hydrothermal system, also occasionally affect the region. More than a dozen large hydrothermal explosion craters formed between about 14,000 and 3,000 years ago (Lowenstern *et al.* 2005, p. 4). The largest hydrothermal-explosion crater documented in the world is along the north edge of Yellowstone Lake in an embayment known as Mary Bay; this 2.6-km (1.5-mile) diameter crater formed about 13,800 years ago (Lowenstern *et al.* 2005, p. 4). We do not consider either a nonexplosive lava flow eruption or a hydrothermal-explosion likely within the foreseeable future, but even if one of these did occur, the impact to wolves or their prey would likely be localized, temporary, and would not threaten the viability of the wolf population in either the GYA, the Wyoming, or the NRM gray wolf populations.

Earthquakes also occur in the region. The most notable earthquake in YNP's recent history was a magnitude 7.5 in 1959 (Lowenstern *et al.* 2005, p. 3). Similarly, a magnitude 6.5 earthquake hit within YNP in 1975 (Lowenstern *et al.* 2005, p. 3). The 1959 earthquake killed 28 people, most of them in a massive landslide triggered by the quake (Lowenstern *et al.* 2005, p. 3). Such massive landslides and other earthquake-related impacts could also affect wildlife. But as with other potential catastrophic events, the impact of a large earthquake to wolves or prey would likely be localized, temporary, and would not threaten the viability of the wolf population in the GYA, the Wyoming, or the NRM gray wolf populations.

The habitat model/population viability analysis by Carroll *et al.* (2003, p. 543) analyzed environmental stochasticity and predicted it was unlikely to threaten wolf persistence in the GYA. We also considered catastrophic and stochastic events that might reasonably occur in Wyoming, the GYA, or the NRM DPS within the foreseeable future, to the extent possible. Most catastrophic events discussed above are unlikely to occur within the foreseeable future. Other events that might occur within the foreseeable future would likely cause only localized and temporary impacts that would not threaten the GYA, the Wyoming, or the NRM gray wolf populations.

Impacts to Wolf Pack Social Structure as a Result of Human-Caused Mortality—When human-caused mortality rates are low, packs often contain a wider spread of individuals across age classes. Such larger complex pack structures are most common in National Parks and large, remote wilderness areas. These types of social structures will continue in protected areas like YNP after wolves are delisted. While intense harvest in immediately adjoining areas can alter natural social structure of kin-based groups (e.g., increase adoption of unrelated individuals into packs) in the protected areas (Rutledge *et al.* 2010, entire), as explained in the ''Commercial or

Recreational Uses'' section of Factor B above, harvest levels have been limited in adjoining areas where such impacts are most likely to be an issue and are likely to continue to be regulated in this manner. This approach is expected to minimize such impacts in YNP.

Regardless, only approximately 20 percent of the region's wolf population currently lives primarily in National Parks or Wilderness areas. Therefore, wolves in most of the NRM DPS constantly interact with livestock and people. In these areas, wolves experience higher rates of human-caused mortality, which alters pack structure but does not reduce population viability, their ability to reproduce, or their ability to produce dispersers (Brainerd *et al.* 2008, p. 89; Jimenez *et al.* In review, p. 1).

Wolf packs frequently have high rates of natural turnover (Mech 2007, p. 1482) and quickly adapt to changes in pack social structure (Brainerd *et al.* 2008, p. 89). Higher rates of human-caused mortality outside protected areas will result in smaller wolf pack size and different structure than in protected areas. However, wolf populations in many parts of the world, including most of North America, experience various levels of human-caused mortality and the associated disruption in natural processes and wolf social structure, without ever being threatened (Boitani 2003, pp. 322–323). Therefore, while human-caused mortality may alter pack structure, we have no evidence that indicates this issue, if adequately regulated (as will occur in the NRM region), is a significant concern for wolf conservation.

Since 1987, we have removed more than 1,700 problem wolves in the NRM region and have monitored the effect of removing breeding adults and other pack members on wolf pack structure and subsequent breeding. Those effects were minor and would certainly not affect wolf population recovery (Brainerd *et al.* 2008, p. 89). Although human-caused mortality will likely increase after delisting, history has proven that adequate wolf reproduction and survival can occur to sustain wolf populations, despite prolonged periods of high rates of human-caused mortality (Boitani 2003, pp. 322–323). The Wyoming wolf population will be managed so that human-caused mortality will not threaten the population.

Overall, we conclude that other natural or manmade factors, singularly or in combination with other threats, will not cause the Wyoming, the GYA, or the NRM gray wolf population to be ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

Conclusion (Including Cumulative Impacts)

According to 50 CFR 424.11(d), we may delist a species if the best available scientific and commercial data indicate that: (1) The species is extinct; (2) the species is recovered and is no longer endangered or threatened; or (3) if the original scientific data used at the time the species was classified were in error. The second criterion (i.e., recovered and is no longer endangered or threatened) applies for wolves in Wyoming.

Wolves in Wyoming, the GYA, and across the NRM DPS are recovered. All prongs of the recovery criteria are satisfied. The numerical, distributional, and temporal components of the overarching recovery goal have been exceeded for 10 consecutive years. Furthermore, Montana, Idaho, and Wyoming have each individually met or exceeded the minimum per-State recovery targets every year since at least 2002, and met or exceeded the minimum management targets every year since at least 2004. Each of the recovery areas (which were originally used to measure progress toward recovery) has been documented at or above 10 breeding pairs and 100 wolves every year since 2005 and probably exceeded these levels every year since 2002 (Service *et al.* 2012, Table 4). Finally, the available evidence demonstrates the NRM gray wolf population is functioning as a metapopulation with gene flow between subpopulations. Thus, we conclude that the population has recovered.

Before we can delist we must also consider the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting. Under section 3 of the Act, a species is an ''endangered species'' if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. In considering what factors might constitute ''threats,'' we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (i.e., it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of an ''endangered species'' or a ''threatened species'' under the Act.

As long as populations are maintained above minimal recovery levels, wolf biology (namely the species' reproductive potential) and the availability of secure blocks of suitable habitat will maintain source populations capable of withstanding all other foreseeable threats. In terms of habitat, the amount and distribution of suitable habitat in public ownership provides, and will continue to provide, large core areas that contain high-quality habitat of sufficient size to anchor a recovered wolf population. Our analysis of land-use practices shows that these areas will maintain their suitability well into the foreseeable future. While disease and parasites can temporarily cause localized population impacts, as long as populations are managed above recovery levels, these factors are not likely to threaten the wolf population at any point in the foreseeable future. Natural predation is also likely to remain an insignificant factor in population dynamics into the foreseeable future. Additionally, we conclude that other natural or manmade factors like public attitudes towards wolves, climate change, catastrophic events, and impacts to wolf pack social structure are unlikely to threaten the wolf population within the foreseeable future. While poisoning is a potentially significant factor in the maintenance of the wolf population, no poisons can be legally used to poison wolves in the United States, and we do not foresee or anticipate a change in poison regulation that would allow more widespread wolf poisoning.

Human-caused mortality is the most significant issue to the long term conservation status of the wolf population in Wyoming, the GYA, and the entire NRM DPS. Therefore, managing this source of mortality (i.e., overutilization for commercial and recreational purposes [Factor B] as well as other sources of human-caused mortality [Factor C]) remains the primary challenge to maintaining a recovered wolf population into the foreseeable future. Fortunately, wolf populations have an ample natural resiliency to high levels of human-caused mortality, if population levels and controllable sources of mortality are adequately regulated. For example, in 2009 and in 2011, more than 600 NRM wolves died each year from all sources of mortality (agency control including defense of property, regulated harvest, illegal and accidental killing, and natural causes), and the population showed little change (technically, slight

increases in minimum population levels were documented each year) (Service *et al.* 2012, tables 4a, 4b). Similarly, from 1995 to 2008, the NRM wolf population grew by an average of about 20 percent annually, even in the face of an average annual human-caused mortality rate of 23 percent (Service *et al.* 2012, Table 4; Smith *et al.* 2010, p. 620; also see Figure 3 above). Overall, wolf populations can maintain themselves despite human-caused mortality rates of 17 to 48 percent (Fuller *et al.* 2003, pp. 182–184 [22 percent +/− 8 percent]; Adams *et al.* 2008 [29 percent]; Creel and Rotella 2010 [22 percent]; Sparkman *et al.* 2011 [25 percent]; Gude *et al.* 2011 [48 percent]; Vucetich and Carroll In review [17 percent]). Furthermore, wolf populations have been shown to increase rapidly if mortality is reduced after severe declines (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2012, Table 4).

Human-caused mortality can include both controllable sources and sources of mortality that will be difficult to limit. Controllable sources of mortality are discretionary and can be limited by the managing agency. They include permitted take, sport hunting, and direct agency control. Sources of mortality that will be difficult to limit, or may be uncontrollable, occur regardless of population levels and include things like defense of property mortality, illegal take, accidental mortality (such as vehicle collisions), and mortality in the predator area of Wyoming.

The recovery goal calls for a three-part metapopulation of at least 30 breeding pairs and at least 300 wolves equitably distributed among Montana, Idaho, and Wyoming. We have determined that Wyoming's share of this recovery goal will be satisfied by Wyoming's commitment to maintain at least 10 breeding pairs and at least 100 wolves in areas outside of YNP and the Wind River Indian Reservation. All sources of mortality will be considered in management decisions so that management objectives are met. Furthermore, Wyoming intends to maintain an adequate buffer above minimum population objectives to accommodate management needs and ensure uncontrollable sources of mortality do not drop the population below this minimum population level. Thus, the minimum recovery goal for the State of Wyoming will be exceeded in areas outside YNP and the Wind River Indian Reservation, allowing YNP and the Wind River Indian Reservation to provide an additional buffer above the minimum recovery target. Additionally, Wyoming is planning a gradual population reduction to ensure population targets are not compromised while the State gathers information on the vulnerability of wolves under a State management regime. This graduated approach to population reductions and long term stabilization of the population, with an adequate buffer above minimum population targets, provides us with confidence that Wyoming's minimum management targets will not be compromised.

All three States within the NRM DPS are required to manage comfortably above the minimum recovery level of at least 10 breeding pairs and at least 100 wolves. In Montana and Idaho, we required the statewide population level to be managed at least 50 percent above this target. Because Wyoming, unlike Montana and Idaho, has a large portion of its wolf population in areas outside the State's control (e.g., YNP and the Wind River Indian Reservation), we developed an approach for Wyoming that recognizes this fact, but still holds the State to the same commitment to achieve the desired safety margin above the minimum recovery goal. Specifically, the wolf populations in YNP and the Wind River Indian Reservation will provide the remaining buffer above the minimum recovery goal intended by the minimum management targets employed in Montana and Idaho (i.e., population targets 50 percent above minimum recovery levels). From 2000 to the end of 2011 (the most recent official wolf population estimates available), the wolf population in YNP ranged from 96 to 174 wolves, and between 6 to 16 breeding pairs. However, recent population levels may be higher than the long term carrying capacity of YNP; the park predicts its wolf numbers may decline further and settle into a lower equilibrium (Smith 2012). Specifically, YNP biologists estimate that the park will have between 50 to 100 wolves and 5 to 10 packs with 4 to 6 of these packs meeting the breeding pair definition annually (Smith 2012). Regardless, YNP will represent a core refugium that contains a substantial number of overwintering wild ungulates and few livestock with low levels of human-caused wolf mortality. These factors guarantee that the area will remain a secure stronghold for the Wyoming wolf population. Thus, YNP will always provide a secure wolf population providing a safety margin above the minimum recovery goal.

The Wind River Indian Reservation will further buffer the population, although the area's contribution to recovery levels has always been, and is likely to remain, very modest. The Wind River Indian Reservation typically contains a small number of wolves (single digits), which sometimes form packs that count toward Tribal population totals. None of these packs have ever met the breeding pair definition.

In total, Wyoming wolves will be managed as game animals year-round or protected in about 38,500 km^2 (15,000 mi^2) in the northwestern portion of the State (15.2 percent of Wyoming), including YNP, Grand Teton National Park, John D. Rockefeller, Jr. Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and most of the Wind River Indian Reservation (Lickfett 2012). This area (see Figure 1) includes: 100 percent of the portion of the GYA recovery area within Wyoming (Service 1987, Figure 2); approximately 79 percent of the Wyoming portion of the primary analysis area used in the 1994 Environmental Impact Statement (areas analyzed as potentially being impacted by wolf recovery in the GYA) (Service 1994, Figure 1.1); the entire home range for 24 of 27 breeding pairs (88 percent), 40 of 48 packs (83 percent), and 282 of 328 individual wolves (86 percent) in the State at the end of 2011 (Service *et al.* 2012, Tables 2, 4, Figure 3; Jimenez 2012a; Jimenez 2012, pers. comm.); and approximately 81 percent of the State's suitable habitat (including over 81 percent of the high-quality habitat (greater than 80 percent chance of supporting wolves) and over 62 percent of the medium-high-quality habitat (50 to 79 percent chance of supporting wolves) (Oakleaf 2011; Mead 2012a)). Although wolves will not persist in the predator area, these protected and managed portions of Wyoming are of sufficient size to support a recovered wolf population in Wyoming.

Genetic diversity is not a wolf conservation issue in the NRM DPS at this time and we do not expect it to become one in the foreseeable future. While the GYA is the most isolated core recovery area within the NRM DPS, genetic and dispersal data demonstrate that minimal acceptable levels of genetic exchange between all NRM subpopulations were met or exceeded while the species was listed. While State management will almost certainly reduce genetic exchange rates from recent levels (which appear to exceed minimal acceptable levels of genetic exchange), we find it extremely unlikely that it will be reduced to the point that the GYA wolf population will be threatened by lower genetic diversity in the foreseeable future. Overall, the best scientific and commercial information available indicates that this issue is unlikely to undermine the Wyoming,

the GYA, or the NRM gray wolf population's recovered status and that this issue, singularly or in combination with other factors, is unlikely to cause the population to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

We considered all potential threats individually and cumulatively, including all sources of mortality, currently facing the species and those reasonably likely to affect the species in the foreseeable future throughout Wyoming and the GYA. Collectively, the available information indicates that wolves in Wyoming, the GYA, and the NRM DPS are recovered, likely to remain recovered, and unlikely to again become threatened with extinction within the foreseeable future. Thus, in accordance with 50 CFR 424.11(d), we are delisting wolves in Wyoming. This rulemaking is separate and independent from, but additive to, the previous action delisting wolves in the remainder of the NRM DPS (all of Idaho, all of Montana, eastern Oregon, eastern Washington, and north-central Utah) (74 FR 15123, April 2, 2009; 76 FR 25590, May 5, 2011).

Significant Portion of the Range Analysis

Having determined that gray wolf in Wyoming does not meet the definition of endangered or threatened throughout its range, we must next consider whether there are any significant portions of its range that are in danger of extinction or likely to become endangered. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines the term ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have not addressed it in our regulations including: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the NRM gray wolf (74 FR 15123, Apr. 12, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, Feb. 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (i.e., species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout a SPR, then, the entire species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Therefore, the consequence of finding that a species is endangered or threatened in a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (i.e., prior to the 2007 Solicitor's Opinion), because no consistent, long term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. Resiliency describes the characteristics of a species that allow it to recover from periodic disturbance. Redundancy (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. Representation (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitats is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species) and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to

recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether, without that portion, the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species' conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be currently imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, i.e., if that portion were completely extirpated. In other words, the portion of the range need not be so important that even being in danger of extinction in that portion would be sufficient to cause the remainder of the range to be endangered; rather, the complete extirpation (in a hypothetical future) of the species in that portion would be required to cause the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the portion status analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

In this case, we have already determined wolves are not threatened or endangered in areas including protected and game portions of the State. Therefore, this analysis only evaluates whether the portions of Wyoming where wolves are treated as predators constitute a threatened or endangered significant portion of the range of wolves in Wyoming, the GYA, or the NRM DPS.

When analyzing the significance of the predator area to wolf conservation, it is important to understand the role, or lack thereof, that the predator area plays in the conservation of the species. Wyoming's predator area was not envisioned to meaningfully contribute to wolf recovery in the region (in fact, the predator area contains zero percent of the original recovery zone) as it has very little suitable habitat (~19 percent of the State's suitable habitat). Today, even with the protections of the Act, very few wolves, packs, and breeding pairs occupy the predator area (3 of 27 breeding pairs, 8 of 48 packs, and 46 of 328 individual wolves in Wyoming at the end of 2011). If all of the wolves, packs, and breeding pairs that occupy the predator area were extirpated, the remainder of the Wyoming, the GYA, or the NRM wolf population would not become endangered. This determination is based on our conclusion that the protected and game portions of the State are of sufficient size and contain enough suitable habitat to support and maintain a recovered wolf population in Wyoming over the long term, given the expected management strategy for this area, without any survival in the predator area. While some wolves that primarily occupy the Trophy Area will be killed when traveling into the predator area, total mortality from such events is expected to be minimal, would not compromise the population's recovered status, and would not cause the remainder of the range to become endangered. Furthermore, while wolf mortality in the predator area could affect successful migration between subpopulations, such mortality: (1) Is expected to be opportunistic and

minimal, and (2) is not expected to affect genetic factors to the point that it could cause the remainder of the range to become endangered. In short, even if no wolves survived in, or successfully traversed, the predator area, the NRM DPS as well as wolves in Wyoming and the GYA would not become endangered. All of these issues are discussed in more detail above.

Based on this information and analysis, we conclude that the predator portion of Wyoming does not represent ''a significant portion of range.''

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to implement a system in cooperation with the States, to monitor for at least 5 years the status of all species that have recovered and been removed from the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12). The primary goal of post-delisting monitoring is to ensure that the recovered species does not deteriorate, and if an unanticipated decline is detected, to take measures to halt the decline to avoid relisting the species as threatened or endangered. If relisting is ever warranted, as directed by section 4(g)(2) of the Act, we will make prompt use of the Act's emergency listing provisions if we determine the wolf faces a significant risk to its well-being.

Wolves have been monitored in the NRM DPS for over 20 years. The NRM region was intensively monitored for wolves even before wolves were documented in Montana in the mid-1980s (Weaver 1978; Ream and Mattson 1982, pp. 379–381; Kaminski and Hansen 1984, p. v). Numerous Federal, State, and Tribal agencies, universities, and special interest groups assisted in those various efforts. Since 1979, wolves have been monitored using standard techniques including collecting, evaluating, and following up on suspected observations of wolves or wolf signs by natural resource agencies or the public; howling or snow tracking surveys conducted by the Service, cooperators, volunteers, and interested special interest groups; and by capturing, radio-collaring, and monitoring wolves. We only treat wolves and wolf packs as confirmed when Federal, State, or Tribal agency verification is made by field staff that can reliably identify wolves and wolf signs.

At the end of the year, we compile agency-confirmed wolf observations to estimate the minimum number of and location of adult wolves and pups that were likely alive on December 31 of that year. These data are then summarized by packs to indicate minimum population size, approximate composition, and minimum distribution. This level of wildlife monitoring is intensive and provides relatively accurate minimum estimates of wolf population distribution and structure (Service *et al.* 2012, Table 1–4, Figure 1–4). The Service Annual Reports have documented all aspects of the wolf management program including staffing and funding, legal issues, population monitoring, livestock conflicts, control to reduce livestock and pet damage, research (predator/prey interactions, livestock/wolf conflict prevention, disease and health monitoring, publications, etc.) and public outreach.

In Wyoming after delisting, the WGFD, the National Park Service, the Service, and the Shoshone and Arapahoe Tribal Fish and Game Department will each monitor wolf populations in areas under their respective jurisdiction and share information as appropriate. These agencies will monitor breeding pairs and total number of wolves in Wyoming in order to document their minimum number, distribution, reproduction, and mortality. These agencies will continue to use the monitoring techniques and strategies that have been used to estimate the NRM wolf population for more than 20 years, but may modify these techniques through time as new knowledge becomes available and as the parties responsible for monitoring gain additional experience at wolf management and conservation. Information from these partners will be published by WGFD in an annual wolf report. Similar reports have been published annually since 1989 by the Service and our partners (Service *et al.* 1989–2012, entire).

For the post-delisting monitoring period, the best source of that information will be the State's annual report or other wolf reports and publications. We intend to post the annual State wolf reports on our Web site (*http://www.fws.gov/mountain-prairie/species/mammals/wolf/*) by around April of each following year. We also intend to annually publish an assessment of the status of the wolf population in the NRM DPS during the post-delisting monitoring period. This assessment will consider the minimum numbers of packs, breeding pairs, and total numbers of wolves in mid-winter by State and by recovery area as well as any changes in threats. This information will inform whether a formal status review is necessary.

Specifically, the following scenarios will lead us to initiate a formal status review to determine if relisting is warranted:

(1) If the wolf population falls below the minimum recovery level of 10 breeding pairs or 100 wolves in Wyoming statewide (including YNP and the Wind River Indian Reservation) at the end of any 1 year;

(2) If the wolf population segment in Wyoming excluding YNP and the Wind River Indian Reservation falls below 10 breeding pairs or 100 wolves at the end of the year for 3 consecutive years;

(3) If the wolf population in Wyoming falls below 15 breeding pairs or 150 wolves, including YNP and the Wind River Indian Reservation, for 3 consecutive years; or

(4) If a change in State law or management objectives would significantly increase the threat to the wolf population.

As discussed above in Issue and Response #49, we will also conduct a status review if the above standards are routinely not achieved—an outcome we do not anticipate.

Status review or relisting decisions will be based on the best scientific and commercial data available. If a formal status review is triggered during the post-delisting monitoring period by these triggers or the triggers noted for the remainder of the DPS in our 2009 delisting rule (74 FR 15123, April 2, 2009), the review will evaluate the status of the entire NRM DPS to determine if relisting is warranted. In the unlikely event such a review is ever necessary, the review would attempt to identify why a particular area is not meeting its population objectives. For example, if the wolf population in Wyoming falls below 15 breeding pairs or 150 wolves including YNP and the Wind River Indian Reservation for 3 consecutive years when the Wyoming wolf population under State jurisdiction is at least 10 breeding pairs and at least 100 wolves, the status review would focus on factors affecting wolves in YNP and the Wind River Indian Reservation. Adaptive management strategies may be recommended in this review.

All such reviews will be made available for public review and comment, including peer review by select species experts. If relisting is ever warranted, as directed by section 4(g)(2) of the Act, we will make prompt use of the Act's emergency listing provisions if necessary to prevent a significant risk to the well-being of the NRM DPS. Additionally, if any of these scenarios occur during the mandatory post-delisting monitoring period of at least 5 years, the post-delisting monitoring period will be extended 5 additional years from that point.

Effects of the Rule

Once effective, this rule will remove the protections of the Act for all gray wolves in Wyoming. This rulemaking is separate and independent from, but additive to, the previous action delisting wolves in the remainder of the NRM DPS (all of Idaho, all of Montana, eastern Oregon, eastern Washington, and north-central Utah) (74 FR 15123, April 2, 2009; 76 FR 25590, May 5, 2011). Additionally, once effective, this rule will remove the special regulations under section 10(j) of the Act designating Wyoming as a nonessential experimental population area for gray wolves. These regulations currently are found at 50 CFR 17.84(i) and 17.84(n). We are making this rule effective less than 30 days after the date of publication. As stated above, this rule removes protective regulations pertaining to gray wolves in Wyoming. Therefore, this rule is ''a substantive rule which * * * relieves a restriction.'' As set forth in 5 U.S.C. 553(d)(1), such a rule may be made effective less than 30 days after its publication date.

Required Determinations

Paperwork Reduction Act

The OMB regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that ''ten or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. 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.

This rule does not contain any collections of information that require approval by OMB under the Paperwork Reduction Act. As described under the Post-Delisting Monitoring section above, gray wolves in Wyoming will be monitored by WGFD, Sovereign Tribal Nations in Wyoming, the National Park Service, and the Service. We do not anticipate a need to request data or other information from 10 or more persons during any 12-month period to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more non-Federal individuals, groups, or organizations per year, we will first obtain information collection approval from the OMB.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This issue is also addressed further in Issue and Response 5 above.

Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

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. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have coordinated with the affected Tribes on this rule and earlier related rules including offers to consult with Native American Tribes and Native American organizations in order to both (1) provide them with a complete understanding of the changes, and (2) to understand their concerns with those changes. If requested, we will conduct additional consultations with Native American Tribes and multi-tribal organizations subsequent to this final rule in order to facilitate the transition to State and tribal management of wolves within Wyoming.

References Cited

A complete list of references cited is available: (1) On the Internet at *http://www.regulations.gov* or *http://www.fws.gov/mountain-prairie/species/mammals/wolf/* or (2) upon request from the Denver Regional Office, Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** above).

Authority

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

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Wolf, gray [Northern Rocky Mountain DPS]'' under MAMMALS in the List of Endangered and Threatened Wildlife.

§ 17.84 [Amended]

■ 3. Amend § 17.84 by removing and reserving paragraphs (i) and (n).

Dated: August 22, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–21988 Filed 8–31–12; 4:15 pm]

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Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, and 579

Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and Equipment Recall Regulations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, and 579

[Docket No. NHTSA–2012–0068; Notice 1]

RIN 2127–AK72

Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and Equipment Recall Regulations

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

ACTION: Notice of proposed rulemaking (NPRM); Proposal to revise a currently approved information collection.

SUMMARY: NHTSA is proposing amendments to certain provisions of the early warning reporting (EWR) rule and the regulations governing motor vehicle and equipment safety recalls. The amendments to the EWR rule would require light vehicle manufacturers to specify the vehicle type and the fuel and/or propulsion system type in their reports and add new component categories of stability control systems for light vehicles, buses, emergency vehicles, and medium-heavy vehicle manufacturers, and forward collision avoidance, lane departure prevention, and backover prevention for light vehicle manufacturers. In addition, NHTSA proposes to require motor vehicle manufacturers to report their annual list of substantially similar vehicles via the Internet.

As to safety recalls, we propose, among other things, to require certain manufacturers to submit vehicle identification numbers (VIN) for recalled vehicles and to daily report changes in recall remedy status for those vehicles; require online submission of recalls reports and information; and require adjustments to the required content of the owner notification letters and envelopes required to be issued to owners and purchasers of recalled vehicles and equipment.

DATES: Written comments regarding these proposed rule changes may be submitted to NHTSA and must be received on or before: November 9, 2012. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on proposed revisions to existing information collections. See the Paperwork Reduction Act section under Rulemaking Analyses below. All comments relating to the revised information collection requirements should be submitted to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section on or before November 9, 2012. Comments to OMB are most useful if submitted within 30 days of publication.

ADDRESSES: Written comments to NHTSA may be submitted using any one of the following methods:

- *Mail:* Send comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the US Government regulations Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays.

Whichever way you submit your comments, please remember to mention the docket number of this document within your correspondence. The docket may be accessed via telephone at 202–366–9324.

Comments regarding the proposed revisions to existing information collections should be submitted to NHTSA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Instructions: All comments submitted in relation to these proposed rule changes must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the Supplementary Information section of this document. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Please see the Privacy Act heading under Rulemaking Analyses and Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues on EWR requirements, contact Tina Morgan, Office of Defects Investigation, NHTSA (telephone: 202–366–0699). For non-legal issues on recall requirements, contact Jennifer Timian, Office of Defects Investigation (telephone: 202–366–0209). For legal issues, contact Andrew J. DiMarsico, Office of Chief Counsel, NHTSA (telephone: 202–366–5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Summary of the Proposed Rule
III. Background
  A. The Early Warning Reporting Rule
  B. The Foreign Defect Reporting Rule
  C. Defect and Noncompliance Information Reports and Notifications
  D. Scope of this Rulemaking
IV. Discussion
  A. Statutory Background on Early Warning, Foreign Defect Reporting and Recall Notification Requirements
  B. Matters Considered in Adding Data Elements to Early Warning Reports
  C. Vehicle Type for Light Vehicle Aggregate Data
  D. Reporting by Fuel and/or Propulsion System Type
  E. New Component Categories for Light Vehicles, Buses, Emergency Vehicles, and Medium-Heavy Vehicles
  1. Stability Control Systems
  2. Forward Collision Avoidance and Lane Departure Prevention
  3. Backover Prevention
  F. Proposed EWR Reporting Templates
  G. Electronic Submission of Annual Substantially Similar Vehicle Lists
  H. VIN Submission and Recall Remedy Completion Information for Safety Recalls
  I. Added Requirements for Information Required to be Submitted in a Part 573 Defect and Noncompliance Information Report
  1. An Identification and Description of the Risk Associated with the Safety Defect or Noncompliance with FMVSS
  2. As to Motor Vehicle Equipment Recalls, the Brand Name, Model Name, and Model Number of the Equipment Recalled
  3. Prohibited Disclaimers in Part 573 Defect and Noncompliance Information Report
  J. Online Submission of Recall-Related Reports, Information, and Associated Documents and Recall Reporting Templates
  K. Amendments to Defect and Noncompliance Notification Requirements Under Part 577
  L. Regulatory Changes to Add or Make More Specific Current Requirements for Manufacturers to Keep NHTSA Informed of Changes and Updates in Defect and Noncompliance Information Reports
  M. Requirement to Notify NHTSA in the Event of Filing of Bankruptcy Petition of a Recalling Manufacturer
  N. Lead Time
V. Request for Comments
VI. Privacy Act Statement

VII. Rulemaking Analyses and Notices
A. Regulatory Policies and Procedures
B. Regulatory Flexibility Act
C. Executive Order 13132 (Federalism)
D. Unfunded Mandates Reform Act
E. Executive Order 12988 (Civil Justice Reform)
F. Paperwork Reduction Act
1. Part 579 Collection
2. Parts 573 and 577 Collections
G. Executive Order 13045
H. Regulation Identifier Number (RIN)
I. Plain Language
J. Data Quality Act
K. Executive Order 13609
VIII. Proposed Regulatory Text

I. Introduction

In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Public Law 106–414. Up until the TREAD Act's enactment, NHTSA relied primarily on analyses of complaints from consumers and technical service bulletins (TSBs) from manufacturers to identify potential safety related defects in motor vehicles and motor vehicle equipment. Congress concluded that NHTSA did not have access to data that may provide an earlier warning of safety defects or information related to foreign recalls and safety campaigns. Accordingly, the TREAD Act required that NHTSA prescribe rules requiring motor vehicle and equipment manufacturers to submit certain information to NHTSA that would assist identifying potential safety related defects and to require manufacturers to submit reports on foreign defects and safety campaigns. *See* 49 U.S.C. 30166(m) and (l).

On July 10, 2002, NHTSA published its Early Warning Reporting (EWR) regulations requiring that motor vehicle and equipment manufacturers provide certain early warning data. 49 CFR part 579, subpart C; *see* 67 FR 45822. The EWR rule requires quarterly reporting of early warning information: Production information; information on incidents involving death or injury; aggregate data on property damage claims, consumer complaints, warranty claims, and field reports; and copies of field reports (other than dealer reports and product evaluation reports) involving specified vehicle components, a fire, or a rollover.

On October 11, 2002, NHTSA published regulations requiring manufacturers to report foreign recalls or other safety campaigns in a foreign country covering a motor vehicle, item of motor vehicle equipment or tire that is identical or substantially similar to a motor vehicle, item of motor vehicle equipment or tire sold or offered for sale in the United States. 49 CFR part 579, subpart B, 67 FR 63310. Under these regulations, manufacturers are required to submit annual lists of substantially similar vehicles to NHTSA. 49 CFR 579.11(e)

As described more fully in the Background section, below, EWR requirements vary somewhat depending on the nature of the reporting entity (motor vehicle manufacturers, child restraint system manufacturers, tire manufacturers, and other equipment manufacturers) and the annual production of the entity. The EWR information NHTSA receives is stored in a database, called Artemis, which also contains additional information (e.g., domestic and foreign recall details and complaints filed directly by consumers) related to defects and investigations.

The Early Warning Division of the Office of Defects Investigation (ODI) reviews and analyzes a huge volume of early warning data and documents submitted by manufacturers. Using its traditional sources of information, such as consumer complaints from vehicle owner questionnaires (VOQs) and manufacturers' own communications, and the additional information provided by EWR submissions, ODI investigates potential safety defects. These investigations often result in recalls.

In the last several years, the agency published two amendments to the EWR regulations. On May 29, 2007, NHTSA made three changes to the EWR rule. 72 FR 29435. First, the definition of ''fire'' was amended to more accurately capture fire-related events. 72 FR 29443. Second, the agency eliminated the requirement to produce hard copies of a subset of field reports known as ''product evaluation reports.'' *Id.* Last, the agency limited the time that manufacturers must update a missing vehicle identification number (VIN)/tire identification number (TIN) information or a component in a death or injury incident to a period of no more than one year after NHTSA receives the initial report. 72 FR 29444. On December 5, 2008, NHTSA issued a notice of proposed rulemaking (NPRM) which was followed in September 2009 by a final rule that modified the reporting threshold for light vehicle, bus, medium-heavy vehicle (excluding emergency vehicles), motorcycle and trailer manufacturers' quarterly EWR reports. *See* 73 FR 74101 (December 5, 2008); 74 FR 47740, 47757–58 (September 17, 2009). This rule further required manufacturers to submit EWR reports with consistent product names from quarter to quarter and amended part 573 *Defect and Noncompliance Responsibility and Reports* to require tire manufacturers to provide tire identification number ranges for recalled tires. 74 FR 47757–58. The final rule also stated that manufacturers must provide the country of origin for a recalled component. *Id.* Last, the rule amended the definition of ''other safety campaign'' to be consistent with the definition of ''customer satisfaction campaign.'' *Id.*

The September 2009 rule did not address several proposals in the preceding December 2008 NPRM. Those proposals sought to require light vehicle manufacturers to include the vehicle type in the aggregate portion of their quarterly EWR reports, report on use of electronic stability control in light vehicles, and specify fuel and/or propulsion systems when providing model designations. *Id.* The agency decided to issue a separate rulemaking addressing some of the foregoing proposals to obtain more meaningful comments. *See* 74 FR 47744. Today's document addresses proposals raised in the December 2008 NPRM not resolved by the September 2009 final rule.

Recently, in July 2012, Congress enacted the Moving Ahead for Progress in the 21st Century (MAP–21) Act, Public Law 112–141, 126 Stat 405, 763 (July 6, 2012). Section 31301 of this Act requires the Secretary of Transportation to mandate that motor vehicle safety recall information be made available to the public on the Internet, be searchable by vehicle make and model and vehicle identification number (VIN), be in a format that preserves consumer privacy, and includes information about each recall that has not been completed for each vehicle. The section further provides that the Secretary may initiate a rulemaking to require manufacturers to provide this information on a publicly accessible Internet Web site. *Id.*

II. Summary of the Proposed Rule

The early warning reporting (EWR) rule requires certain manufacturers of motor vehicles and motor vehicle equipment to submit information to NHTSA. 49 CFR part 579, subpart C. The EWR rule divides vehicle manufacturers into different segments based upon weight or vehicle application. These segments are light vehicles, buses, emergency vehicles, medium-heavy vehicles, motorcycles and trailers. The proposed amendments to the EWR rule concern light vehicles, buses, emergency vehicles, and medium-heavy vehicles.

Today's document proposes requiring light vehicle manufacturers to report vehicle type in their death and injury and aggregate reports. Under the current EWR rule, light vehicle manufacturers submit vehicle type as part of

production reports, but do not report vehicle types in either their death and injury reports or their aggregate reports. This proposal seeks to correct this inconsistency.

We propose to require reporting on additional components in the light vehicle, bus, emergency vehicle, and medium-heavy vehicle component categories and to amend the light vehicle, bus, emergency vehicle, and medium-heavy vehicle reporting templates.

This proposal also would add a requirement that light vehicle manufacturers provide the fuel and/or propulsion system type for nine (9) different fuel and/or propulsion system types. In addition, the proposal would add definitions for each fuel and/or propulsion system.

Furthermore, today's document proposes to add four (4) new light vehicle and one (1) new medium-heavy vehicle component reporting categories. The new light vehicle component categories are electronic stability control, forward collision avoidance, lane departure prevention, and backover prevention; the new medium-heavy vehicle component category is stability control/roll stability control. We also propose new definitions for each of these components. We are also proposing to correct a minor inconsistency in light vehicle manufacturer reporting of vehicle types to capture several recently introduced light vehicle technologies.

This proposal also seeks comments on amendments to a manufacturer's reporting requirements related to safety recalls and other safety campaigns in foreign countries under subpart B of part 579. 49 CFR part 579, subpart B. We propose to standardize the manner of submitting annual lists of substantially similar vehicles under 579.11(e) by uploading them, via a secure Internet connection, to NHTSA's Artemis database using a template provided on NHTSA's EWR Web site. Currently, manufacturers may submit their substantially similar lists by mail, facsimile or email. *See* 49 CFR 579.6(a).

Today's proposed rule proposes changes and additions to the regulations governing recalls, 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports,* and 49 CFR Part 577, *Defect and Noncompliance Notification.*

We are proposing a number of measures in an effort to improve the information the agency receives from recalling manufacturers concerning the motor vehicles and equipment they are recalling and the plans for remedying those products, in addition to distribution of that information to the affected public.

First, for motor vehicle recalls, and in accordance with the MAP–21 Act, we are proposing to adopt regulations that would implement MAP–21's mandate that the Secretary require motor vehicle safety recall information be made available to the public on the Internet, be searchable by vehicle make and model and vehicle identification number (VIN), be in a format that preserves consumer privacy, and includes information about each recall that has not been completed for each vehicle. *See* MAP–21 Act, Public Law 112–141, § 31301, 126 Stat 405, 763 (July 6, 2012). The Secretary was given the discretion to engage in rulemaking to require each manufacturer to provide the information above on vehicles it manufacturers on a publicly accessible Internet Web site. Id. at section 31301(b). We propose to exercise the authority given the Secretary in sections (a) and (b), not only to meet the *Act's mandate, but to increase the numbers of motor vehicles remedied under safety recall campaigns which, in turn, will serve to reduce the risk of incidents, as well as injuries or fatalities, associated with vehicles that contain safety defects or fail to meet minimum FMVSS.*

To meet MAP–21, and increase the number of motor vehicles remedied under safety recall campaigns, the agency proposes to offer vehicle owners and prospective purchasers an enhanced vehicle recalls search tool through its Web site, *www.safercar.gov*, that will go beyond the current functionality to search by specific make and model vehicle, and will offer a VIN-based search function that will report back whether a vehicle has been subject to a safety recall, and whether that vehicle has had the manufacturer's free remedy performed.

In order to gather the information necessary for us to provide this enhanced functionality, we are proposing to require larger volume, light vehicle manufacturers to submit the VINs for vehicles affected by a safety recall to NHTSA. We further propose to require these manufacturers to submit to NHTSA recall remedy completion information on those vehicles, again supplied by VIN, that is updated at least once daily so that our search tool has ''real time'' information that can inform owners and other interested parties if a recall is outstanding on a vehicle. In our effort to improve the information received from recalling manufacturers, and so NHTSA can better understand and process recalls, as well as manage and oversee the recall campaigns and the manufacturers conducting those campaigns, we are proposing to require certain additional items of information from recalling manufacturers. These additional items include an identification and description of the risk associated with the safety defect or noncompliance with a FMVSS, and, as to motor vehicle equipment recalls, the brand name, model name, and model number, of the equipment recalled. We are also proposing that manufacturers be prohibited from including disclaimers in their Part 573 information reports.

Similarly, as part of our effort to ensure we are apprised of information related to recalls that we oversee, we are also proposing changes to add or make more specific current requirements for manufacturers to keep NHTSA informed of changes and updates in information provided in the defect and noncompliance information reports they supply.

We are proposing to require manufacturers to submit through a secure, agency-owned and managed web-based application, all recall-related reports, information, and associated documents. This is to improve our efficiency and accuracy in collecting and processing important recalls information and then distributing it to the public. It also will reduce a current and significant allocation of agency resources spent translating and processing the same information that is currently submitted in a free text fashion, whether that text is delivered via a hard copy, mailed submission, or delivered electronically through email.

In order to ensure that owners are promptly notified of safety defects and failures to meet minimum safety standards, we are proposing to specify that manufacturers notify owners and purchasers no later than 60 days of when a safety defect or noncompliance decision is made. In the event the free remedy is not available at the time of notification, we are proposing that manufacturers be required to issue a second notification to owners and purchasers once that remedy is available.

In an effort to encourage owners to have recall repairs made to their vehicles and vehicle equipment, we are proposing additional requirements governing the content and formatting of owner notification letters and the envelopes in which they are mailed in an effort to improve the number of vehicles that receive a remedy under a recall. We are proposing that all letters include ''URGENT SAFETY RECALL'' in all capitals letters and in an enlarged font at the top of those letters, and that for vehicle recalls, the manufacturer place the VIN of the owner's vehicle

affected by the safety defect or noncompliance, within the letter. To further emphasize the importance of the communication, and to distinguish it from other commercial communications, we are proposing that the envelopes in which the letters are mailed be stamped with the logos of the National Highway Traffic Safety Administration and the U.S. Department of Transportation, along with a statement that the letter is an important safety recall notice issued in accordance with Federal law.

Lastly, we are proposing to add a requirement for manufacturers to notify the agency in the event they file for bankruptcy. This requirement will help us preserve our ability to take necessary and appropriate measures to ensure recalling manufacturers, or others such as corporate successors, continue to honor obligations to provide free remedies to owners of unsafe vehicle and equipment products.

III. Background

A. The Early Warning Reporting Rule

On July 10, 2002, NHTSA published a rule implementing the EWR provisions of the TREAD Act, 49 U.S.C. 30166(m). 67 FR 45822. This rule requires certain motor vehicle manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA that could be used to identify potential safety-related defects.

The EWR regulation divides manufacturers of motor vehicles and motor vehicle equipment into two groups with different reporting responsibilities for reporting information. The first group consists of: (a) Larger vehicle manufacturers that meet certain production thresholds that produce light vehicles, buses, emergency vehicles, medium-heavy vehicles, trailers and/or motorcycles; (b) tire manufacturers that produce over a certain number per tire line; and (c) all manufacturers of child restraints. Light vehicle, motorcycle, trailer and medium-heavy vehicle manufacturers except buses and emergency vehicles that produced, imported, offered for sale, or sold 5,000 or more vehicles annually in the United States are required to report comprehensive reports every calendar quarter. Emergency vehicle manufacturers must report if they produced, imported, offered for sale, or sold 500 or more vehicles annually and bus manufacturers must report if they produced, imported or offered for sale, or sold 100 or more buses annually in the United States. Passenger car tire, light truck tire and motorcycle tire manufacturers that produced, imported, offered for sale, or sold 15,000 or more per tire line are also required to provide comprehensive quarterly reports. The first group must provide comprehensive reports every calendar quarter. 49 CFR 579.21–26. The second group consists of all other manufacturers of motor vehicles and motor vehicle equipment (i.e., vehicle manufacturers that produce, import, or sell in the United States fewer than 5,000 light vehicles, medium-heavy vehicles (excluding emergency vehicles and buses), motorcycles, or trailers annually; fewer than 500 emergency vehicles annually; fewer than 100 buses annually; manufacturers of original motor vehicle equipment; and manufacturers of replacement motor vehicle equipment other than child restraint systems and tires). The second group has limited reporting responsibility.[1] 49 CFR 579.27.

Light vehicle, bus, emergency vehicle and medium-heavy vehicle manufacturers must provide information relating to:

- Production (the cumulative total of vehicles or items of equipment manufactured in the year).
- Incidents involving death or injury based on claims and notices received by the manufacturer.
- Claims relating to property damage received by the manufacturer.
- Consumer complaints (a communication by a consumer to the manufacturer that expresses dissatisfaction with the manufacturer's product or performance of its product or an alleged defect).
- Warranty claims paid by the manufacturer pursuant to a warranty program (in the tire industry these are warranty adjustment claims).
- Field reports (a report prepared by an employee or representative of the manufacturer concerning the failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment).

For property damage claims, warranty claims, consumer complaints and field reports, light vehicle, bus, emergency vehicle and medium-heavy vehicle manufacturers submit information in the form of numerical tallies, by specified system and component. These data are referred to as aggregate data. Reports on deaths or injuries contain specified data elements. In addition, light vehicle, bus, emergency vehicle and medium-heavy vehicle manufacturers are required to submit copies of field reports, except for dealer and product evaluation reports.

On a quarterly basis, vehicle and equipment manufacturers meeting the production thresholds discussed above must provide comprehensive reports for each make and model for the calendar year of the report and nine previous model years for vehicles and four years for equipment. The vehicle systems or components on which manufacturers provide information vary depending upon the type of vehicle or equipment manufactured. Light vehicle manufacturers must provide reports on twenty (20) vehicle components or systems: Steering, suspension, service brake, parking brake, engine and engine cooling system, fuel system, power train, electrical system, exterior lighting, visibility, air bags, seat belts, structure, latch, vehicle speed control, tires, wheels, seats, fire and rollover. Bus, emergency vehicle and medium-heavy vehicle manufacturers must provide reports on an additional four (4) vehicle components or systems: service brake air, fuel system diesel, fuel system other, and trailer hitch.[2]

B. The Foreign Defect Reporting Rule

On October 11, 2002, NHTSA published regulations implementing foreign motor vehicle and product defect reporting provisions of the TREAD Act, 49 U.S.C. 30166(1). 67 FR 63295, 63310; 49 CFR 579, subpart B. The Foreign Defect Reporting rule requires certain motor vehicle manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA when a manufacturer or a foreign government determines that a safety recall or other safety campaign should be conducted in a foreign country for products that are identical or substantially similar to vehicles or items of equipment sold or offered for sale in the United States. 49 U.S.C. 30166(1)(1) & (2). To assist the agency's program implementation, manufacturers must submit an annual list of substantially similar vehicles to NHTSA. 49 CFR 579.11(e). This list is due by November 1 of each year. Manufacturers may submit their substantially similar vehicle list by mail, facsimile or by email. 49 CFR 579.6(a). NHTSA offers a Microsoft Excel template on its Web site *http://*

[1] In contrast to the comprehensive quarterly reports provided by manufacturers in the first group, the second group of manufacturers does not have to provide quarterly reports. These manufacturers only submit information about a death incident when they receive a claim or notice of a death.

[2] Manufacturers of motorcycles, trailers, child restraints and tires report on varying systems and components. *See* 49 CFR 579.23–26.

www.safercar.gov/ that manufacturers can download and use to upload their substantially similar lists directly to NHTSA's Artemis database. The vast majority of manufacturers submit their substantially similar list by uploading the template directly to the agency.

C. Defect and Noncompliance Information Reports and Notifications

Pursuant to 49 U.S.C. 30118 and 30119, manufacturers are required to provide notice to the Secretary if the manufacturer determines that a motor vehicle or item of motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. The regulation implementing the manufacturer's requirement to provide notice to NHTSA is located at 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports,* which, among other things, requires manufacturers to provide reports (commonly referred to as Defect or Noncompliance reports, or Part 573 Reports, as the case may be) to NHTSA on defects in motor vehicles and motor vehicle equipment and noncompliances with motor vehicle safety standards found in 49 CFR part 571. Section 573.6 specifies the information that manufacturers are required to submit to the agency and Section 573.9 specifies the address for submitting reports. One element is the identification of the vehicles containing the defect or noncompliance. Section 573.6(c)(2)(i) requires manufacturers to identify passenger cars by the make, line, model year, the dates of manufacture and other information as necessary to describe the vehicles. For all other vehicles, Section 573.6(c)(2)(ii) requires manufacturers to identify the vehicles by body style or type, dates of manufacture and any other information as necessary to describe the vehicle, such as the GVWR. Section 573.6(c)(3) requires manufacturers to submit the total number of vehicles that potentially contain the defect or noncompliance. Section 573.8 requires manufacturers to maintain lists of VINs of the vehicles involved in a recall as well as the remedy status for each vehicle to be included in a manufacturer's quarterly reporting as specified in 573.7.

The conduct of a recall notification campaign, including how and when owners, dealers, and distributors are notified, is addressed by regulation in 49 CFR Part 577, *Defect and Noncompliance Notification.* Section 577.5 specifies required content and structure of the owner notifications. Section 577.13 specifies required content for dealer and distributor notifications. Section 577.7 dictates the time and manner of these notifications.

Recently, in July 2012, Congress enacted the MAP–21 Act, Public Law 112–141, 126 Stat. 405 (July 6, 2012). It requires, among other things, that the Secretary of Transportation require that motor vehicle safety recall information be made available to the public on the Internet, be searchable by vehicle make and model and vehicle identification number (VIN), be in a format that preserves consumer privacy, and includes information about each recall that has not been completed for each vehicle. Id. *at section 31301(a).* The Act provides that the Secretary may initiate a rulemaking to require manufacturers to provide this information on a publicly accessible Internet Web site. *Id.* at 31301(b).

D. Scope of this Rulemaking

Today's proposed rule is limited in scope to the proposed amendments to the EWR requirements, the foreign defect reporting rule, and to the requirements associated with safety recall reporting, administration, and execution as delineated in Parts 573 and 577 of Title 49 of the Code of Federal Regulations. Apart from the proposed changes noted above in the summary section, NHTSA intends to leave the remaining current EWR, foreign defect reporting regulations, and safety recalls implementing regulations Parts 573 and 577 unchanged.

IV. Discussion

A. Statutory Background on Early Warning Reporting, Foreign Defect Reporting and Recall Notification Requirements

Under the early warning reporting requirements of the TREAD Act, NHTSA is required to issue a rule establishing reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the agency's ability to carry out the provisions of Chapter 301 of Title 49, United States Code, which is commonly referred to by its initial name the National Traffic and Motor Vehicle Safety Act or as the Safety Act. *See* 49 U.S.C. 30166(m)(1), (2). Under one subsection of the early warning provisions, NHTSA is to require reports of information in the manufacturers' possession to the extent that such information may assist in the identification of safety-related defects and which concern, *inter alia,* data on claims for deaths and aggregate statistical data on property damage. 49 U.S.C. 30166(m)(3)(A)(i); *see also* 49 U.S.C. 30166(m)(3)(C). Another subsection, specifically 30166(m)(3)(B), authorizes the agency to require manufacturers to report information that may assist in the identification of safety defects. Specifically, section 30166(m)(3)(B) states: ''As part of the final rule * * * the Secretary may, to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request.'' This subsection conveys substantial authority and discretion to the agency. Most EWR data, with the exception of information on deaths and property damage claims, is reported under regulations authorized by this provision.

The agency's discretion is not unfettered. Per 49 U.S.C. 30166(m)(4)(D), NHTSA may not impose undue burdens upon manufacturers, taking into account the cost incurred by manufacturers to report EWR data and the agency's ability to use the EWR data meaningfully to assist in the identification of safety defects.

The TREAD Act also amended 49 U.S.C. 30166 to add a new subsection (l) to address reporting of foreign defects and other safety campaigns by vehicle and equipment manufacturers. This section requires manufacturers of motor vehicles or items of motor vehicle equipment to notify NHTSA if the manufacturer or a foreign government determines that the manufacturer should conduct a recall or other safety campaign on a motor vehicle or item of motor vehicle equipment that is identical or substantially similar to a motor vehicle or item of motor vehicle equipment offered for sale in the United States. 49 U.S.C. 30166(l). Subsection (l) does not define ''identical'' or the term ''substantially similar.'' Under the TREAD Act's foreign defect reporting provisions, NHTSA is to specify the contents of the notification. *Id.*

The Safety Act also requires manufacturers of motor vehicles or items of motor vehicle equipment to notify NHTSA and owners and purchasers of the vehicle or equipment if the manufacturer determines that a motor vehicle or item of motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. 49 U.S.C. 30118(c). Manufacturers must provide notification pursuant to the procedures set forth in section 30119 of the Safety Act. Section 30119 sets forth the contents of the

notification, which includes a clear description of the defect or noncompliance, the timing of the notification, means of providing notification and when a second notification is required. 49 U.S.C. 30119. Subsection (a) of section 30119 confers considerable authority and discretion on NHTSA, by rulemaking, to require additional information in a manufacturer's notification. *See* 49 U.S.C. 30119(a)(7).

In July 2012, Congress enacted the MAP–21 Act. See Public Law 112–141, 126 Stat. 405 (July 6, 2012). Sections 31301 of the MAP–21 Act mandates that the Secretary require that motor vehicle safety recall information be made available to the public on the Internet, and it provides authority to the Secretary, in his discretion, to conduct a rulemaking to require each manufacturer to provide its safety recall information on a publicly accessible Internet Web site. Under section 31301(a), Congress has directed the Secretary to require motor vehicle safety information be available on the Internet, searchable by vehicle make, model and VIN, preserves consumer privacy and includes information regarding completion of the particular recall. Section 31301(b) authorizes the Secretary, in his discretion, to conduct a rulemaking requiring each manufacturer to provide the safety recall information in paragraph (a) on a publicly accessible Internet Web site. Specifically, section 31301(a) states:

(a) VEHICLE RECALL INFORMATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall require that motor vehicle safety recall information—

(1) Be available to the public on the Internet;

(2) be searchable by vehicle make and model and vehicle identification number;

(3) be in a format that preserves consumer privacy; and

(4) includes information about each recall that has not been completed for each vehicle.

While Congress has provided certain parameters to its mandate to make safety recall information available on the Internet, it has not directly spoken on the mechanism to implement section 31301(a), leaving the agency to use its discretion to fill any ambiguity. Paragraph (a) is silent with respect to who is required to make safety recall information available, which manufacturers are subject to the requirement, the types of safety information to be made available and how and when the information is placed on the Internet.

While it is clear that motor vehicle manufacturers have data regarding safety recalls, NHTSA also receives safety recall information from manufacturers pursuant to other provisions of the Safety Act and NHTSA's regulations. *See* 49 U.S.C. §§ 30118 and 30119; 49 CFR part 573. With both manufacturers and NHTSA collecting safety recall information, section 30301(a) lacks precise language as to who is required to make that information available on the Internet. Paragraph (a) is clear that the ''Secretary shall require'' the information be placed on the Internet, but it is unclear who the Secretary is to require to place safety recall information on the Internet. Under this language, either manufacturers or NHTSA may be required to place safety recall information on the Internet.

In addition, section 30301(a) is silent on which manufacturers are subject to making information available on the Internet, only requiring motor vehicle safety recall information be made available. This section does not specify which vehicle manufacturers are required to make their information available. Consistent with traditional tools of statutory construction, Congress is presumed to know each agency's statutory and regulatory scheme. Under its regulatory scheme, NHTSA often breaks down motor vehicle manufacturers into different vehicle classes based upon each vehicle's application. For example, under the Early Warning Reporting (EWR) Regulation, 49 CFR part 579, subpart C, NHTSA divides motor vehicle manufacturers into several reporting categories such as light vehicles, medium-heavy vehicles, motorcycles and trailers and has limited the reporting obligations of classes of vehicle manufacturers that annually produce under a certain amount. *See* 49 CFP 579.21–24. Here, Congress has not directly spoken on whether safety recall information must be made available from all vehicle manufacturers, certain classes of vehicle manufacturers or, like the EWR rule, certain manufacturers based on annual production. Congress, accordingly, has left it to NHTSA to determine the scope of manufacturers that are required to place safety recall information on the Internet.

Moreover, section 30301(a) does not expressly state the type of safety recall information that must be placed on the Internet, merely requiring ''motor vehicle safety recall information'' and requiring that this information be searchable by vehicle, make and model and VIN. Other than vehicle make, model and VIN, section 30301(a) requires only that ''motor vehicle safety information'' include information about each recall that has not been completed for each vehicle. However, under NHTSA regulations, recall information is broader than the information specifically listed in section 30301(a). Under 49 CFR part 573, in general, manufacturers are required to submit several types of information, such as the total number of vehicles, an estimate of the percentage of vehicles with the defect, a description of the defect, a chronology of all the principal events that lead to the determination of a recall, a description of the manufacturer's remedy program, etc. *See* 49 CFR 573.6. Given the diversity of information that could constitute safety recall information, Congress has vested considerable discretion with NHTSA to determine the appropriate types of information to be placed on the Internet.

Section 30301(a) also fails to specify how and when the safety recall information shall be placed on the Internet. Other than providing for the information to be searchable by vehicle make, model and VIN, and that the format preserves consumer privacy, section 31301(a) is silent on the format and degree of availability of the safety recall information. Current information available on the Safercar.com Web site is available in different formats and degrees of availability. For instance, the agency makes consumer complaints available on the Internet in two different formats. One format is searchable by vehicle, make, model and component. The other format provides the public the ability to download NHTSA's consumer complaint database, which permits the individual to perform customized searches of the consumer complaint database. Without precise language specifying the format and degree of availability, NHTSA is left to determine the appropriate mechanism for placement on the Internet.

While providing authority to conduct a rulemaking, section 31301(b) provides little help in resolving the issues in paragraph (a). Paragraph (b) provides the Secretary with the authority to conduct a rulemaking to provide the information in subsection (a) and provides limited instructions as to the scope of any such rulemaking and sharing such information with automobile dealers and consumers. Section 31301(b) states:

(b) RULEMAKING.—The Secretary may initiate a rulemaking proceeding to require each manufacturer to provide the information described in subsection (a), with respect to that manufacturer's motor vehicles, on a publicly accessible

Internet Web site. Any rules promulgated under this subsection—

(1) shall limit the information that must be made available under this section to include only those recalls issued not more than 15 years prior to the date of enactment of [MAP–21];

(2) may require information under paragraph (1) to be provided to a dealer or an owner of a vehicle at no charge; and

(3) shall permit a manufacturer a reasonable period of time after receiving information from a dealer with respect to a vehicle to update the information about the vehicle on the publicly accessible Internet Web site.

Similar to paragraph (a) of 31301, paragraph (b) does not address which manufacturers are subject to the requirement to provide safety recall information on the publicly accessible Internet, whether the information is placed on the manufacturer's public Web site or NHTSA's Web site, the types of safety information to be made available and how and when the information is placed on the Internet. Instead, it vests considerable discretion in the agency to conduct a rulemaking to best meet the statutory goals of section 31301. The MAP–21 Act further specifies that a manufacturer's filing of a bankruptcy petition under Chapter 11 of Title 11 of the United States Code, does not negate its duty to comply with, among other things, the defect and noncompliance notification and reporting obligations, nor the requirement to provide a free remedy, under the Safety Act. *MAP–21 Act at section at 31312.*

B. Matters Considered in Adding Data Elements to Early Warning Reports

Under EWR, we endeavor to collect a body of information that may assist in the identification of potential safety-related defects in motor vehicles and motor vehicle equipment. When we believe that the EWR information may be refined or enhanced to further advance our goal of identifying safety defects, we consider factors that are relevant to the particular area of EWR under consideration. In view of our broad statutory authority to require reporting of information that may assist in the identification of potential safety-related defects, we do not believe that it is necessary or appropriate to identify a prescriptive list of factors for delineating particular data elements. Nonetheless, based on our experience, the following considerations, among other things, have been identified as relevant to evaluating whether or not adding data elements to light vehicle, bus, emergency vehicle and medium-heavy vehicle reporting would assist in identifying safety-related defects:

- The importance of the data to motor vehicle safety.
- The maturity of a particular technology and its market penetration.
- Whether the current component categories are adequate to capture information related to proposed data elements.
- Whether ODI has investigated or been notified of vehicle recalls related to the proposed data elements.
- Whether VOQ complaints related to the data elements have been useful in opening investigations into potential safety-related defects and whether those investigations have resulted or may result in recalls.
- Whether manufacturers collect information on the proposed data elements.
- The burden on manufacturers.

We emphasize that the general approach of the EWR program is to collect data on numerous systems and components in a very wide range and volume of vehicles for the agency to then systematically review information, with the end result being the identification of a relatively small number of potential safety problems, compared to the amount of data collected and reviewed. These data are considered along with other information collected by and available to the agency in deciding whether to open investigations.

C. Vehicle Type for Light Vehicle Aggregate Data

The EWR regulation requires light vehicle manufacturers producing 5000 or more vehicles annually to submit production information including the make, the model, the model year, the type, the platform and the production. 49 CFR 579.21(a). Manufacturers must provide the production as a cumulative total for the model year, unless production of the product has ceased. *Id.* While light vehicle manufacturers are required to provide the type of vehicle with their production, they are not required to provide the type of vehicle when they submit death and injury data pursuant to 49 CFR 579.21(b) or with aggregate data under 49 CFR 579.21(c).[3] Under today's notice, we propose to amend 579.21(b) and (c) to require light vehicle manufacturers to provide the type of vehicle when they submit their death and injury data and aggregate data under those sections. We also propose to amend the light vehicle reporting templates for the EWR death and injury and aggregate reports to reflect adding vehicle type. The proposed light vehicle templates are located in Appendix A below.

Today's proposal will assist ODI to identify potential safety-related defects by making light vehicle EWR data received internally consistent. Because light vehicle manufacturers providing quarterly EWR reports are not obligated to provide the vehicle type in their death and injury and aggregate EWR reports, NHTSA is unable to distinguish whether the light vehicle death and injury and aggregate data are associated with certain vehicle types such as passenger cars, multi-purpose vehicles, light trucks or incomplete vehicles. Without being able to isolate this information by vehicle type, ODI cannot match aggregate data with production data.

If this proposal is adopted, NHTSA could perform a more focused analysis of the EWR information. For instance, warranty claims by vehicle type from the aggregate data can be matched with corresponding vehicle type production data, allowing us to determine the occurrence of warranty claims per vehicle type. This proportion can be used in a subsequent, more focused and thorough analysis of EWR data. A relatively high rate of warranty claims per production unit may warrant further examination of EWR and other ODI sources of information. This proposal would permit a more efficient and targeted use of the EWR data in terms of detecting and identifying potential safety concerns.

Light vehicle manufacturers should be able to readily identify the vehicle type from the VIN provided in the information they receive. About 95 percent of the EWR reports on incidents involving a death or injury include a VIN when initially submitted by manufacturers. 71 FR 52040, 52046 (September 1, 2006). Warranty claims and field reports normally contain a VIN because the manufacturer's authorized dealer or representative has access to the vehicle and, in the case of warranty claims, a vehicle manufacturer will not pay a warranty claim unless the claim includes the VIN. For consumer complaints and property damage claims, the VIN or other information is generally available to identify the type of vehicle. If the VIN is not available, we propose that the manufacturer submit ''UN'' for ''unknown'' in the required field.

NHTSA believes that this change would place a minimal burden on light

[3] For light vehicles, type means a vehicle certified by its manufacturer pursuant to 49 CFR 567.4(g)(7) as a passenger car, multipurpose passenger vehicle, or truck or a vehicle identified by its manufacturer as an incomplete vehicle pursuant to 48 CFR 568.4. *See* 49 CFR 579.4.

vehicle manufacturers. Each manufacturer would need to add a field to its EWR database containing the light vehicle type and perform reprogramming of internal software. In its response to the December 2008 NPRM, the Alliance of Automobile Manufacturers (Alliance), an industry trade group,[4] did not object to this proposal, stating that the costs were relatively modest. *See* Comment of Alliance of Automobile Manufacturers to December 5, 2008 NPRM (docket #NHTSA 2008–0169–0013.1, located at *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064808443c2).*

We seek comment on today's proposed amendments to 49 CFR 579.21(b) and (c) to add a vehicle type requirement to EWR death and injury and aggregate data reports. In any comments on burden, we seek details on costs to revise EWR templates and software to meet this proposal.

D. Reporting by Fuel and/or Propulsion System Type

The EWR regulation requires light vehicle manufacturers to report the required information by make, model and model year. 49 CFR 579.21(a), (b)(2), (c). The rule also requires light vehicle manufacturers to subdivide their EWR death and injury and aggregate reports by components. 49 CFR 579.21(b)(2), (c). The reporting by make, model and model year and component categories have remained unchanged since the EWR regulation was published in July 2002. Since that time, manufacturers have introduced new technologies to meet the demand for more fuel efficient vehicles. Currently, light vehicle manufacturers do not identify the specific fuel or propulsion system used in their vehicles. As use of these new technologies expands, we are concerned that the current EWR reporting scheme is not sufficiently sensitive for readily identifying vehicles with different fuel and/or propulsion system types. For example, some models, such as the Toyota Camry, are offered with both conventional and hybrid propulsion systems. To address these concerns, we propose to amend 579.21(a), (b), and (c) to require light vehicle manufacturers to report fuel and/or propulsion system types in their EWR reports. We also propose to amend the light vehicle reporting templates to reflect these proposals. We propose adding eight (8) fuel and/or propulsion systems and an ''other'' category in which manufacturers may bin their vehicles. We are also proposing definitions for each fuel and/or propulsion system and codes that a manufacturer would use when reporting.

The current Corporate Average Fuel Economy (CAFE) standard and new proposed CAFE standards will spur manufacturers to increasingly produce fuel efficient vehicles employing various technologies. Following the direction set by President Obama on May 21, 2010, NHTSA and the Environmental Protection Agency (EPA) have issued a Notice of Proposed Rulemaking (NPRM) for Fuel Economy and Greenhouse Gas emissions regulations for model year (MY) 2017–2025 light-duty vehicles.[5] NHTSA believes that to meet the proposed CAFE rule, manufacturers will increase their production of light vehicles with alternate fuel/propulsion systems which will raise new safety issues in these vehicle that are currently unaccounted for in the EWR regulatory scheme.

Therefore, as the automotive industry begins to introduce and produce more vehicles with new propulsion systems, NHTSA believes now is an opportune time to start collecting EWR information to assist in identifying potential defects in these new systems. As currently configured, the EWR reporting structure may mask potential problems with these systems. NHTSA is currently unable to discern from EWR data whether a particular vehicle problem is unique to a particular fuel or propulsion system. Under today's proposal, problems with a particular make and model that may be unique to one fuel/propulsion system could be readily distinguished from problems that may apply to that make and model regardless of the fuel/propulsion system. Also, this proposal would permit NHTSA to investigate safety concerns in many makes and models with similar fuel/propulsion systems (e.g., a battery problem in a plug-in electric vehicle or a hydrogen fuel cell problem that may extend to similarly equipped vehicles).

We believe that adding the appropriate fuel and/or propulsion system type to EWR will enhance NHTSA's ability to identify and address potential safety defects related to specific fuel and/or propulsion systems. Recent investigations indicate that dividing light vehicles by make, model, and fuel/propulsion system will assist in our identification of safety defect trends. NHTSA has opened several investigations on light vehicle models manufactured with more than one fuel or propulsion system as an option. Each investigation involved an issue with a specific fuel or propulsion system that under current EWR reporting is masked by light vehicle manufacturers reporting the vehicles under one category for fuel/propulsion:

- PE02–071 and EA03–001 involved alleged vehicle explosions during fires on 1996–2003 Ford Crown Victoria vehicles powered by compressed natural gas (CNG). The 1996–2003 Crown Victoria was manufactured with two (2) different fuel/propulsion systems: Spark ignition fuel (SIF) and CNG. This resulted in a recall: NHTSA recall number 03V472.
- PE07–028 involved alleged CNG tanks exploding during fires on 2003 Honda Civic vehicles powered by CNG. Honda recalled the vehicles. *See* NHTSA recall number 07V512. The 2003 Honda Civic is available with three (3) different fuel/propulsion systems: SIF, hybrid (HEV) or CNG.

Accordingly, we propose amending 49 CFR 579.21(a), (b), and (c) to require light vehicle manufacturers to provide the type of fuel and/or propulsion system when they submit their EWR data. We also propose amending the light vehicle reporting templates for the EWR production information, death and injury, and aggregate reports to reflect adding fuel and/or propulsion type.

We propose adding a new definition of ''fuel and/or propulsion system type'' in 49 CFR 579.4. The new definition would provide that ''*Fuel and/or propulsion system type* means the variety of fuel and/or propulsion systems used in a vehicle, as follows: Compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel-cell power (FCP); hybrid electric vehicle (HEV); hydrogen based power (HBP); plug-in hybrid (PHV); and spark ignition fuel (SIF).'' Manufacturers would identify the fuel and/or propulsion system on the EWR template in the appropriate field. In addition to amending 579.4 to add ''fuel and/or propulsion system type'', we propose to amend that section to add a definition for each fuel/propulsion system type, as follows:

- *Compressed natural gas (CNG)* means, in the context of reporting fuel and/or propulsion system type, a system that uses compressed natural gas to propel a motor vehicle.
- *Compression ignition Fuel (CIF)* means, in the context of reporting fuel and/or propulsion system type, a system

[4] The Alliance members are BMW Group, Chrysler LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

[5] Notice of Proposed Rulemaking, *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 76 FR 74854–75420,* December 1, 2011 (located at *http://www.nhtsa.gov/staticfiles/rulemaking/pdf/cafe/2017-25_CAFE_NPRM.pdf).*

that uses diesel or any diesel-based fuels to propel a motor vehicle. This includes biodiesel.

- *Electric battery power (EBP)* means, in the context of reporting fuel and/or propulsion system type, a system that uses only batteries to power an electric motor to propel a motor vehicle.
- *Fuel-cell power (FCP)* means, in the context of reporting fuel and/or propulsion system type, a system that uses fuel cells to generate electricity to power an electric motor to propel the vehicle.
- *Hybrid electric vehicle (HEV)* means, in the context of reporting fuel and/or propulsion system type, a system that uses a combination of an electric motor and internal combustion engine to propel a motor vehicle.
- *Hydrogen based power (HBP)* means, in the context of reporting fuel and/or propulsion system type, a system that uses hydrogen to propel a motor vehicle through means other than a fuel cell.
- *Plug-in hybrid (PHV)* means, in the context of reporting fuel and/or propulsion system type, a system that combines an electric motor and an internal combustion engine to propel a motor vehicle and is capable of recharging its batteries by plugging in to an external electric current.
- *Spark ignition fuel (SIF)* means, in the context of reporting fuel and/or propulsion system type, a system that uses gasoline, ethanol, or methanol based fuels to propel a motor vehicle.

We anticipate that the majority of vehicles produced by manufacturers will be captured by our proposed definitions. However, the proposal includes the term ''other'' to identify vehicle models employing a fuel/propulsion system that is not enumerated in our other proposed fuel and/or propulsion types. For example, the Dual fuel F–150 would be classified as ''Other,'' since it is propelled by either gasoline or CNG. We propose to use the following codes for fuel/propulsion type: CNG, CIF, EBP, FCP, HEV, HBP, PHV, SIF and OTH (Other).

Our fuel/propulsion system types include most of the alternative fuels found in the Energy Policy and Conservation Act (EPCA), as amended, 49 U.S.C. 32901, but not all. Due to differences in the Corporate Average Fuel Economy (CAFE) and EWR programs, our proposed categories of fuel/propulsion systems differ slightly from the alternative fuels listed in section 32901. While EPCA encourages manufacturers to produce vehicles using alternative fuels, the EWR program has a different focus. In the context of alternative fuel vehicles, that focus is on potential problems that may occur within a fuel or propulsion system, which requires the agency to differentiate between propulsion technologies that are, or will be, available to consumers. For EWR purposes, there is no technical hardware difference between a vehicle with a spark ignition fuel engine capable of using a variety of fuels, such as ethanol or gasoline, or a mixture of fuels, such as E85 (ethanol/gasoline mixture) and a vehicle with a spark ignition fuel engine using gasoline only. While such a fuel distinction is appropriate for the CAFE program, EWR will not benefit from that level of detail because the specific fuel type being used will be unknown.

We solicit comment on our proposed definitions and seek input on clarifying each distinct system type. We also seek comment on whether additional fuel and/or propulsion system types should be added and how they might be defined.

The Alliance's comments to the December 2008 NPRM opposed adding fuel or propulsion systems because it would increase manufacturers' reporting costs. First, the Alliance contended that adding fuel/propulsion system reporting by distinct models would impose a one-time cost of approximately $170,000 (per manufacturer) to revise their EWR systems to collect and properly bin the data. Substantial ongoing costs would be incurred as well. According to these comments, manufacturers separately maintain some data, such as production and sales information, based upon the type of fuel or propulsion system in various models. However, the Alliance states that manufacturers do not separate vehicles by fuel or propulsion system when reporting EWR data by component category. Doing so, the Alliance states, would require manufacturers to revise their systems, which appears to be the bulk of the manufacturers' costs. The Alliance also noted that adding fuel/propulsion types would require manufacturers to report on hundreds of different models. Today's proposal is different than the one proposed in the December 2008 NPRM. Our current proposal would not add the fuel and/or propulsion system type to the model name as was proposed in December 2008. It proposes to add a new separate reporting element to the EWR.

If today's proposal is adopted, manufacturers will incur a one-time cost to revise EWR templates and software to incorporate the fuel and/or propulsion system types in their EWR reporting. However, in the agency's view, adding the fuel and/or propulsion system type to EWR will not be unduly burdensome for manufacturers because manufacturers already collect this information. Manufacturers collect and analyze data on alternative fueled models, like any other model, to monitor quality control, safety problems and to make in-process improvements. In their data collections, manufacturers distinguish between fuel/propulsion systems within a model to conduct root cause analyses. Once EWR systems are revised, additional ongoing burdens should be negligible as manufacturers already have established EWR operations. In addition, the agency has proposed a relatively small number of fuel and/or propulsion system types that should not require manufacturers to report on hundreds of different models, as stated by the Alliance.

We seek comments on our proposal to amend 49 CFR 579.21 to add fuel and/or propulsion system type to light vehicle reporting, the proposed types of fuel or propulsion systems and each proposed fuel or propulsion type definition. We also seek comments on the proposed light vehicle templates located in section F below incorporating our proposed amendments. Finally, on comments related to burden, we seek details on costs to revise EWR templates and software to meet the fuel and/or propulsion system type proposal.

E. New Component Categories for Light Vehicles, Buses, Emergency Vehicles, and Medium-Heavy Vehicles

The EWR regulation requires light and medium-heavy vehicle manufacturers to report the required information by specific component categories. 49 CFR 579.21(b)(2), (c), (d) and 579.22(b), (c), (d). The component categories for each vehicle type have remained unchanged since the EWR regulation was published in July 2002. Since that time, new technologies, such as Electronic Stability Control (ESC), Roll Stability Control (RSC), Forward Collision Avoidance (FCA), Lane Departure Prevention (LDP), and Backover Prevention, have been introduced into the marketplace. As these new technologies are implemented, and demand for these products increases in the market place, we are concerned that the EWR component categories are unsuitable for capturing these newer technologies. As a result, today we propose to add components ESC, RSC, FCA, LDP and backover prevention to EWR reporting.

1. Stability Control Systems

We propose to add a new component for light vehicles, buses, emergency vehicles and medium/heavy vehicles in 49 CFR 579.21(b)(2) and 49 CFR

579.22(b)(2) for stability control systems.[6] On April 6, 2007, NHTSA published a final rule adding Federal Motor Vehicle Safety Standard (FMVSS) No. 126 *Electronic Stability Control Systems.* 72 FR 17236, 17310, as amended 72 FR 34410 (June 22, 2007). FMVSS No. 126 requires that all new light vehicles, with certain exceptions, must be equipped with an ESC system meeting the standard's requirements. As it pertains to buses, emergency vehicles and medium-heavy vehicles, NHTSA studies indicate that stability control systems provide potential safety benefits for heavy trucks.[7] In addition, for some manufacturers, stability control systems are standard on all heavy trucks.[8] As a result of FMVSS No. 126 and safety benefits of stability control systems on heavy vehicles, the number of vehicles containing stability control systems is increasing rapidly and potentially could include most of the vehicle fleet.

In addition to stability control systems, RSC systems are increasingly being installed on heavy trucks. RSC detects a high lateral acceleration condition that could lead to a truck rolling over, and intervenes by automatically applying the vehicle's brakes and/or reducing engine power and applying the engine retarder. We are proposing to include RSC in the definition of stability control in this notice for medium-heavy trucks. In addition, while trailer-based RSC systems are available, we are not proposing to include reporting of RSC incidents by trailer manufacturers at this time. RSC systems are installed predominantly on powered vehicles such as truck tractors, rather than trailers, in the current marketplace.

The EWR regulation currently does not have a specific component for stability control issues. *See* 49 CFR 579.21(b)(2) and 579.22(b)(2). Light vehicle manufacturers report ESC issues under ''03 service brake system'' and medium-heavy vehicle manufacturers report stability control issues under ''03 service brake, hydraulic'' and ''04 service brake, air'' because those definitions include stability control. As a result, potential stability control issues may be masked within the broader service brake category, making NHTSA unable to examine and detect potential safety concerns that may be associated directly with a vehicle's stability control system. Adding an ESC component category to light vehicles and stability control and/or RSC to buses, emergency vehicles and medium-heavy vehicles reporting categories will allow NHTSA to capture data on this mandatory system on light vehicles and new system on medium-heavy trucks and analyze stability control data for potential defects.

We propose to use the ESC definition found in 49 CFR 571.126.S4 for light vehicles. We propose to define ESC for buses, emergency vehicles, and medium-heavy vehicles as a system that has all the following attributes:

- That augments vehicle directional stability by applying and adjusting the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicles to induce correcting yaw moment to limit vehicle oversteer and to limit vehicle understeer;
- That enhances rollover stability by applying and adjusting the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to reduce lateral acceleration of a vehicle;
- That is computer-controlled with the computer using a closed-loop algorithm to induce correcting yaw moment and enhance rollover stability;
- That has a means to determine the vehicle's lateral acceleration;
- That has the means to determine the vehicle's yaw rate and to estimate its side slip or side slip derivative with respect to time;
- That has the means to estimate vehicle mass or, if applicable, combination vehicle mass;
- That has the means to monitor driver steering input;
- That has a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle and/or combination vehicle; and
- That, when installed on a truck tractor, has the means to provide brake pressure to automatically apply and modulate the brake torques of a towed semi-trailer.

RSC has similar attributes related to rollover stability. We propose to define RSC as a system that has the following attributes:

- That enhances rollover stability by applying and adjusting the vehicle brake torques to reduce lateral acceleration of a vehicle;
- That is computer-controlled with the computer using a closed-loop algorithm to enhance rollover stability;
- That has a means to determine the vehicle's lateral acceleration;
- That has the means to determine the vehicle mass or, if applicable, combination vehicle mass; That has a means to modify engine torque, as necessary, to assist the driver in maintaining rollover stability of the vehicle and/or combination vehicle; and
- That, when installed on a truck tractor, has the means to provide brake pressure to automatically apply and modulate the brake torques of a towed semi-trailer.

Recent investigative activities and manufacturer recalls illustrate that adding a stability control component category likely will assist NHTSA to uncover potential safety issues. The agency has opened several light vehicle ESC investigations since 2007 that under current EWR reporting is masked by light vehicle manufacturers reporting ESC issues under service brake system:

- PE08–056 and EA09–002 involved alleged ESC malfunctions on 2005–2006 Chevrolet Corvettes. The subject vehicles are allegedly experiencing sudden and unexpected inappropriate brake application to one or more wheels causing the ESC to malfunction. This investigation resulted in a recall (10V172).
- PE08–072 and EA09–006 involved alleged ESC and/or Traction Control System (TCS) malfunctions on 2003 Toyota Sequoias. The subject vehicles are allegedly experiencing sudden and unexpected inappropriate brake application to one or more wheels causing the ESC to malfunction. This investigation resulted in a recall (10V176).

In addition, there have been eleven (11) light vehicle recalls[9] due to ESC problems and three (3) medium-heavy vehicle recalls[10] due to stability control problems. The agency believes that stability control issues are likely to increase as vehicle manufacturers add stability control to their fleets. In our view, it is important to capture EWR data on this key safety component, supplementing NHTSA's traditional screening methods to assist in

[6] Manufacturers may market or refer to ESC as electronic stability program, vehicle stability control, rollover stability control, vehicle dynamics integrated management system, or active skid and traction control, among others.

[7] *See* DOT HS 811 205, October 2009, ''Safety Benefits of Stability Control Systems for Tractor-Semitrailers'' located at *http://www.nhtsa.gov/DOT/NHTSA/NRD/Multimedia/PDFs/Crash%20Avoidance/2009/811205.pdf and* DOT HS 811 233, November 2009, ''Heavy Truck ESC effectiveness Study Using NADS'' located at *http://www.nhtsa.gov/DOT/NHTSA/NRD/Multimedia/PDFs/Crash%20Avoidance/2009/811233.pdf.*

[8] *Not your daddy's brakes: Technology advances allow for shorter stopping distances and the development of stability and collision avoidance systems, but there is a need for good maintenance,* Fleet Equipment, March 22, 2010 (located at *http://www.fleetequipmentmag.com/Item/71983/not_your_daddys_brakes.aspx*).

[9] The light vehicle recalls are designated NHTSA recall nos.: 98V080, 04V554, 05V119, 05V120, 05V177, 05V316, 08V645, 09V122, 09V130, 09V187, and 09V280.

[10] The medium-heavy vehicle recalls are designated NHTSA recall nos.: 05V543, 09V115, and 09V196.

identifying potential safety issues sooner.

The Alliance's comments to the December 2008 NPRM opposed adding an ESC component, citing both substantive concerns and cost burdens. The Alliance contends that most consumers will be unaware whether ESC was activated or operated properly during an accident. In addition, because ESC shares components with other systems, the Alliance states that it will be difficult for manufacturers to ascertain whether a consumer complaint, warranty claim, field report or other item reportable under EWR should be included in the ESC category. The Alliance also asserts that adding an ESC category would require a substantial investment.

The agency acknowledges that in some instances consumers may not perceive stability control problems during a crash or will be unable to distinguish stability control problems from problems with other components. This may occur when a consumer communicates through a complaint or a property damage claim to the manufacturer. Although there may be some of these instances, the agency believes that misidentification of stability control complaints will be negligible. The agency receives vehicle owner questionnaires (consumer complaints) reporting potential problems with ESC. Furthermore, consumer complaint data represent only 5 percent and property damage claims represent less than 1 percent of the EWR aggregate data for the service brake component. Consumer complaints and property damage claims data are likely to be analyzed by a dealer's technician or manufacturer's representative, who can identify customers' concerns and classify them accordingly as either stability control or another component.[11]

The bulk of the EWR data for the service brake component consists of warranty claims and field reports. Manufacturers likely have the capability to identify and report specific problems associated with stability control in warranty claims and field reports. Manufacturers of light vehicles have elaborate warranty systems that capture information about discrete components and service codes. Manufacturers also track issues identified by their representatives in the field. These data are valuable to manufacturers because they are the primary sources for manufacturers to identify problems, and to monitor quality and in-process improvements. With the ability to identify specific issues through service codes and field inspections, manufacturers should be able to code stability control issues appropriately.

Adding a new component to the light vehicle, bus, emergency vehicle and medium-heavy vehicle EWR reporting is likely to create a one-time cost for manufacturers to amend their reporting template and revise their software systems to appropriately categorize the stability control system data. We do not believe this cost will be substantial or pose an undue burden on manufacturers. In the agency's view, as discussed above, stability control is an important required component for vehicle control and a malfunction can have an impact on vehicle safety. Capturing data on this new technology will assist the agency in identifying potential problems sooner. Because the number of vehicles with stability control is increasing rapidly and all light vehicles manufactured after September 1, 2011 must have ESC, we believe that it is appropriate for the agency to start collecting EWR data on this specific component.

Therefore, we propose to amend 49 CFR 579.21(b)(2) and 49 CFR 579.22(b)(2) to add Stability Control System to the list of components in that section. We also propose to amend 49 CFR 579.4(b) to add the regulatory definition of ESC systems, found in 49 CFR 571.126.S4,[12] to add definition of stability control and RSC for buses, emergency vehicles, and medium-heavy vehicles, and to amend the definition of ''service brake system'' to remove stability control from the definition. We seek comments on our proposal to amend 49 CFR 579.21(b)(2) and 49 CFR 579.22(b)(2) to add the component ''stability control system.'' We also seek comments on the proposed definition for this component.

2. Forward Collision Avoidance and Lane Departure Prevention

In addition to adding a component category for ESC, we propose to add Forward Collision Avoidance (FCA) and Lane Departure Prevention (LDP) system components for light vehicles in 49 CFR 579.21(b)(2). These emerging crash avoidance technologies have been in development for some time and are appearing in the current light vehicle fleet. As these new technologies are implemented, and demand increases, we are concerned that the EWR component categories will not capture them. NHTSA believes it is appropriate to add these technologies to EWR now.

An FCA system monitors and detects the presence of objects in a vehicle's forward travel lane and alerts the driver by means of an audible and/or visual warning of a potential impact with the object. FCA systems seek to warn drivers of stopped, decelerating or slower moving vehicles in the vehicle's lane of travel in order to avoid collisions. Some FCA systems may also assist with driver's braking or automatically brake to avoid collisions. Manufacturers may market or refer to this crash-avoidance technology as forward collision warning (FCW), predictive brake assist, crash imminent braking, dynamic brake support, collision warning system, collision warning with brake support, collision mitigation brake system, pre-sense or pre-safe systems, pre-collision system, collision warning with brake assist, and/or collision warning with auto brake, among other things. We propose to define FCA as a system:

- That has an algorithm or software to determine distance and relative speed of an object or another vehicle directly in the forward lane of travel; and
- That provides an audible, visible, and/or haptic warning to the driver of a potential collision with an object in the vehicle's forward travel lane.

The system may also include a feature:

- That pre-charges the brakes prior to, or immediately after, a warning is issued to the driver;
- That closes all windows, retracts the seat belts, and/or moves forward any memory seats in order to protect the vehicle's occupants during or immediately after a warning is issued; or
- That applies any type of braking assist or input during or immediately after a warning is issued.

[11] ODI recently reviewed consumer complaints submitted to the agency by a manufacturer in the context of a follow-up information request on EWR service brake data. ODI was able to classify the manufacturer's consumer complaints into brake and ESC issues based on the text associated with each consumer complaint.

[12] FMVSS No. 126 defines Electronic Stability Control system or ESC system to mean a system that has all of the following attributes:

(1) That augments vehicle directional stability by applying and adjusting the vehicle brake torques individually to induce a correcting yaw moment to a vehicle;

(2) That is computer-controlled with the computer using a closed-loop algorithm to limit vehicle oversteer and to limit vehicle understeer;

(3) That has a means to determine the vehicle's yaw rate and to estimate its side slip or side slip derivative with respect to time;

(4) That has a means to monitor driver steering inputs;

(5) That has an algorithm to determine the need, and a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle; and

(6) That is operational over the full speed range of the vehicle (except at vehicle speeds less than 20 km/h (12.4 mph), when being driven in reverse, or during system initialization).

FCA systems generally employ radar, laser and/or camera-based sensors to detect objects in front of the vehicle. Toyota Motor Corporation's Pre-Collision System (PCS) utilizes a radar-based system. Nissan's Infiniti brand offers a laser-based system. Toyota's Advanced Pre-Collision System combines both a radar and camera. For FCA reporting, we anticipate manufacturers will submit EWR data related to these systems and their specific components. Where an issue arises involving a component that has more than one function, we propose that manufacturers report EWR data based upon the functionality of the component as reported in the underlying claim, notice, warranty claim, complaint, property damage claim or field report.

An LDP system warns a driver that his or her vehicle is exiting a travel lane and may automatically provide steering input to help the driver maintain lane position. Manufacturers may market or refer to this crash-avoidance technology as lane departure warning, lane keeping assist, lane detection algorithm, lane assist, and/or lane monitoring systems, among others. These systems generally use a small camera to detect and track lane markings and provide an audible and/or visible warning to the driver if the vehicle is in danger of crossing the lane line unintentionally. Accordingly, we propose to define LDP as a system:

- That has an algorithm or software to determine the vehicle's position relative to the lane markers and the vehicle's projected direction; and
- That provides an audible, visible, and/or haptic warning to the driver of unintended departure from a travel lane.

The system may also include a feature:

- That applies the vehicle's stability control system to assist the driver to maintain lane position during or immediately after the warning is issued;
- That applies any type of steering input to assist the driver to maintain lane position during or immediately after the warning is issued; or
- That applies any type of braking pressure or input to assist the driver to maintain lane position during or immediately after the warning is issued.

Most LDP systems function through cameras placed on the windshield that detect lane markers in front of the vehicle and calculate the vehicle's position relative to the lane markers. For LDP reporting, we anticipate manufacturers will submit EWR data related to these systems and their components. When an issue arises with a component that has more than one function, we propose that manufacturers report EWR data based upon the functionality of the component as reported in the underlying claim, notice, warranty claim, complaint, property damage claim or field report.

While FCA and LDP are relatively new technologies, their use is increasing. Registration data indicates that there are over 769,000 and 657,000 registered vehicles equipped with FCA and LDP systems, respectively.[13] The latest production data from EWR indicate that the total number of vehicles with FCA and LDP systems is now 1,656,000 and 1,292,000, respectively.[14]

NHTSA is encouraging deployment of these important crash avoidance systems by notifying consumers which vehicles offer them through the New Car Assessment Program. On July 11, 2008, NHTSA published a final decision notice in the **Federal Register** announcing changes to the New Car Assessment Program (NCAP) for model year 2010. This change was delayed until model year 2011. 73FR 79206. Starting with model year 2011 vehicles, NHTSA recommends ESC, FCW and LDW systems that pass the NCAP performance tests on the Web site *www.safercar.gov.* 73 FR 40016, 40034. The agency believes that adding these technologies in NCAP will increase consumer awareness of these beneficial technologies and spur market demand. 73 FR 40033. We note that today's proposed EWR components FCA and LDP have slightly different naming conventions than the NCAP naming conventions of FCW and LDW. Both EWR's and NCAP's definitions capture basic warning functions of these technologies, but the EWR definition is more generic than NCAP due to the agency's attempt to capture future versions of these systems that the agency had not made a determination whether these systems are beneficial and therefore should receive additional credit under NCAP.

Adding FCA system and LDP component categories to the light vehicle reporting category will assist NHTSA in identifying potential safety issues for these critical safety systems. The EWR regulation currently does not have a specific component for FCA and LDP issues. *See* 49 CFR 579.21(b)(2). Manufacturers may report FCA and LDP issues under ''01 steering system,'' ''03 service brake system,'' or ''18 vehicle speed control.'' As a result, potential FCA and LDP issues will be masked within these broader categories, making NHTSA unable to examine and detect potential safety concerns that may be related to a vehicle's FCA or LDP systems. Adding these component categories to light vehicle reporting will allow NHTSA to obtain data on these important safety systems and analyze them for potential safety concerns.

Adding FCA and LDP as component categories to the light vehicle EWR reporting will require manufacturers to incur a one-time cost to amend their reporting template and revise their software systems to appropriately categorize the data. We do not believe these costs will be substantial or pose an undue burden.

3. Backover Prevention

In addition to adding component categories for ESC, FCA, and LDP, we propose to add a component category for systems designed to mitigate backover crashes for light vehicles in 49 CFR 579.21(b)(2). On December 7, 2010, NHTSA published an NPRM proposing to amend FMVSS No. 111, *Rearview Mirrors,* to expand the current rear visibility requirements for all light vehicles under 10,000 pounds Gross Vehicle Weight Rating by specifying an area behind the vehicle that a driver must be able to see when the vehicle is in reverse. *See* 75 FR 76186. The agency estimates that on average there are 292 fatalities and 18,000 injuries (3,000 of which NHTSA estimates are incapacitating) resulting from backover incidents every year. Of those, 228 fatalities and 17,000 injuries were attributed to backover incidents involving light vehicles under 10,000 pounds. *Id.* at 76187. While many manufacturers currently offer vehicle models with some form of a backover prevention system, in the near term NHTSA believes that manufacturers would meet these new requirements with a rear visibility system that includes a rear-mounted video camera and an in-vehicle visual display. As a result of the rulemaking and the acceptance of backover technologies in the market place, the agency believes that the number of vehicles utilizing some form of a backover prevention system will increase dramatically and that over time these systems will take on different trade names and include additional functionality not present today.

For the purposes of EWR, NHTSA is defining a backover prevention system as a system that provides a rearview image to a driver to prevent a vehicle from striking an individual or other object while traveling in reverse. This definition is similar to the definition in the December 2010 NPRM. Therefore, we propose to define backover prevention as a system that has:

[13] RL Polk Registration data, July 1, 2009.

[14] EWR Production Data, 3rd quarter of 2010.

• A visual image of the area directly behind a vehicle that is provided in a single location to the vehicle operator and by means of indirect vision.

We are proposing to define a backover detection system as a system that provides a visual image to the rear of the vehicle or a sensor-based system that provides a warning to the driver because manufacturers are currently using these types of systems. NHTSA estimates that 19.8 percent of MY 2010 light vehicles have an image-based backover prevention system.[15]

For backover prevention reporting, we anticipate manufacturers will submit EWR data related to these systems and their components. When an issue arises with a component that has more than one function, we propose manufacturers report EWR data based upon the functionality of the component as reported in the underlying claim, notice, warranty claim, complaint, property damage claim or field report.

The agency believes these measures will enhance its ability to identify and address potential safety defects related to this important safety system that is already in the market. The EWR regulation currently does not have a specific component for backover prevention issues. *See* 49 CFR 579.21(b)(2). Currently, manufacturers may report backover prevention issues under ''13 visibility'' or ''11 electrical system.'' As a result, potential backover prevention issues will be masked within these broader categories, making NHTSA unable to examine and detect potential safety concerns that may be associated directly with a vehicle's backover prevention systems. Adding this component category to light vehicle reporting will allow NHTSA to obtain data on these important safety systems and analyze it for potential safety concerns.

Therefore, we propose to amend 49 CFR 579.21(b)(2) to add FCA, LDP, and backover prevention systems to the list of components in that section. We also propose to amend the definition of ''visibility'' to remove an exterior view-based television system for light vehicles. We seek comments on our proposal to amend 49 CFR 579.21(b)(2) to add the components ''forward collision avoidance system,'' ''lane departure prevention system,'' and ''backover prevention system.'' We also seek comments on the proposed definitions for these components.

[15] Preliminary Regulatory Impact Analysis, Backover Crash Avoidance Technologies NPRM FMVSS No. 111.

F. Proposed EWR Reporting Templates

Based upon the proposed amendments for light vehicle manufacturers to provide the vehicle type and fuel and/or propulsion type in their quarterly EWR submissions, and adding ESC, FCA, LDP, and Backover Prevention system components to EWR reporting, we propose to amend the EWR light vehicle production, death and injury, and aggregate reporting templates. The proposed light vehicle reporting templates are located in Appendix A to this NPRM. Figure 1 represents the proposed amended light vehicle production template, Figure 2 represents the proposed amended light vehicle death and injury reporting template and Figure 3 represents the proposed amended light vehicle aggregate reporting template. Appendix B contains the proposed bus, emergency vehicle and medium-heavy vehicle reporting templates that incorporate the proposed amendment to add stability control to these vehicles. Figure 4 represents the proposed amended bus aggregate reporting template, Figure 5 represents the proposed amended emergency vehicle aggregate reporting template and Figure 6 represents the proposed amended medium-heavy vehicle aggregate reporting template. We seek comments on our proposed reporting templates.

G. Electronic Submission of Annual Substantially Similar Vehicle Lists

The foreign defect reporting regulations, 49 CFR part 579, subpart B, require manufacturers selling or offering motor vehicles for sale in the United States to submit annually a document that identifies each model of motor vehicle that the manufacturer sells or plans to sell during the following year in a foreign country that the manufacturer believes is identical or substantially similar to a motor vehicle sold or offered for sale in the United States (or to a motor vehicle that is planned for sale in the United States in the following year) and each such identical or substantially similar vehicle sold or offered for sale in the United States. 49 CFR 579.11(e). Manufacturers may submit this list to NHTSA by mail, facsimile or by email. 49 CFR 579.6. When a manufacturer notifies NHTSA of a safety recall or other safety campaign in a foreign country, the agency searches the manufacturer's substantially similar list for vehicles in the U.S. that may contain a similar problem as identified in the foreign recall or campaign.

Unlike EWR reports, manufacturers are not required to upload their substantially similar list directly to the Artemis database. However, most vehicle manufacturers upload their substantially similar lists directly to Artemis through the agency's secure Internet server. These manufacturers use a template that is available on the agency's Web site, located at *http://www-odi.nhtsa.dot.gov/ewr/xls.cfm*. The agency would prefer that manufacturers upload their lists in to Artemis because submissions by mail, facsimile, or email cannot be uploaded to Artemis and are not readily searchable. To ensure that NHTSA can readily search all substantially similar lists, we propose to amend section 579.6(b) to require that the annual list of substantially similar vehicles required by 579.11(e) be uploaded directly to the Artemis database.

We seek comments on our proposal to require manufacturers to submit their substantially similar list directly to the Artemis database.

H. VIN Submission and Recall Remedy Completion Information for Safety Recalls

We are proposing a number of changes in the regulations governing safety recalls in an effort to improve the information the agency receives from recalling manufacturers about the motor vehicles and equipment they are recalling, plans for remedying those products, and distribution of that information to the affected public.

The first of these changes proposes to require larger volume manufacturers, whose safety recalls address the vast majority of vehicles recalled, to provide to the agency VIN information for the vehicles covered by their respective recall campaigns. This proposed change is aimed, among other things, to accomplish the MAP–21 Act mandate that the Secretary require motor vehicle safety recall information be made available to the public on the Internet, be searchable by vehicle make and model and vehicle identification number (VIN), be in a format that preserves consumer privacy, and includes information about each recall that has not been completed for each vehicle. *See* MAP–21 Act, Public Law 112–141, § 31301(a), 126 Stat 405, 763.With section 31301's mandate to make recall safety information publicly available, we believe the best way to meet MAP–21's requirement is to increase the safety recall information currently available on the agency's Web site. The agency makes a considerable amount of safety recall information available to the public. VIN information from vehicle manufacturers will be used to support an enhanced version of the

agency's current recalls look-up service available online at *www.safercar.gov*. It will enable vehicle owners and other interested users to determine with confidence whether a specific vehicle has a safety defect or noncompliance that has not been remedied under the manufacturer's remedy program. Our current recalls look-up offers the functionality of searching for vehicle safety recalls, among other ways, through a make and model search (and so meeting an express requirement of section 31301(a) of MAP–21 Act), but it does not offer information for any one, specific vehicle. We expect that providing vehicle-specific recalls information will have a positive impact on vehicle recalls completions, thereby reducing the risk of injuries and fatalities associated with motor vehicle safety defects and noncompliances with minimum FMVSS.

Our service will cover all major makes, models, and model years, so that consumers have a ''one stop shop'' for safety recall information on vehicles they may own or consider purchasing. Owners will not need to search multiple Web sites for recalls information regarding their vehicles. The search functionality and returned information will be consistent for all recalls, major manufacturers, and light vehicles.

Additionally, by receiving recall information by VIN, NHTSA's established recall email subscription service can immediately notify its users, over 70,000 at present and growing, when their VIN has been included in a recall. This benefit will be especially important when a recall involves an immediate and imminent safety threat. Consumers will be able to quickly conclude whether a serious safety concern they learn about through television or social media is linked to their particular vehicle.

We propose to amend subsection 573.6(c)(3) to require larger volume motor vehicle manufacturers that manufacture 25,000 or more light vehicles annually or 5,000 or more motorcycles annually to submit electronically the VIN of each vehicle that potentially contains a defect or noncompliance, and will be covered by a safety recall campaign. As with other information required to be submitted on vehicles being recalled, manufacturers would be required to submit this information when submitting a Part 573 Report, unless that information was not available at that time, in which case, it would be submitted when it became available, or, under a proposal addressed later in this notice, within five working days of when that VIN information becomes available.[16]

Our proposal is consistent with recommendations to improve recall completion rates (the percentage of the recalled vehicle population that has the recall remedy performed) made by the U.S. General Accountability Office (GAO) in response to its review of NHTSA's safety recalls. *See* U.S. General Accountability Office, NHTSA Has Options to Improve the Safety Defect Recall Process, GAO–11–603 (2011), available in the agency's rulemaking docket.

Our proposal would impose little to no additional burden on manufacturers. Vehicle manufacturers already acquire VIN information from state motor vehicle agencies for purposes of conducting recalls. This is because, under the Safety Act, and its implementing regulations, a manufacturer must notify each person who is registered under State law as the owner of the vehicle of the recall, and registered owner information is maintained on a VIN basis by the respective State agencies. *See* 49 U.S.C. 30119(d)(1)(A) and 49 CFR 577.7(a)(2)(i). In addition, larger vehicle manufacturers submit specific VINs in connection with certain aspects of the Early Warning Reporting Rule. 49 CFR 579.21, 22, 23, and 24. The agency simply proposes here that vehicle manufacturers submit the VIN information in a prescribed format. Indeed, many manufacturers already provide VIN-based recall look-up functions on their Internet or other commercial Web pages.[17]

In our view, there are benefits to having NHTSA offer a similar application for owners and consumers that cuts across all major makes, models, and model years, so that consumers have a ''one stop shop'' for safety recall information on vehicles they may own or consider purchasing. We believe that providing easy access to this important safety information will facilitate notifications of a recall to owners and encourage owners and consumers to obtain the recall remedy. We believe this would result in increased completion rates and a reduction of the number of unsafe vehicles on U.S. roads.

NHTSA must obtain information from the manufacturer on whether the recall remedy has been performed on each recalled vehicle in order to provide full information to a consumer and to meet the MAP–21 Act's requirement that the Secretary require ''information about each recall that has not been completed for each vehicle.'' Otherwise, the recalls look-up function we envision will tell a consumer only that a vehicle was subject to a safety recall at some point, and not whether the remedy was performed. With the added recall information from large volume light vehicle manufacturers, NHTSA can inform consumers that a vehicle is subject to a safety recall and whether the remedy identified by the manufacturer has been performed and meet MAP–21's express provision to make this information available to the public. The information must be up-to date, so we propose that manufacturers electronically submit on a daily basis the recall remedy status of each vehicle covered by a recall.

We propose that manufacturers provide a vehicle's remedy status using the categories required in the agency's quarterly reporting requirements: Unremedied; inspected and repaired; inspected and determined not to require repair; exported; stolen; scrapped; the owner was unable to be notified (returned mail); or other (for whatever other reason the manufacturer could not remedy the vehicle. *See* 49 CFR 573.7(b)(4) and (5).

We propose an additional category to account for the period between the time a manufacturer has decided to conduct a recall and notified NHTSA, and the time it notifies owners of the availability of the free remedy. This pre-recall launch or ''recall remedy not yet available'' category would inform an owner that his or her vehicle is subject to a recall, but the remedy is not yet available. We propose that for VINs designated by the manufacturer as falling within the pre-recall launch period, our service confirm that the vehicle is subject to the manufacturer's recall, so that an owner is not misinformed as to his/her vehicle's inclusion, and knows that the remedy campaign has not been launched. Our proposal expands the information we currently provide via our recalls search function where we summarize the recall campaign and inform when the recall is expected to start and provide a telephone number for owners to contact the manufacturer for further information. Under our proposal, more information would be available because the manufacturer will now have the ability to designate by VIN this pre-recall launch status in the event, due to parts delays or other circumstances, the

[16] Our proposal to change from a less precise ''as it becomes available'' requirement to a more precise five working day requirement is addressed in section L, *infra*.

[17] See e.g., *www.carfax.com*, Chrysler: *http://www.chrysler.com/en/owners/and* Ford: *http://www.ford.com/owner-services/customer-support/recall-information*.

manufacturer is unable to offer the free remedy to all involved owners on the same date.

We further propose a ''deleted'' category that will enable a manufacturer to remove vehicles from a recall population. For example, a manufacturer may have mistakenly assessed the scope of vehicles affected by a particular safety defect or noncompliance condition and will then need to adjust the population, by adding or removing vehicles and their respective VINs.

Also, we propose to require that manufacturers provide the date the recall remedy was performed, where applicable, so that we can also provide that information to interested owners and consumers.

Under our proposal, a manufacturer would first submit VIN data for vehicles covered by a recall when submitting a Part 573 Report (or, if that information is not available at that time, within the prescribed time of when it becomes available, typically within a matter of weeks). The information would be submitted electronically in a table format. Manufacturers would be required to list VINs vertically in rows with a horizontally adjacent column for reporting the current recall remedy status category, plus the pre-recall launch category, and a column for reporting the date the recall remedy was performed (where applicable). An example of the table we propose is located in Appendix C, Form C1, attached to this notice.

Thereafter, each day at a time specified by the agency, the manufacturer would submit to NHTSA the same table, but now limited to a list of VINs for which the recall remedy status had changed from the previous day's submission, complete with the designations reflecting the new status. Also, if there were changes to the recall population, either additions or subtractions, the manufacturer would submit those VINs as well. VINs that need to be added to a manufacturer's VIN list would be included in its daily update to the agency with an identification of the date of the addition. VINs that need to be removed from a manufacturer's VIN list, due to later information establishing that the vehicle should not have been recalled, for one example, would be appropriately coded. We further propose to include a comment column that can be used to attach any notes, up to 30 characters, needed to help describe the status of a particular VIN. Appendix C, Form Cl, demonstrates these functions.

A manufacturer's VIN data submission would be an automated process accomplished through a secure server using secure file transfer protocol (SFTP). The daily VIN updates of vehicles covered in a recall along with the remedy status would be updated using a NHTSA specified application programming interface (API). The manufacturer's server would post to a secure server, operated by the agency, at a set time each day. Only changes to the previous day's information would be submitted, thereby greatly limiting the volume of information being transferred from the manufacturer to the agency. After its submission is completed and verified, the manufacturer would receive an acceptance notice. If any portion of the submission was rejected, that information would be returned to the manufacturer on a secure, NHTSA operated Recalls Portal. The agency anticipates that its system will provide sufficient detail (to the specific recall and VIN level) to the manufacturer when information is rejected in order for the manufacturer to quickly identify and resolve any problems.

The requirement to submit VIN information electronically is not highly burdensome. The information we seek in today's proposal is already captured by manufacturers and submitted to NHTSA in part. Under 49 CFR 573.8, manufacturers are required to maintain information, including VINs, on all vehicles involved in a recall notification. These lists are maintained in computer information storage devices and must be maintained for five years. However, because a manufacturer's obligation to perform a recall remedy does not expire, manufacturers must maintain records that, at a minimum, reflect the current recall remedy status of the vehicles covered by their campaigns. In addition, manufacturers are currently required to submit quarterly reports that provide the recall remedy status of vehicles in a safety recall campaign. In order to maintain recall data and determine recall remedy status, most manufacturers use software and create large electronic databases that are integrated with their dealer network. Such electronic databases record VIN data and recall remedy status information, update it, and synchronize this information on regular intervals against their systems for processing and paying their dealerships or repair facilities to perform the recall remedy. Accordingly, larger volume manufacturers will only have to incur a one-time cost to reconfigure their systems to transmit VIN data and recall remedy status information in the electronic format NHTSA requires.

The MAP–21 Act specifies that any rules issued pursuant to the Act will ''permit a manufacturer a reasonable period of time after receiving information from a dealer with respect to a vehicle to update the information about the vehicle on the publicly accessible Internet Web site.'' *See* MAP–21 Act at section 31301(b)(3). Given that paragraph (b) refers back to the information in paragraph (a) in section 31301, we read (b)(3) to include completion of the safety recall remedy offered by the manufacturer on that vehicle. In this proposed rule, we do not propose to define what that reasonable period of time is. In the agency's experience, we have not encountered situations involving large volume manufacturers failing to update their records on recalls completions by dealers. Accordingly, we do not believe these manufacturers will inordinately delay updating their internal recalls completion records and thereby stymie the timeliness and accuracy of the VIN look-up service we propose to meet MAP–21's requirements. We seek comments on the agency's decision not to define the term ''reasonable period of time.'' Due to the statutory requirement under the Safety Act that a manufacturer must remedy recalled vehicles when presented, manufacturers maintain records reflecting a vehicle's recall remedy status indefinitely. 49 U.S.C. 30120. Although manufacturers maintain such records indefinitely, the utility and safety benefit of NHTSA receiving such records decreases over time. Accordingly, we propose to limit the requirement to provide electronic updates to 10 years from the date a manufacturer first supplied the VIN list for a recall. Manufacturers are only required to provide a free remedy under the Safety Act for vehicles that were bought by the first purchaser less than 10 calendar years from when the manufacturer notified its owners of the safety defect or noncompliance. *See* 49 U.S.C. 30120(g). Also, in the agency's experience and, based upon our interactions with manufacturers, very few vehicles can be expected to be presented for remedy 10 years after a recall notification has been made. In our view, very few consumers will utilize our VIN look-up service to learn of recalls on their vehicles that are over a decade old. Furthermore, the utility of, and safety benefits derived from, a VIN-lookup service will not be adversely affected with our proposed ten-year limit.

In order to offer a functional VIN recall search tool and to provide effective search capability at launch, we require a database of recalled vehicle VIN data. Otherwise, when our VIN

recall search tool is launched, there will be very little utility to the tool and users will be discouraged from using the tool, thereby undermining our efforts to facilitate owner notification and reducing the number of unsafe vehicles on U.S. roadways. Therefore, if the VIN proposal is adopted, we propose to require manufacturers, within 180 days of the effective date of this rule, to submit VIN data for each vehicle covered by a recall filed within 24 months prior to the effective date of this VIN submission requirement. To clarify, ''filed'' means a manufacturer submitted a Part 573 defect or noncompliance report indicating its intention to conduct a recall, except those manufacturers that stated an intent to file a petition for an exemption to the recall requirements on the basis that the noncompliance is inconsequential to motor vehicle safety (unless, of course the petition was denied in which case the manufacturer would be required to conduct a recall and provide VINs).

A proposal to require VIN data on vehicles covered by recalls filed prior to the MAP–21 Act's enactment is directly contemplated in the Act, which provides that any implementing rulemaking, ''shall limit the information that must be made available * * * to include only those recalls issued not more than 15 years prior to the date of enactment of this Act.'' See MAP–21 Act, Public Law 112–141, § 31301(b)(1), 126 Stat 405, 763 (July 6, 2012). Accordingly, our proposal to require VIN data on vehicles covered by recalls filed within the prior 2 years' time is well within the agency's discretion. We seek comment on whether to require VIN data on recalls covered by recalls filed in earlier years.

Our proposal to require submission of VIN data to us is limited to larger, light vehicle manufacturers. Although already permissible under section 30119 of the Safety Act,[18] the MAP–21 Act's express grant of authority to the Secretary to require motor vehicle safety recall information to be publicly available provides the agency discretion in determining the information needed to meet the Act's requirement. See MAP–21 Act at section 31301(b). This discretion includes setting parameters that determine which manufacturers must provide recall information for the Internet site that is contemplated under the Act.

We propose to limit the VIN submission requirement to manufacturers of 25,000 or more light vehicles, or manufacturers of 5,000 or more motorcycles, manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States annually.[19] A manufacturer would meet these thresholds if it knows or anticipates it will meet these thresholds by the end of the current calendar, or if it reached those volumes during the previous calendar year.

Based on current data received by NHTSA's Early Warning Division, this notice includes a list of vehicle manufacturers presently meeting the above stated production thresholds, found in *Appendix E.* At this time, we propose to limit this requirement to these manufacturers because, due to their production volume and their current obligation for EWR reports, these larger manufacturers have the resources to readily and efficiently meet the proposed VIN reporting requirements using the electronic media we propose here.

At this time, we are not proposing to require smaller light vehicle or motorcycle manufacturers to submit VIN data. The costs and burdens of this proposed rule would be greater on these smaller volume manufacturers than for their large volume counterparts. For smaller manufacturers that do not already operate robust computer systems and complex databases, a one-time investment to purchase the needed hardware and software and daily maintenance to meet the VIN requirement could be costly.

If after several years of experience with VIN data, we believe that receiving VIN data from smaller manufacturers would be beneficial, we may propose to include lower volume manufacturers. Of course, nothing prevents these manufacturers from voluntary participation in our VIN look-up service. We solicit comment on our decision to not include lower volume manufacturers in this proposed rule.

Based on feedback we receive about our current recalls look-up service and email recall notification service, we anticipate that the majority of users of our service will be individual consumers or users of light vehicles and motorcycles, rather than medium-heavy commercial vehicle owners and users. The latter tend to communicate directly with the manufacturer or dealerships and rely less upon the Agency for information about recalls or vehicular safety issues. If at a later time, we believe that receiving VIN data from this community would be beneficial, we may amend our rulemaking. As with the smaller volume manufacturers, nothing prevents these manufacturers from voluntary participation. We seek comment on our decision.

Some large light vehicle manufacturers also manufacture medium-heavy vehicles. In some cases, these medium-heavy vehicles fall within the same model family (e.g., Ford F-series vehicles). Accordingly, we clarify that should a light vehicle manufacturer make a defect or noncompliance decision that results in a recall of its light vehicle applications as well as medium or heavier duty applications, then it would be required to provide the VINs on all the recalled vehicles. This is to avoid consumer confusion and possible misinformation from the agency in the event of such recalls. We wish to avoid foreseeable situations where a consumer would hear of a recall in the news media or through our recall notification system, go to our web site with their VIN, and retrieve an erroneous message that the recall does not apply to the vehicle or it is unknown whether it applies. Although we are not proposing to require manufacturers to submit VIN data for recalls that involve only their medium-heavy vehicle applications, we would expect that manufacturers will not bifurcate their defect or noncompliance decision-making and file separate defect or noncompliance reports in order to avoid producing VINs on their medium-heavy vehicle applications in those situations where the same safety defect or noncompliance affects both light and medium-heavy applications. We solicit comments on our approach of requiring light vehicle manufacturers, where they recall vehicles for defects or noncompliances that affect both light and medium-heavy applications, to submit VIN data on all the vehicles being recalled.

Some recalls involve safety defects where the consequences arise as the result of exposure to certain environmental conditions. These are commonly referred to as ''regional

[18] Vehicle manufacturers must notify NHTSA and provide certain information when they decide to recall their vehicles to remedy a safety defect or noncompliance with a FMVSS. See 49 U.S.C. 30118 and 30119. Under section 30119, NHTSA has considerable discretion to determine the contents of such notices, including content that changes based on the product or manufacturer. 49 U.S.C. § 30119(a). For example, in the case of passenger vehicles, an identification of the vehicles to be recalled is to be made by make, line, model year, and dates of manufacture, whereas other types of vehicles (and items of equipment) are subject to different requirements. Compare 49 CFR 573.6(c)(2)(i) to 49 CFR 573.6(c)(2)(ii), (iii), (iv), and (v).

[19] For purposes here, ''light vehicle'' means any motor vehicle, except a bus, motorcycle, or trailer, with a GVWR of 10,000 lbs or less. 49 CFR 579.4. ''Motorcycle'' means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground. 49 CFR 571.3.

recalls,'' and in these recalls only the vehicles currently registered, or originally sold or registered, in those areas, are covered by the recall. Consistent with today's proposal to require submission of VINs associated with the recalled population, we clarify that only the VINs of the vehicles covered by the safety recall are to be provided.

To further comply with the directive in the MAP–21 Act, and meet the safety objective of providing the public specific and up-to-date recall information on vehicles, we propose to amend subsection 573.6(c)(3) to add three subparagraphs (i), (ii), and (iii). The first, subparagraph (i), contains requirements for VIN submission as well as recall remedy status for each VIN. Subparagraph (ii) contains the requirement that, on a one-time basis only, manufacturers must submit the VIN information for each vehicle covered by a safety recall filed within 24 months prior to the effective date of this rule. Subparagraph (iii) specifies that any vehicle manufacturer not covered by (i) or (ii), may voluntarily supply VIN information for vehicles it has recalled voluntarily, so long as it submits the information in accordance with the requirements of both (i) and (ii).

We seek comments on our proposal to require a list of VINs for vehicles subject to a recall from larger vehicle manufacturers, as well as our proposal to require these manufacturers to submit once daily any changes to the recall remedy status of vehicles involved in recall campaigns and the associated information identified above. We also seek comment on our proposal to require VIN information for recalls conducted within the 24 months prior to this rule's effective date.

In addition to comments on our proposal, we solicit information concerning plausible alternatives to our proposal. Specifically, we solicit suggestions for VIN-driven recalls search mechanisms that do not require manufacturer submission of VIN information to the agency, but provide a comparable level of timely and accurate vehicle-specific recall information, across a comparable breadth and depth of vehicle applications.

We would be interested in learning, for example, if vehicle manufacturer VIN-driven recalls search tools located on their Web sites are a realistic alternative or, as another example, if VIN-driven recalls search tools owned by third parties are comparable alternatives. We are interested in comments that address whether these or other tools are plausible alternatives to a NHTSA-owned and operated tool, given the many factors that affect the completeness, reliability, and timeliness of information provided by a manufacturer on the recall history of vehicles that it manufactured. Among our present concerns are that not all vehicle manufacturers offer a VIN-driven service and some offer it only if the consumer is a registered user of the site with the manufacturer (a process that may or may not require input of personal information such as names, addresses, and phone numbers). Also, not all manufacturers provide recalls information to third party sites, those that do may not provide that information to the same third party sites. Some sites include marketing and other material not relevant or distracting from the recalls information, and the currency of the information as to whether a particular vehicle has been remedied varies between search tools.

We also solicit comments on the costs and burdens, as well as expected safety benefits, of any alternatives suggested in comments. We note that any alternatives must meet the MAP–21 Act's minimum requirements. Safety recall information provided under an alternative must be: available to the public on the Internet; searchable by vehicle make, model, and VIN; in a format that preserves consumer privacy; and include information about each recall that has not been completed for each vehicle. Although we will consider alternatives that may not be free of charge to dealers or owners, we are unlikely to adopt such alternatives. We believe safety critical information, such as recall information, should be provided to the public without charge.

We are open to considering, and request comment on, providing a vehicle manufacturer the choice to participate in the agency's VIN look-up tool and the information service, or, to expressly elect to provide on its own Web site a VIN look-up that would ensure a level of information at least equal to the Agency's proposed service. To meet the agency's requirements, we envision the manufacturer's recall look-up tool, for example, would need to be VIN-driven with information as to recall completion updated at least once daily (exclusive of any reasonable period of time the manufacturer may need to update its records based on information from dealers as to recall completion on a vehicle). We envision it being a free service available to the public, including dealers, owners, and any interested parties. In all likelihood, if we were to offer an alternative under which a manufacturer would be allowed to elect not to submit recall VIN information to NHTSA and instead maintain its public Web site with the same information as would be posted on NHTSA's Web site and the same functionality as NHTSA's Web site, we would need to adopt regulations in order to ensure individual manufacturer's Web sites offer a standardized look and functionality regardless of the manufacturer providing the service. We tentatively believe these rules would likely include items such as requiring a conspicuous hyperlink to the VIN-driven recall tool found on the manufacturer's main Web page (or similarly easy to locate Web page), prohibiting any marketing or sales information in conjunction with the VIN recall tool, requiring straightforward ease-of-use without Web site registration or personal information other than a VIN, and providing of the same VIN specific recall information as what the agency proposes to provide through its proposed VIN-driven recalls tool.

We solicit comments on this alternative and on the above possible requirements for a manufacturer election to post information on its Web site in lieu of the manufacturer providing data for a NHTSA Web site. We solicit additional or different rules for manufacturer owned and operated recalls look-up tools. We solicit comments on the costs and burdens, as well as expected safety benefits, of this alternative.

After comments are received on this notice, we reserve the flexibility to develop and adopt an alternative based on outgrowths of this proposal or comments received on the discussion above.

Lastly, all manufacturers are required to file quarterly reports reporting on the progress of their recall campaigns. *See* 49 CFR 573.7. Given that the larger volume manufacturers and those small volume manufacturers that opt in to the VIN look-up service will be providing daily information from which the agency can determine completion information, the purpose of those quarterly reports would be obsolete as to those manufacturers' recalls. We, therefore, propose to eliminate the quarterly reports requirement for large volume manufacturers and small volume manufacturers that opt in to the VIN look-up service.

We seek comment on our proposal to remove the requirement to report quarterly for those manufacturers that will be required to submit VIN information and submit to NHTSA recall remedy completion information as described in our proposals.

I. Added Requirements for Information Required To Be Submitted in a Part 573 Defect and Noncompliance Information Report

Pursuant to 49 U.S.C. 30118 and 30119, manufacturers must provide notification to the agency if the manufacturer decides or the agency determines that a noncompliance or safety-related defect exists in a motor vehicle or item of motor vehicle equipment. NHTSA has significant discretion in determining the contents of this notification. *See* 49 U.S.C. 30119(a)(7). Among other things, NHTSA's regulation specifying the contents of the notification to the agency, 49 CFR Part 573, delineates the information to be contained in the notification to NHTSA in section 573.6 and instructions for submitting reports in section 573.9.

Manufacturers are currently required to submit certain details concerning the safety defect (or noncompliance, as the case may be), the affected products, the proposed schedule for notifying owners and dealers, in addition to a host of other recalls-related details, in their Part 573 reports. These requirements are located in subsection 573.6(c) of Part 573.

The information required to be submitted has been and remains useful. In our experience over the years, however, there are additional details that the agency needs in order to better understand and process safety recalls, as well as manage and oversee the recall campaigns and the manufacturers conducting those campaigns. Accordingly, we are proposing today to add the following requirements to subsection 573.6(c):

- An identification and description of the risk associated with the safety defect or noncompliance with FMVSS, and in terms consistent with the current requirements of 49 CFR 577.5(f) for providing in owner notifications an evaluation of the risk to motor vehicle safety from the safety defect or noncompliance; and
- For equipment recalls, the make, model name, and model number, as applicable, of the equipment and as it was identified and/or labeled at time of purchase to the purchaser.

We also propose to add a new paragraph to Part 573 to prohibit disclaimers in a manufacturer's Part 573 information report.

A discussion of these proposals follows.

1. An Identification and Description of the Risk Associated With the Safety Defect or Noncompliance With FMVSS

Under our current regulations, a manufacturer does not have to identify or describe the consequence or risk associated with a safety defect or noncompliance when it submits a Part 573 Information report to NHTSA. Many manufacturers voluntarily provide this information in their notifications and reports, but others may not or may not on a consistent basis.

We believe this information is critical to NHTSA's understanding and evaluation of the safety defect or noncompliance for which the manufacturer is conducting a recall. This information is valuable to NHTSA's knowledge of the issue and assists in NHTSA's assessment of the adequacy of the manufacturer's campaign and corrective actions. A description of the risk is critical to the agency's summary of the defect or noncompliance that is available on the agency's Web site, and to adequately inform owners of the safety risk and properly motivate them to perform the recommended recall remedy. In turn, in our view, having this information available on our Web site will assist in the agency's goal to increase completion rates.

We propose to require that manufactures identify the consequence or risk in terms that are consistent with the present requirements found in 49 CFR 577.5(f) for identifying and describing risk in owner notification letters. By requiring the description of risk to meet the same requirements as for owner letters, we can better manage consistency between what the manufacturer reports, what NHTSA publishes, and what manufacturers communicate to owners in furtherance of the agency's mission to adequately notify owners and increase remedy completion rates. Accordingly, we propose to modify paragraph (c)(5) of 573.6—the paragraph that requires a description of the defect or noncompliance—to add a requirement that manufacturers identify and describe the risk attendant to the safety defect or noncompliance on which they are reporting.

We seek comments on our proposal.

2. As to Motor Vehicle Equipment Recalls, the Brand Name, Model Name, and Model Number of the Equipment Recalled

Pursuant to section 573.6(c)(2)(iii), manufacturers recalling motor vehicle equipment for safety defects or noncompliances are required to identify the equipment. Many items of equipment are sold to owners and identifiable under a brand (or trade) name that is different from identifying information submitted to NHTSA under 573.6(c)(2)(iii). This makes real-world identification of the recalled equipment difficult for both the agency and consumers. And where owners cannot or are limited in their ability to identify recalled equipment, their removal of that equipment from use and obtaining the manufacturer's free remedy is effectively undermined, thereby allowing unsafe equipment to remain in use and continue to pose a safety risk.

In order to address this shortcoming, we propose to require the brand (or trade) name, model name, and model number information, where that information applies to the recalled equipment, from manufacturers in their Part 573 reports. This information would include the commercial name of the recalled equipment item so NHTSA and consumers can easily identify the product.

We request comments on this proposal.

3. Prohibited Disclaimers in Part 573 Defect and Noncompliance Information Report

Under the Safety Act, manufacturers are required to notify NHTSA and then conduct an owner notification campaign and provide a free remedy when they decide a vehicle or item of motor vehicle equipment they manufactured contains either a safety defect or fails to comply with a FMVSS. Manufacturers are further required to affirmatively state in their owner notifications that they have decided a safety defect (or noncompliance, as the case may be) exists in the product. *See* 49 CFR 577.5(c). There is no correlating requirement, however, for manufacturers to make a similar statement in the notifications and Part 573 reports they are required to supply NHTSA.

Although many Part 573 reports are filed each year in which the manufacturer states plainly that it has made a safety defect or noncompliance decision, there are many that do not. And, on occasion, there are Part 573 reports filed where the manufacturer disavows that it has made any such decision and that it is conducting a recall campaign nevertheless in order to avoid a difficulty that it has decided will be alleviated or reduced if it conducts the campaign. On most occasions the difficulty avoided is further investment of resources in responding to an agency investigation into the product, or litigation with the

agency over whether the product contains a safety defect or is noncompliant.

These attempts to disavow defect or noncompliance decisions, which amount to disclaimers, are inconsistent with the Safety Act and introduce confusion into the public record for those safety recalls. *See* 49 U.S.C. §§ 30118—30120. Notification to NHTSA through the filing of the requisite Part 573 information report is only prescribed and intended when the manufacturer has made a defect or noncompliance decision or where NHTSA has made such a decision after its investigation and an opportunity for a hearing. The decision is the necessary precedent to those filings, all of which are a matter of public record and shared with the public via NHTSA's Web site *www.safercar.gov.* Further, as noted above, the manufacturer is required to notify owners and purchasers that it has made a defect or noncompliance decision in its notifications to those owners and purchasers. *See* 49 CFR 577.5(c). For a manufacturer to make this statement, but then to have a record reflecting the direct opposite, is confusing and misleading.

Accordingly, we propose to amend Part 573 to add a new paragraph instructing manufacturers that Part 573 reports must not contain a statement or implication that there is no safety defect.

We welcome comments on this proposal.

J. Online Submission of Recalls-Related Reports, Information, and Associated Documents and Recalls Reporting Templates

Under present requirements, manufacturers have the option under section 573.9 to submit recall-related information as a portable document format (.pdf) attachment to an email message to the agency. *See* 72 FR 32014 (June 11, 2007). That option has proven very useful and effective for both manufacturers and the agency as both seek to maximize the efficiency with which important recall information is sent to and received by the agency so that it can then be processed and distributed from the agency to the public via our Web site *www.safercar.gov* as well as through our recall notification service. The recall-related information that is routinely submitted by many manufacturers in this manner ranges from Part 573 reports, to amendments and updates to those reports, to representative copies of recall communications such as owner and dealer notifications and technical instructions, to quarterly reports reflecting the progress of a recall campaign.

Nevertheless, even where a manufacturer exercises this option it still requires significant allocation of agency resources toward processing the information received via email and in a PDF format into the agency's systems such that it can be effectively reviewed, managed, stored, and then delivered to the Web site. The agency resources required to perform the same tasks and provide the same services in relation to recalls information where the manufacturer chose not to file using this option, but rather to submit only a hard copy via certified mail or other means such as expedited mail delivery or facsimile, are even greater.

We seek to maximize the use of technology to lessen the agency's costs, reduce errors in data entry and improve the public recall notification process. We believe technology has reached the point where manufacturers all have access to the Internet and are performing many, if not most, business communications and tasks using it. For example, many manufacturers submit EWR information electronically through a Web portal developed for that purpose. We believe that the time has come to require manufacturers to submit Part 573 information through an online application that would be hosted and managed by the agency. Web-based submissions deliver maximum efficiency and reduce the agency's burden to translate and enter information into its database. No longer would the agency devote resources to identifying and correcting errors in translation that occur whenever agency personnel review and then reenter the information reviewed into the NHTSA database. A Web-based submission is faster and provides better delivery of recall information to the public encouraging quicker remediation of defective products and freeing up resources that are better allocated to managing and analyzing recall information as part of recall oversight.

We are proposing to amend section 573.9 to require manufacturers to securely submit all Part 573 report information and recall notification materials electronically through the use of forms or direct upload functions that will be housed on an agency owned and controlled Web site. We envision this process and its functionality to be very similar to what many manufacturers are already doing pursuant to EWR requirements. As with that program, and to ensure security, we plan to issue passwords before allowing submissions to be made to the agency. Manufacturers that are currently meeting EWR requirements through the *www.safercar.gov* Web site will be able to use their EWR passwords for purposes of filing information and documents associated with safety recalls. Manufacturers will be able to track their submissions on the secure Web portal and we also plan to send the submitter a confirmation message to an email account registered with the agency confirming our receipt of the submission.

As to Part 573 defect and noncompliance information reports specifically, we are proposing that manufacturers use one of five forms that we will make available on the agency Web site; one for vehicles, one for equipment, one for tires, one for child restraints, and one for vehicle alterers.[20] The manufacturer will complete online one form depending on the type of product for which it made a safety defect or noncompliance decision, and submit it online to the agency. The fields of each form will pertain to each of the requirements in the regulations for the defect and noncompliance information reports (49 CFR 573.6), as well as those proposed requirements in today's notice that are adopted in a final rule. There are also a handful of fields for which information is not required to be supplied by the manufacturer, either currently or under any of our proposals in today's notice, but nevertheless provide information that is useful to us and that we would like to have if a manufacturer is willing to supply it. With the exception of information that must be submitted in an initial report, *see* 49 CFR 573.6(b), the manufacturer will be able to leave blank those fields for which it does not have information at the time of filing and later resubmit the unavailable information to update or amend its report, as the case may be.

For VIN data, and recall remedy status as to each vehicle on a VIN list, we propose to provide a VIN submission template, in the form of a standard table that manufacturers can use or follow to develop their own tables. This was discussed above in our discussion related to our proposal to require submission of VIN lists and daily updates on recall remedy status. The

[20] A vehicle alterer means a person who alters by addition, substitution, or removal of components (other than readily attachable components) a certified vehicle before the first purchaser of the vehicle other than for resale. *See* 49 CFR 567.4. Vehicle alterers may also be referred to as vehicle up-fitters. A separate form for vehicle alterers would be beneficial as these, usually, very small companies are often unfamiliar with safety recall reporting and a form that does not confuse ''new vehicle alterer'' for ''vehicle manufacturer'' would help to clarify their role in conducting safety recalls.

template we propose to use is in Appendix C, Form C1, attached to this notice.

For vehicle recalls conducted by smaller volume vehicle manufacturers that are not subject to the new VIN reporting requirements proposed in this notice, and equipment recalls, we will have an online form for those manufacturers to complete and submit through the Web site. The fields on that form will coordinate with the current requirements of section 573.7, *Quarterly reports.* The form we propose to use is shown in Figure D6, Quarterly Report Form Management, and which is available in this rulemaking's docket.

In addition, we propose to include direct upload functions for the uploading of all representative copies of communications on recalls that are presently required to be submitted to the agency under 573.6(c)(10). This would include materials such as copies of owner notifications and dealer notifications and technical instructions. We also propose this function for the draft owner notification letters and the envelopes that manufacturers are obligated to submit to the agency for approval pursuant to section 577.5(a). We also propose to allow for an ''other'' or miscellaneous direct upload function so that a manufacturer can submit to us any other materials for either our review (such as dealer notices that manufacturers are not obligated to submit for our approval, but nevertheless may want to solicit the agency's input for any number of reasons), or for submission to its recalls file.

We recognize that 49 U.S.C. 30118(c) requires that manufacturers notify NHTSA by certified mail when they learn a motor vehicle or equipment they manufactured contains a defect and decide in good faith that the defect is safety-related, or decide that such a product does not comply with an applicable FMVSS. In order to meet the statutory requirement, we envision manufacturers submitting a printed copy of the completed online form after the form has been submitted and accepted by the agency. The agency will design the system to allow manufacturers to download and print a copy of this material.

In order to meet our proposal today to require electronic filing and submission of all recalls-related information and materials, we propose to change the heading and the regulatory text of 573.9.

Examples of each of the forms we are proposing manufacturers be required to complete are available for review in this rulemaking's docket. Figure D1 is the form for vehicle recalls, other than vehicle recalls conducted by vehicle alterers. Figure D2 is the form for equipment recalls, other than tires and child restraints. Figure D3 is the form for tire recalls, Figure D4 is the form for child restraint recalls, and Figure D5 is the form for vehicle recalls conducted by vehicle alterers. Figure D6 is the proposed quarterly report form. Figure D7 is the proposed recalls portal dashboard, where manufacturers can see a summary of their Part 573 reports, as well as an example of a confirmation message a manufacturer will see after submitting a Part 573 report.

We seek comments on our proposal to amend section 573.9 to require online submission of the reports and information required by 573.6, as well as on the forms, templates and direct upload functions we have proposed.

K. Amendments to Defect and Noncompliance Notification Requirements Under Part 577

Pursuant to 49 U.S.C. 30118 and 30119, manufacturers must provide notification to owners, purchasers, and dealers if the manufacturer decides or the agency determines that a noncompliance or safety-related defect exists in a motor vehicle or item of motor vehicle equipment. NHTSA has significant discretion as to requirements related to recall notifications, including the contents of these notifications. 49 U.S.C. 30119(a)(7). At a minimum, manufacturers must provide these notifications within a reasonable time after first deciding that a product has a safety defect or noncompliance. 49 U.S.C. 30119 and 49 CFR 577.7(a)(1). For agency-ordered notifications associated with ordered recalls, the agency has defined reasonable time to mean within 60 days of the manufacturer's receipt of the order, unless the Administrator orders a different timeframe. 49 CFR 577.7(b). NHTSA's regulations specifying the contents and timing of owner and dealer notifications are found in 49 CFR Part 577, *Defect and Noncompliance Notifications.* Among other things, Part 577 specifies the information and, in some cases, the required order of that information. It also dictates the formatting of the envelopes containing the owner notifications. For owner notifications, these requirements are found in section 577.5, and for dealer notifications, in section 577.13.

As indicated above, both the statute and Part 577 require that owners and purchasers be notified by the manufacturer within a reasonable time after the manufacturer first decides that either a safety defect or noncompliance exists. 49 U.S.C. 30119(c) and 49 CFR 577.5(a), 577.7(a). Consistent with its interpretation of ''reasonable time'' for agency-order notifications that is currently found in Part 577, *see* 49 CFR 577.7(b), NHTSA has recently started informing manufacturers conducting recalls that it expects them to conduct owner notifications within 60 days of their Part 573 filing. There have been occasions where manufacturers have expressed concerns about NHTSA's expectations due to difficulties the manufacturer may have faced in the execution of a particular recall. For example, manufacturers have raised concerns about providing notice within 60 days when they are faced with delays in obtaining recall remedy parts that will extend the time period by which they can feasibly offer a free remedy well beyond 60 days after they have notified NHTSA of a safety defect or failure to comply with minimum safety standards. In these circumstances, manufacturers have contended that sending letters to owners creates owner confusion and frustration, as the remedy is unavailable.

The intent of the notification requirement is to ensure that owners and dealers are informed of unreasonable safety risks due to defects or failures to meet minimum safety requirements. The requirement that this notification be performed within a reasonable time balances the need for prompt notice to owners to warn of the safety risks with the need to provide manufacturers limited flexibility to develop and provide the remedy. Even where the remedy is not ready at the time of notification, the manufacturer often can instruct an owner to take precautionary steps while the remedy is being prepared or procured in order to avoid or at least mitigate the occurrence of the defect or its consequence. Mitigation may include inspections conducted by the owner or the manufacturer (or its representative), observation of certain warnings that can be reported to the manufacturer, such as illumination of a malfunction indicator light, or application of an interim remedy. For example, if a ''check engine'' light appearing at highway speeds might indicate an engine defect that may lead to a fire, a simple notification letter before the remedy is available can alert the owner that, if one encounters this situation, the driver should pull over and shut down the vehicle immediately in order to avoid a possible vehicle fire.

We do not believe the flexibility that is extended through a reasonableness standard could fairly be construed to mean that critical safety information be withheld from those that are most likely

to suffer the consequence of a safety defect or noncompliance until such time as the manufacturer is ready to perform the remedy aspect of a recall campaign. Subordinating an owner's awareness and ability to make an informed judgment, and to take measures to protect one from the risks and consequences associated with a safety defect or noncompliance, to the manufacturer's commercial interest in providing a more smoothly executed and administered campaign, is inconsistent with the Act.

Accordingly, we propose to add language to section 577.7(a)(1) to require that manufacturers notify owners and purchasers no later than 60 days of when they notify NHTSA that a defect or noncompliance with a FMVSS exists, and, should the free remedy not be available at the time of notification, that manufacturers issue a second notification to owners and purchasers once that remedy is available. As indicated above, this 60 day time frame parallels the requirement for agency-ordered notifications. *See* 49 CFR 577.7(b). We propose to add language to make clear that both notifications—the first or ''interim'' notification to inform of the defect or noncompliance, and then the second notification to again inform of the defect or noncompliance and inform of the availability of the free remedy—will need to meet the requirements of Part 577.5. This added language avoids any potential issues or confusion over whether the notifications need to meet the current requirements for owner notifications of a safety recall.

As for the requirements associated with the content of owner and purchaser notifications, we are proposing three measures to amplify the importance of the notifications and the urgency with which an owner should act in obtaining the remedy. First, we propose to require that all notification letters include ''URGENT SAFETY RECALL'' in all capitals letters and in an enlarged font at the top of the notification letter to owners and purchasers. Second, for vehicle recalls, we propose that the manufacturer place the VIN of the owner's vehicle affected by the safety defect or noncompliance within the letter. Third, in order to further emphasize the importance of the communication, and to distinguish it from other commercial communications, such as advertising and marketing communications, we propose that the envelopes in which the letters are mailed be stamped with logos of the U.S. Department of Transportation and NHTSA, in blue or black, along with a statement in red that the letter is an important safety recall notice issued in accordance with federal law.

Our first two proposals were items of specific recommendation in the GAO's June 2011 report concerning its audit of NHTSA's safety recalls program and its review of mechanisms for improving that program. *See* U.S. General Accountability Office, NHTSA Has Options to Improve the Safety Defect Recall Process, GAO–11–603 (2011). As part of its audit, GAO conducted focus groups to ascertain what content in owner letters did or did not, or would or would not, motivate owners to have important recall remedies applied to their vehicles in the event of a recall. The focus group participants reviewed sample owner notification letters and their envelopes and provided feedback. A number of themes resonated from this research, one of which was that the seriousness or severity of the defect may not have been communicated as clearly as it could have been and that could impact an owner's motivation to react positively to a recall notification. GAO Audit at p. 31. Another theme was the importance of indicating to the owner that their specific vehicle was affected by the defect and subject to the recall. *Id.* Accordingly, the GAO in its report recommended NHTSA require owner letters to include the word ''urgent'' in large type in the owner letters in order to obtain owners' attention to the letter, and that the owner's VIN be included so that it is clear to the owner that their vehicle is affected by the defect and the subject of the letter. *Id.* at 37.

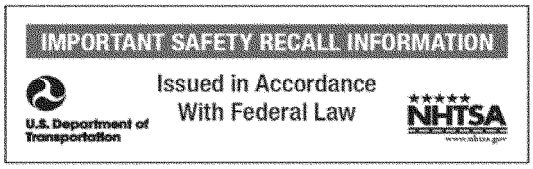
We believe there is merit to the GAO's recommendations as to how we can adjust the content or format of owner notification letters to better inform and motivate owners to react positively to important recall notifications from manufacturers. These recommendations are specific and, in our view, easy to accommodate.

Therefore, we propose to modify the language of paragraph (b) of section 577.5—the section that specifies the content and structure of owner notification letters, and the paragraph that directs that each letter open with a statement that the letter is being sent in accordance with the Safety Act.

As to the third proposal, we are concerned that due to the sheer volume of materials consumers receive in their regular mail, safety recall notifications are being inadvertently overlooked and ignored. Many materials consumers now receive in their mailboxes are stamped with terminology designed to incite a level of urgency or immediacy and so terminology like ''important,'' or ''urgent,'' has become commonplace. We are also concerned that other business interests, such as interests selling extended vehicle warranties, are enclosing marketing, advertising, and other non-safety related materials, in envelopes that replicate or closely mirror safety recall notifications in efforts to call attention to their materials and induce the recipient to open them. These serve ultimately to discourage owners from opening safety recall notifications because the owner has grown accustomed to envelopes that appear to be official but simply are marketing something related to his/her motor vehicle or equipment, and will assume the materials inside do not relate to a serious safety concern.

In an effort to better emphasize the importance of a recall notification, and to distinguish it from other mailed materials, we propose to require all envelopes containing safety recall owner notifications to have imprinted on them an identical one inch by three inch label found in the bottom left corner of the envelope. This is so that, over time, owners and consumers will recognize this label and immediately make the connection that the communication is a safety recall notification. This label is to contain the logos for the NHTSA as well as the U.S. Department of Transportation, in blue or black, with the message that the notification is an ''Important Safety Recall Notice Issued In Accordance With Federal Law.'' The phrase ''Important Safety Recall Notice'' is to be in white lettering within a solid red box. An example of a recall notification envelope with this new label can be found in *Appendix D* with this notice. We are hopeful that including our logo, the Department's logo, this message, in conjunction with the other present requirements for these envelopes, will accomplish our objectives of motivating increased owner compliance when they learn of a safety recall on their vehicles.

The following is a visual image of the proposed label:



Accordingly, we propose to modify section 577.5(a), ''Notification pursuant to a manufacturer's decision,'' to incorporate this proposal.

In addition, we propose to include direct upload functions for the uploading of all representative copies of communications on recalls that are presently required to be submitted to the agency under 577.5(a). This change allows the agency to verify consistency with the above proposed changes to 573.6(c)(10) and 573.9 by requiring manufacturers to submit their proposed owner notification letters and envelopes through our online recalls portal.

We seek comments on these proposals.

L. Regulatory Changes To Add or Make More Specific Current Requirements for Manufacturers To Keep NHTSA Informed of Changes and Updates in Defect and Noncompliance Information Reports

Manufacturers are required to provide their defect and noncompliance information reports not more than five working days after making a safety defect or noncompliance decision. They are required to supply certain information in those reports at the outset—basic information like their name, identification of the products being recalled, and a description of the defect or noncompliance occasioning the recall. Manufacturers have the flexibility to provide other required information as it becomes available when and if that information is not available at the time of first filing. These timeframes and minimal requirements for the reports as initially filed with NHTSA are found in 49 CFR 573.6(b).

We propose to amend section 573.6(b) in three respects. First, we propose to require that information not available at submission of the initial report be provided within five working days of when it becomes available and in place of the current requirement which specifies only that the information be provided as it becomes available. Next, to require manufacturers to submit to NHTSA an amended Part 573 Report within five working days if and when the manufacturer has new information that updates or corrects the information that was previously reported, as required by paragraphs (2), (3), (4), (8)(i) or (ii) of paragraph (c). These paragraphs relate to, among other things, the identification of the vehicles or vehicle equipment covered by a safety recall campaign, the total number of vehicles or items of equipment covered by a campaign and the associated VINs, the percentage of the vehicles or items of equipment covered by the campaign estimated to actually contain the safety defect or noncompliance, the description of the manufacturer's program for remedying the safety defect or noncompliance, and the estimated date(s) for sending notifications to owners and dealers about the safety recall. Further, we propose to add a requirement that within 90 days of a recall's available remedy, the manufacturer review its Part 573 Report for completeness and accuracy and supplement or amend it as necessary to comply with Part 573.

We have tentatively concluded that these changes are needed for several reasons. First, inaccurate or incomplete 573 reports impede the agency's ability to effectively monitor safety recalls, or evaluate a safety recall's effectiveness. NHTSA cannot properly perform its oversight role or respond properly to the public regarding a recall when the agency has incomplete or inaccurate information about the recall. Although often NHTSA is notified of updated information or changes to a safety recall campaign, there continue to be many instances in which it is not, or the information is not provided promptly, or is only provided once NHTSA identifies an inaccuracy or inconsistency and requests the manufacturer provide an explanation. The agency, therefore, believes it necessary to revise the regulations to more clearly specify that manufacturers must promptly provide information not previously provided and submit updated or corrected information. These proposals provide a specific timeframe to submit the supplemental and amended information.

The current requirement in 49 CFR 573.6(b) that the manufacturer submit information ''as it becomes available'' lacks precision. Since the agency adopted this requirement, there have been instances when, in our view, information has become available but the manufacturer has not submitted the information to the agency. To obtain the information in a timely manner, we propose to tighten the regulation, instead of leaving the language as is and engaging in unnecessary interactions with slow-to-report manufacturers. Similarly, the agency believes that requiring manufacturers to amend information required by paragraphs (2), (3), (4), (8)(i) or (ii) of paragraph (c) within 5 working days after it has new information that updates or corrects information that was previously reported will assist in the agency's effort to monitor recalls, because the agency will then have correct information on critical matters such as the recall population, the total number of vehicles or items of equipment potentially containing the defect or noncompliance, the percentage of vehicles or items of equipment estimated to actually contain the defect, and the manufacturer's program for remedying the defect or noncompliance.

The proposed affirmative obligation to review a Part 573 within 90 days of an available recall remedy in order to identify any changes or additions needed to that report stems from our concern that employees who do the reporting on behalf of the manufacturer may not always have the updated or corrected information as soon as it is known or decided, and that there may be some delay within the manufacturer's organization in getting that information to those employees. Even if the employees who report have access to or receive new information immediately, those employees may not report the new information. The purpose of the affirmative review requirement is to ensure that manufacturers report additions and changes to previous reports. We envision our new online recalls portal to automatically notify the manufacturer after a recall remedy campaign begins so the manufacturer can be reminded to review its report and certify its completeness and accuracy, or submit revised or supplemental information and then certify the overall submission through the same online system. Accordingly, we propose to amend paragraph 573.6(b) to include this affirmative review requirement.

We seek comments on these proposals.

M. Requirement To Notify NHTSA In the Event of Filing of Bankruptcy of a Recalling Manufacturer

We propose to amend Part 573 to add a requirement that a manufacturer must notify NHTSA if it files a bankruptcy petition or is the subject of an involuntary bankruptcy petition for which relief has been ordered in a United States Bankruptcy Court. Based upon our experience, it is necessary to learn of any bankruptcy proceedings when the petition is filed, so that we may act to enforce the provisions of the Safety Act. This, in turn, would protect the interests of owners and consumers of recalled vehicles and equipment. Often, NHTSA learns of bankruptcies well after the petition filing date, which limits the ability of the agency to address issues including performance of outstanding recalls. Notice of bankruptcy proceedings will provide the agency with vital information in order for it to take appropriate steps to ensure the completion of the manufacturer's recall remedy campaign.

NHTSA has authority to collect information that is vital to carrying out its functions under the Safety Act. The National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563 (1966), 80 Stat. 728, authorizes NHTSA to issue regulations as necessary to carry out the Act. *Id* at § 118, 80 Stat 728; *See* 15 U.S.C. 1407 (1990), repealed and recodified without substantive change, PL 103–272, July 5, 1994, 108 Stat 745 (1994), and Section 30119(a) authorizes NHTSA to collect information to adequately inform the agency of a defect or noncompliance. NHTSA believes that this information will assist its efforts to carry out the recall remedy provisions of the Safety Act. Secondarily, receiving notice of a manufacturer's bankruptcy in a timely manner will help NHTSA to effectuate the new statutory requirement of section 31312 of the MAP–21 Act. Section 31312 of MAP–21 adds a new section 30120A to Chapter 301 of Title 49, United States Code. That section specifies that a manufacturer's filing of a petition in bankruptcy under Chapter 11 of Title 11 does not negate the manufacturer's safety recall responsibilities under the Safety Act.

Accordingly, we propose to amend Part 573 to add section 573.16, to require the reporting of a bankruptcy petition to NHTSA. We seek comments on these proposals.

N. Lead Time

We understand that manufacturers need lead time to modify their existing EWR databases and software if today's proposed amendments to the EWR regulation, or logical outgrowths of them, are adopted in a final rule. The proposed amendments requiring some lead time include the requirement for light vehicle manufacturers to provide the vehicle type and fuel and/or propulsion system type in their quarterly EWR submissions and adding Stability Control systems, FCA, LDP, and Backover Prevention components to EWR reporting. Because manufacturers will need time to modify existing EWR databases and software to conform their systems to meet the amendments proposed today, we propose a lead time of one year from the date the final rule is published. We believe this lead time is an adequate amount of time for manufacturers to comply with the proposed amendments. Accordingly, the proposed effective date for the amendments to light vehicle type, light vehicle fuel and/or propulsion system reporting and components will be the first reporting quarter that is one year from the date the final rule is published.

For the proposal to amend the manner in which substantially similar lists are submitted, we do not believe a long lead time is necessary. We propose that the effective date for this amendment be 60 days after the date the final rule is published.

We understand that adopting today's proposals to require larger vehicle manufacturers to supply VIN information electronically and in the manner specified will require those manufacturers to modify or adjust their existing databases and software in order to arrange for the submission of this information and the daily updates of it. We further understand that the requirements to file online Part 573 Reports and quarterly reports (where applicable) using the forms prescribed will also require some lead time, including time for manufacturers to register and be provided passwords and to conduct training of staff. We propose the effective date for these proposals be 180 days after the date the final rule is published.

For the remaining proposals affecting requirements under Parts 573 and 577, we do not believe as long a lead time is necessary. Those proposals do not require changes to technology or investment of additional resources. Accordingly, we propose the effective date for all remaining proposals that are adopted be 60 days after the date the final rule is published.

We seek comments on our proposed lead time and effective dates.

V. Request for Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[21] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://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, Room W12–140, Washington, DC 20590.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[22]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

How can I be sure that my comments were received?

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

[21] *See* 49 CFR § 553.21.

[22] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[23]

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

VI. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

VII. Rulemaking Analyses and Notices

A. Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This document was reviewed under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking action is not considered ''significant'' under Department of Transportation policies and procedures. The effects of these proposed changes have been analyzed in a Preliminary Regulatory Evaluation. The proposals being made within this document that relate to adding reporting fields for light vehicle and medium-heavy vehicle manufacturers would place only a minimal burden on EWR manufacturers through a one-time adjustment to their EWR databases and software. The agency estimates that the proposal will result in a one-time burden of $62,208 per light vehicle manufacturer and $10,368 per bus, emergency vehicle, and medium-heavy vehicle manufacturer. In addition, the proposals being made within this document that relate to new VIN submission requirements will result in a one-time burden of $51,200 per manufacturer. The agency also estimates an annual cost burden of $133,930 per manufacturer for the proposed amendments to Part 577 to notify owners and purchaser of recalled motor vehicles and motor vehicle equipment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule would affect all motor vehicle and motor vehicle equipment manufacturers. The proposed changes to the EWR regulations, the foreign defect reporting regulation, defect and noncompliance information reports, and defect and noncompliance notifications would affect manufacturers of light vehicles, buses, emergency vehicles, medium-heavy vehicles, motorcycles and trailers, tires and motor vehicle equipment.

In order to determine if any of these manufacturers are small entities under the RFA, NHTSA reviewed the North American Industry Classification System (NAICS) codes. Business entities are defined as small businesses using the North American Industry Classification System (NAICS) code, for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm. For establishments primarily engaged in manufacturing or assembling automobiles and light and medium-heavy duty trucks, buses, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing the safety systems for which reporting will be required, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, re-tread tires, other vehicles equipment and alterers, and second-stage manufacturers, the firm must have less than 500 employees to be classified as a small business. In determining the number of employees, all employees from the parent company and its subsidiaries are considered and compared to the 1,000 employee

[23] *See* 49 CFR § 512.

threshold. Many of the bus companies are owned by other larger companies.

The agency separately published a Preliminary Regulatory Evaluation that includes a regulatory flexibility analysis. That document sets forth in detail the agency's analysis and is located in the docket.

The agency believes that there are a substantial number of small businesses that will be affected by the proposed amendments to the Early Warning Rule, the Foreign Defect Reporting Rule, the Defect and Noncompliance Information Reports, and Defect and Noncompliance Notification; however, we do not believe that the requirements, which involve reporting and recordkeeping, will amount to a substantial economic burden, as discussed in the Cost section of the Preliminary Regulatory Evaluation.

In summary, as stated in the agency's Preliminary Regulatory Evaluation, this proposal will not have a significant economic impact on a substantial number of small businesses. For the reasons stated in the Preliminary Regulatory Evaluation, the agency believes that the proposed amendments to Part 573, Part 577 and 579 will not have a significant economic impact on vehicle manufacturers, and motor vehicle equipment manufacturers including tire manufacturers affected by the proposed rule. Accordingly, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us 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.'' The Executive Order defines this phrase 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.'' The agency has analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The changes proposed in this document only affect a rule that regulates submission of information the manufacturers of motor vehicles and motor vehicle equipment, which does not have 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, as specified in Executive Order 13132.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2007 results in $130 million (119.682 ÷ 92.106 = 1.30). This proposal would not result in expenditures by State, local or tribal governments. This proposal only applies to motor vehicle and equipment manufacturers. The proposal would result in one-time cost of about $4.75 million for proposed EWR and Part 573 VIN changes and about $7.5 million annually recurring costs to manufacturers for notifying owners and purchasers of recalls under the proposed changes to Part 577. This proposal would not result in expenditures by motor vehicles and equipment manufacturers of more than $130 million annually and, therefore, would not require an assessment per the Unfunded Mandates Reform Act of 1995.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' [24] the agency has considered whether this proposed rule would have any retroactive effect. We conclude that it would not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. The Information Collection Request (ICR) for the proposed revisions to the existing information collections described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden.

The collection of information associated with Part 579 is titled ''Reporting of Information and Documents About Potential Defects'' and has been assigned OMB Control Number 2127–0616. This collection is approved by OMB. The collection of information associated with Part 573 and portions of Part 577 is titled, ''Defect and Noncompliance Reporting and Notification.'' This collection is approved by OMB and has been assigned OMB Control Number 2127–0004.

1. Part 579 Collections

When NHTSA most recently requested renewal of the information collection associated with Part 579, the agency estimated that the collection of information would result in 2,355 responses, with a total of 82,391 burden hours on affected manufacturers. These estimates were based on 2006 EWR data. The agency has published two amendments to the EWR regulation since then which will affect the reporting burden on manufacturers. On May 29, 2007, the agency eliminated the requirement to produce hard copies of a subset of field reports known as ''product evaluation reports.'' 72 FR 29435. On September 17, 2009, NHTSA issued a final rule that modified the reporting thresholds for quarterly EWR reports. 74 FR 47740. The reporting threshold for light vehicle, medium-heavy vehicle (excluding buses and emergency vehicles), motorcycle, and trailer manufacturers was changed from an annual production of 500 vehicles to an annual production of 5,000 vehicles. The reporting threshold for emergency vehicles stayed the same, but the reporting threshold for bus manufacturers was changed from an annual production of 500 vehicles to an annual production of 100 vehicles. These changes have reduced the number of manufacturers required to report certain information and the amount of information those manufacturers are required to report. Because these changes will affect the burden on manufacturers, our burden hour estimates need to be adjusted.

a. Adjusted Estimates for Current Information Collections

In the EWR final regulatory Evaluation (July 2002, NHTSA docket # 8677), it was assumed that reviewing and/or processing would be required for death and injury claims/notices,

[24] *See* 61 FR 4729 (February 7, 1996).

property damage claims, non-dealer field reports, and foreign death claims. It was also assumed that customer complaints, warranty claims, and dealer field reports would not impose incremental burden hours since computer systems were set up to automatically count these aggregate data points. Table 1 below shows the number of documents submitted in 2011 by reporting type.

Table 1

Number of Documents Submitted by Manufacturer in 2011

Category of Claims	Light Vehicles	Heavy, Med Vehicles	Trailers	Motorcycles	Emergency Vehicles	Buses	Tires	Child Restraints	Equipment Mfr.	Mfrs. Below Threshold	Totals
Injury Fatality	5,341	75	10	99	1	6	84	413	7	5	**6,041**
Property Damage*	9,162	354	3	16	0	43	1,824	NA	NA	NA	**11,402**
Warranty Claims	Aggregate Data										
Consumer Complaints	Aggregate Data										
Mfr. Field Reports	57,856	5,987	28	1,390	5	390	NA	2,918	NA	NA	**68,574**
Dealer Field Reports	Aggregate Data										
Foreign Death Claims	38	0	1	1	0	0	1	0	0	0	**41**
Totals:	**72,397**	**6,416**	**42**	**1,506**	**6**	**439**	**1,909**	**3,331**	**7**	**5**	**86,058**

* Property damage claims are aggregate data but are counted differently because they require more time to manually review.

The agency assumed that a total of 5 minutes would be required to process each report with the exception of foreign death claims. For these, it would require 15 minutes. Multiplying this average number of minutes times the number of documents NHTSA receives in each reporting category will yield burden hours (see Table 2).

Table 2

Estimated Annual Burden Hours Using 2011 EWR Data

Category of Claims	Light Vehicles	Heavy, Med vehicles	Trailers	Motorcycles	Emergency Vehicles	Buses	Tires	Child Restraints	Equipment Mfr.	Mfrs. Below Threshold	**Totals**
Injury Fatality	445	6	1	8	0	1	7	34	1	0	**503**
Property Damage*	764	30	0	1	0	4	152	NA	NA	NA	**950**
Warranty Claims	Aggregate Data										
Consumer Complaints	Aggregate Data										
Mfr. Field Reports	4,821	499	2	116	0	33	NA	243	NA	NA	**5,715**
Dealer Field Reports	Aggregate Data										
Foreign Death Claims	10	0	0	0	0	0	0	0	0	0	**10**
Totals:	**6,039**	**535**	**4**	**126**	**1**	**37**	**159**	**278**	**1**	**0**	**7,178**

* Property damage claims are aggregate data but are counted differently because they require more time to manually review.

The burden hours associated with aggregate data submissions for customer complaints, warranty claims, and dealer field reports are included in reporting and computer maintenance hours. The burden hours for computer maintenance are calculated, based on industry input, by multiplying the hours of computer use (for a given category) by the number of manufacturers reporting in a category. Similarly, reporting burden hours are calculated based on industry input, by multiplying hours used to report for a given category by the number of manufacturers for the category. Using these methods and the number of manufacturers who reported in 2011, we have estimated the burden hours for reporting cost and computer maintenance (see Table 3).

TABLE 3—ESTIMATED ANNUAL BURDEN HOURS FOR REPORTING AND COMPUTER MAINTENANCE

Vehicle/Equipment category	Number of manufacturer reporting in 2011	Quarterly hours to report per manufacturer	Annual burden hours for reporting	Hours for computer maintenance per manufacturer	Annual burden hours for computer maintenance
Light Vehicles	40	8	1,280	347	13,880
Medium-Heavy Vehicles	30	5	600	86.5	2,595
Trailers	68	1	272	86.5	5,882
Motorcycles	21	2	168	86.5	1,817
Emergency Vehicles	8	5	160	86.5	692
Buses	29	5	580	86.5	2,509
Tires	38	5	760	86.5	3,287
Child Restraint	29	1	116	86.5	2,509
Vehicle Equipment	5	1	20		
Total			3,956		33,170

Thus, the total burden hours for EWR death and injury data, aggregate data and non-dealer field reports is 7,178 (Table 2) + 3,956 (Table 3) + 33,170 (Table 3) = 44,304 burden hours.

In order to provide the information required for foreign safety campaigns, manufacturers must (1) determine whether vehicles or equipment that are covered by a foreign safety recall or other safety campaign are identical or substantially similar to vehicles or equipment sold in the United States, (2) prepare and submit reports of these campaigns to the agency, and (3) where a determination or notice has been made in a language other than English, translate the determination or notice into English before transmitting it to the agency. NHTSA estimated that preparing and submitting each foreign defect report (foreign recall campaign) would require 1 hour of clerical staff and that translation of determinations into English would require 2 hours of technical staff (note: this assumes that all foreign campaign reports would require translation, which is unlikely).

NHTSA received 104 foreign recall reports in 2011 which results in 104 hours for preparation and submission of the reports (104 defect reports × 1 hour clerical = 104 hours) and 208 hours for technical time (104 foreign recall reports × 2 hours technical = 208 hours.)

With respect to the burden of determining identical or substantially similar vehicles or equipment to those sold in the United States, manufacturers of motor vehicles are required to submit not later than November 1 of each year, a document that identifies foreign products and their domestic counterparts. NHTSA continues to estimate that the annual list could be developed with 8 hours of professional staff time. NHTSA has received lists from 85 manufacturers for 2011, resulting in 680 burden hours (85 vehicle manufacturers × 8 hours = 680 hours).

Therefore, the total annual hour burden on manufacturers for reporting foreign safety campaigns and substantially similar vehicles/equipment is 992 hours (680 hours professional time + 104 hours clerical time + 208 hours technical time).

Section 579.5 also requires manufacturers to submit notices, bulletins, customer satisfaction campaigns, consumer advisories and other communications that are sent to more than one dealer or owner. Manufacturers are required to submit this information monthly. However, the burden hours associated with this information were inadvertently not included in the overall burden hours calculated and submitted with the previous information collection request. Therefore, we have estimated the burden hours necessary for manufacturers to comply with this requirement.

Section 579.5 does not require manufacturer to create these documents. Manufacturers are only required to send copies to NHTSA. Therefore, the burden hours are only those associated with collecting the documents, preparing them for mailing, and sending them to NHTSA. Manufacturers are required to submit the documents within 5 working days after the end of the month in which they were issued. Manufacturers are allowed to submit them by mail, by facsimile or by email. Most manufacturers submit them by email (about 75 percent), some manufacturers send in paper copies by mail and others send in electronic copies on disk by mail.

NHTSA receives about 7,000 notices a year. We estimate that it takes about 5 minutes to collect, prepare and send a notice to NHTSA. Therefore, we estimate that it takes 7,000 documents × 5 minutes = 35,000 minutes or 584 hours for manufacturers to submit notices as required under Part 579.5.

Based on the foregoing, we estimate the burden hours for manufacturer to comply with the current EWR requirements, the foreign campaign requirements and the Part 579.5 requirements are 45,880 burden hours (44,304 hours for EWR requirements + 992 hours for foreign campaign requirements + 584 hours for Part 579.5).

b. New Collections

NHTSA believes that if this NPRM is made final, there will be a one-time increase of 27,160 burden hours on those reporting under Part 579, Subpart C. Adding vehicle type, fuel and/or propulsion system type, and four new components (stability control, FCA, LDP, and backover prevention) to the vehicle EWR reporting is likely to create a one-time cost for manufacturers to amend their reporting template and revise their software system to appropriately categorize the data. We estimate that one-time cost to revise EWR databases and software proposed in the NPRM would involve 2 weeks of a computer programmer's time and 8 hours of a manager's time per one component or fuel/propulsion element. Thus, an increase in burden hours for light vehicle manufacturers will be 80 hours × 6 (vehicle type, 4 components and fuel/propulsion) = 480 hours for a computer programmer and 8 hours × 6 (vehicle type, 4 components and fuel/propulsion) = 48 hours for a computer manager or 528 burden hours. For bus, emergency vehicle and medium/heavy vehicle manufacturers, we estimate 80 hours for computer programmers and 8 hours for computer manager to add the stability control and/or RSC component. There are currently 40 light vehicle manufacturers and 67 bus (29), emergency vehicle (8) and medium-heavy vehicle (30) manufacturers which would be affected by the proposed changes. The additional burden hours for light vehicle manufacturers would be 528 × 40 = 21,120 more burden hours. For bus, emergency vehicle and medium/heavy vehicle manufacturers, we estimate an additional 88 × 67 = 5,896 burden hours. For these reasons, if this NPRM is made final, NHTSA believes industry will incur a one-time increase in 21,120 + 5,896 = 27,016 more burden hours to implement the proposed requirements to NHTSA.

Today's proposal also proposes changes to Part 579, Subpart B. We believe the burden associated with adding a requirement that manufacturers supply the list of substantially similar vehicles electronically will be minimal. The agency believes the electronic submission of annual substantially similar vehicle information will take an additional hour for an IT technician to submit their lists to NHTSA. There are about 85 substantially similar vehicle list submissions per year and about 80 percent are already submitted electronically. Thus, we estimate that manufacturers will incur about 17 additional burden hours per year to submit substantially similar vehicle lists electronically. NHTSA believes that if this NPRM is made final, there will be increase of 17 burden hours on those reporting under Part 579, Subpart B.

We estimate that the total burden hours associated with the Part 579 requirements would be 45,880 hours for current reporting requirements + 27,016 hours for proposed new requirements + 17 hours for proposed electronic submission of substantially similar list = 72,913 burden hours pursuant to the regulatory changes made pursuant to Part 579, which represents a reduction in the burden hours estimated for the current collection (82,391 burden hours).

2. Parts 573 and 577 Collections

The approved information collection associated with Part 573 and portions of Part 577 is associated with an estimated annual burden of 21,370 hours associated with an estimated 175 respondents per year. The control number for these collections is OMB Control Number 2127–0004. For information concerning how we calculated these estimates please see the **Federal Register** Notices 76 FR 17186 (March 28, 2011) and 76 FR 34803 (June 14, 2011).

These estimates require revision. For several of the current collections, we have more current information on which to base estimates, and so we are making adjustments to those estimates to provide more accurate assessments of burden. Also, our proposals in today's notice will result in a number of new collections which require burden calculations.

a. Adjusted Estimates for Current Information Collections

Our prior estimates of the number of manufacturers each year that would be required to provide information under Part 573, the number of recalls for which Part 573 information collection requirements would need to be met, and the number of burden hours associated with the requirements currently covered

by this information collection require adjustment as explained below.

Previously, we calculated an average of 650 Part 573 information reports were filed with NHTSA each year by approximately 175 distinct manufacturers (MFRs). After reviewing more recent records which reflect higher recall volumes, we are adjusting this estimate to 280 distinct manufacturers filing an average of 680 Part 573 information reports each year.

We continue to estimate that it takes a manufacturer an average of 4 hours to complete each notification report to NHTSA and that maintenance of the required owner, purchaser, dealer and distributors lists requires 8 hours a year per manufacturer. Accordingly, the subtotal estimate of annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance and maintenance of owner and purchaser lists is 4,960 hours annually ((680 notices × 4 hours/report) + (280 MFRs × 8 hours)).

In addition, we continue to estimate an additional 2 hours will be needed to add to a manufacturer's information report details relating to the manufacturer's intended schedule for notifying its dealers and distributors, and tailoring its notifications to dealers and distributors in accordance with the requirements of 49 CFR § 577.13. This would total to an estimated 1,360 hours annually (680 notices × 2 hours/report).

In the event a manufacturer supplied the defect or noncompliant product to independent dealers through independent distributors, that manufacturer is required to include in its notifications to those distributors an instruction that the distributors are to then provide copies of the manufacturer's notification of the defect or noncompliance to all known distributors or retail outlets further down the distribution chain within five working days. *See* 49 CFR § 577.8(c)(2)(iv). As a practical matter, this requirement would only apply to equipment manufacturers since vehicle manufacturers generally sell and lease vehicles through a dealer network, and not through independent distributors. We believe our previous estimate of roughly 90 equipment recalls per year needs to be adjusted to 80 equipment recalls per year to better reflect recent recall figures. Although the distributors are not technically under any regulatory requirement to follow that instruction, we expect that they will, and have estimated the burden associated with these notifications (identifying retail outlets, making copies of the manufacturer's notice, and mailing) to be 5 hours per recall campaign. Assuming an average of 3 distributors per equipment item, (which is a liberal estimate given that many equipment manufacturers do not use independent distributors) the total number of burden hours associated with this third party notification burden is approximately 1,200 hours per year (80 recalls × 3 distributors × 5 hours).

As for the burden linked with a manufacturer's preparation of and notification concerning its reimbursement for pre-notification remedies, consistent with previous estimates (*see* 69 Fed. Reg. 11477 (March 10, 2004)), we continue to estimate that preparing a plan for reimbursement takes approximately 8 hours annually, and that an additional 2 hours per year is spent tailoring the plan to particular defect and noncompliance notifications to NHTSA and adding tailored language about the plan to a particular safety recall's owner notification letters. In sum, these required activities add an additional 3,600 annual burden hours ((280 manufacturers × 8 hours) + (680 recalls × 2 hours)).

The Act and Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns, as well as a statutory and regulatory reporting requirement that anyone that knowingly and intentionally sells or leases a defective or noncompliant tire notify NHTSA of that activity.

Manufacturers are required to include specific information relative to tire disposal in the notifications they provide NHTSA concerning identification of a safety defect or noncompliance with FMVSS in their tires, as well as in the notifications they issue to their dealers or other tire outlets participating in the recall campaign. *See* 49 CFR § 573.6(c)(9). We previously estimated about 10 tire recall campaigns per year; however, we are adjusting this figure to 15 tire campaigns per year to better reflect recent figures. We estimate that the inclusion of this additional information will require an additional two hours of effort beyond the subtotal above associated with non-tire recall campaigns. This additional effort consists of one hour for the NHTSA notification and one hour for the dealer notification for a total of 30 burden hours (15 tire recalls a year × 2 hours per recall).

Manufacturer owned or controlled dealers are required to notify the manufacturer and provide certain information should they deviate from the manufacturer's disposal plan. Consistent with our previous analysis, we continue to ascribe zero burden hours to this requirement since to date no such reports have been provided and our original expectation that dealers would comply with manufacturers' plans has proven true.

Accordingly, we estimate 30 burden hours a year will be spent complying with the tire recall campaign requirements found in 49 CFR 573.6(c)(9).

Additionally, because the agency has yet to receive a single report of a defective or noncompliant tire being intentionally sold or leased in the fourteen years since this rule was proposed, our previous estimate of zero burden hours remains unchanged with this notice.

NHTSA's supporting information for the current Part 577 information collection did not include estimates of the burden linked with the requirement to notify owners and purchasers of a safety recall. Today, we estimate that burden. We estimate that it takes manufacturers an average of 8 hours to draft their notification letters, submit them to NHTSA for review, and then finalize them for mailing to their affected owners and purchasers. We calculate that the Part 577 requirements result in 5,440 burden hours annually (8 hours per recall × 680 recalls per year).

b. New Collections

We recognize that our proposal to require owner notifications within 60 days of filing a Part 573 report will increase the burden hours associated with the requirement to notify owners and purchasers of a safety recall. We calculated that about 25% of past recalls did not include an owner notification mailing within 60 days of the filing of the Part 573 report. Under the proposed requirements, manufacturers would have to send two letters in these cases: an interim notification of the defect or noncompliance within 60 days and a supplemental letter notifying owners and purchasers of the available remedy. Accordingly, we estimate that 1,360 burden hours will be added by this 60-day interim notification requirement (680 recalls × .25 = 170 recalls; 170 recalls times 8 hours per recall = 1,360 hours). Therefore we calculate the total burden created by Part 577 to notify owners and purchasers of defective vehicles or motor vehicle equipment at 6,800 hours (5,440 + 1,360).

We believe the burden associated with the added requirement that manufacturers supply the list of VINs associated with the vehicles covered by their recall campaigns will be minimal. As discussed earlier, manufacturers are already required to have ready at the agency's request a list of VINs for

vehicles covered by each recall. They must also have the status of the remedy of each vehicle on that list at the end of each quarterly reporting period, and so they will know the vehicles (and associated VINs) that have not been remedied and be able to provide updated information. They must, as a practical matter, and in order to meet the requirement that they identify current owners based on State registration data (which is accessed using VINs), be able to provide the States with a list of VINs, and, more than likely, that list would be in an electronic format that can be transferred readily to each State for its use in compiling its list of owner names and addresses associated with each VIN. Any added burden, therefore, is reduced to time and costs associated with the manufacturer's transfer of that information to NHTSA through a secure server using SFTP.

We anticipate that the initial electronic submission of a VIN list to NHTSA's database will require one hour to compile per recall and that the recurring daily updates will add no additional hourly burden as it will be an automated process handled by the manufacturer's electronic servers. We calculate that 10 affected motorcycle manufacturers will now submit VINs for an average of 2 recalls each year and 19 affected light vehicle manufacturers will submit VINs for an average of 8 recalls each year. We estimate this will add an additional 172 burden hours (1 hour × 2 recalls × 10 MFRs + 1 hour × 8 recalls × 19 MFRs).

While we believe the automated process to submit VINs and daily VIN remedy updates will be minimally burdensome, we do believe the affected 29 manufacturers will incur a more complex burden during the initial setup and configuration of their computer systems. We estimate that each of the 29 manufacturers will spend a total of 60 hours creating a standardized VIN list template they will use in their VIN submissions to NHTSA. This estimate of 60 hours includes the time needed for software development (24 hours), data preparation (24 hours), and file naming (12 hours). We estimate the configuration of the manufacturers' databases to supply the needed VIN information in a format suitable to be received by NHTSA's computer servers will require a total of 300 hours. This estimate of 300 hours includes the time needed for software development (180 hours), data preparation (60 hours), and database management including the purchase of any needed new hardware (60 hours). Also, we estimate that the one-time VIN submissions related to the recall campaigns from the past 24 months will require 60 burden hours. This estimate of 60 hours includes the time needed for software development (24 hours), data preparation (24 hours), and file naming (12 hours). We calculate that these one-time burdens will only be incurred in the first year and include 1,740 hours for VIN list template creation (29 MFRs × 60 hours), 8,700 hours for the daily VIN update system configuration (29 MFRs × 300 hours), and 1,740 hours for the historical VIN submissions (29 MFRs × 60 hours) for a combined total of 12,180 hours (1,740 + 8,700 + 1,740).

Due to our proposed changes to quarterly reporting, specifically, lifting the requirement to calculate and submit recall quarterly reports for the largest manufacturers of light vehicles or motorcycles, this burden will decrease. We now estimate an average 515 quarterly reports will be filed per quarter (or 2,060 reports per year) by the manufacturers not required to submit VINs under our proposed changes to Part 573. Accordingly, we revise our previous calculation of 12,000 burden hours (3,000 quarterly reports × 4 hours/report) to a new calculation of 8,240 burden hours for quarterly reporting (2,060 quarterly reports × 4 hours/report). This will result in a reduction of 3,760 hours annually.

As to the new requirement that manufacturers utilize NHTSA's new online recalls portal for the submission of all recall documents, we believe there will be minimal burden. Manufacturers typically produce their Part 573 reports by entering the needed data into a computer word processor, emailing and/or printing and mailing their report. NHTSA's new online recalls portal will simply replace the manufacturer's data entry method and delivery with a standardized online form. We do believe there will be some unmeasured burden reduction by having a centralized Web site where manufacturers can find assistance in conducting their recall and upload all of their recall documents. However, we do estimate a small burden of 2 hours annually in order to set up their recalls portal account with the pertinent contact information and maintaining/updating their account information as needed. We estimate this will require a total of 560 hours annually (2 hours × 280 MFRs).

We recognize that manufacturers will incur additional burden in meeting the new requirement to submit changes or additions to the information supplied in an earlier Part 573 report, as well as in conducting the active review of Part 573 report information within 90 days of a recall's available remedy. In our experience, roughly 10 percent of safety recalls involve a change or addition to the information supplied in a 573 Report. The vast majority of these changes or additions are to only a single, discrete, informational component, such as a change in the number of products to be campaigned or a change in the manufacturer's estimation of when it will begin its owner and dealer notifications. As such, these amended reports are relatively simple and straightforward and will require little time to submit through NHTSA's new online recalls portal.

As for the active review of the Part 573 information report conducted within 90 days of the recall's available remedy, we estimate this review will take no more than 30 minutes per recall, as the informational components to be provided in a Part 573 report that will now require an update or correction to NHTSA are very discrete and straightforward. Accordingly, we estimate that there will be an additional burden of 340 hours a year (680 recalls at 30 minutes each).

In view of the fact that the requirement to inform NHTSA of a change or update in these recall components is new, we will liberally assume that the number of amended reports will double. Therefore, we assume that 20 percent of Part 573 reports will involve a change or addition. At 30 minutes per amended report, this will add an additional 68 burden hours per year (680 recalls × .20 = 136 recalls; 136/2 = 68 hours).

As to the proposal to require manufacturers to notify NHTSA in the event of a bankruptcy, we expect this notification to take an estimated 2 hours to draft and submit to NHTSA. We estimate that only 10 manufacturers might submit such a notice to NHTSA each year, so we calculate the total burden at 20 hours (10 MFRs × 2 hours).

Due to the initial costs associated with the Part 573 VIN submission proposal, our burden estimate is higher for the first year of this rule. The Part 573 and Part 577 requirements found in this proposal will require 39,530 burden hours in the first year of this rule and then 27,350 hours each subsequent year. Due to this range of estimates, we will request the maximum estimate of 39,530 burden hours. Accordingly, we plan to request approval from OMB to add an additional 18,160 burden hours a year, for a total of 39,530 burden hours for the regulatory changes proposed to Part 573 and Part 577.

We request comment on our burden hour estimate.

Apart from the burden hours estimated above, several of our

proposals in today's notice involve investment as well as recurring costs. We estimate these costs as follows:

We estimate that the IT staff and database professionals that will be paid to assist the manufacturers in creating their VIN list templates, configuring their daily VIN update systems, and gathering historical recall VIN information, average an hourly rate of $110 per hour. At this hourly rate, the VIN list template creation cost would total $191,400 ($110 × 60 hours × 29 MFRs). The cost to configure the manufacturer's system to automatically submit VIN updates would total $957,000 ($110 × 300 hours × 29 MFRs). The cost to provide the VINs for the last 24 months of safety recalls would total $191,400 ($110 × 60 hours × 29 MFRs). Also, the required hardware that will need to be purchased we estimate will average $5,000 for a total of $145,000 ($5,000 × 29 MFRs). We estimate that these one year costs will total $1,484,800 ($191,400 + $957,000 + $191,400 + $145,000).

As explained above, we estimate that each manufacturer will spend 3 hours compiling and submitting these VIN lists. The subsequent daily updates on the changes in recall remedy status for any of the vehicles involved in the recall, however, will be conducted through an automated process performed by the manufacturers' computer servers. Accordingly, we ascribe zero costs to this automated function.

As for costs associated with notifying owners and purchasers of recalls, we estimate this costs $1.50 per notification on average. This cost estimate includes the costs of printing, mailing, as well as the costs vehicle manufacturers may pay to third-party vendors to acquire the names and addresses of the current registered owners from state and territory departments of motor vehicles. In reviewing recent recall figures, we determined that an estimated 20 million letters are mailed yearly totaling $30,000,000 ($1.50 per letter × 20,000,000 letters). The changes to Part 577 requiring a manufacturer to notify their affected customers within 60 days would add an additional $7,500,000 (20,000,000 letters × .25 requiring interim owner notifications = 5,000,000 letters; 5,000,000 × $1.50 = $7,500,000). In total we estimate that the Part 577 requirements along with the new proposal to require notifications within 60 days will cost manufacturers a total $37,500,000 annually ($30,000,000 owner notification letters + $7,500,000 interim notification letters = $37,500,000).

We estimate the incremental costs associated with the proposed amendments total $12.25 million (3.27 million for EWR + $1.48 million for Part 573 VIN changes + $7.5 million in recall notification letters) in the first year and $7.5 million recurring costs annually in the second and subsequent years for recall notification letters.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.
- Ways to enhance the quality, utility, and clarity of the information to be collected and to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the **ADDRESSES** section of this document to NHTSA and OMB.

G. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not economically significant.

H. Regulation Identifier Number (RIN)

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

I. Plain Language

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

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

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

J. Data Quality Act

Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Public Law 106–554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the ''quality,'' ''objectivity,'' ''utility,'' and ''integrity'' of information that Federal agencies disseminate to the public. As noted in the EWR final rule (67 FR 45822), NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. Where the proposed rule change is requiring additional reporting by manufacturers, the new requirements will serve to improve the quality of the data NHTSA receives under the EWR rule, enabling the agency to be more efficient and productive in proactively searching for potential safety concerns as mandated through the TREAD Act.

K. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

> The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation.

International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA requests public comment on whether (a) ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement, have any implications for this rulemaking.

VIII. Proposed Regulatory Text

List of Subjects in 49 CFR parts 573, 577, and 579

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes that parts 573, 577, and 579 be amended as set forth below:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

1. Revise the authority citation for part 573 to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–30121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

2. Amend § 573.4 by adding the definitions of ''Light vehicle'' and ''Motorcycle'' in alphabetical order to read as follows:

§ 573.4 Definitions.

* * * * *

Light vehicle means any motor vehicle, except a bus, motorcycle, or trailer, with a GVWR of 10,000 lbs or less.

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

* * * * *

3. Amend § 573.6 by revising paragraphs (b), (c)(2)(iii), (c)(3), and (c)(5) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(b) Each report shall be submitted not more than 5 working days after a defect in a vehicle or item of equipment has been determined to be safety related, or a noncompliance with a motor vehicle safety standard has been determined to exist. At a minimum, information required by paragraphs (1), (2) and (5) of paragraph (c) of this section shall be submitted in the initial report. The remainder of the information required by paragraph (c) of this section that is not available within the five-day period shall be submitted within 5 working days of when it becomes available. In addition, each manufacturer shall amend information required by paragraphs (2), (3), (4), (8)(i) or (ii) of paragraph (c) within 5 working days after it has new information that updates or corrects information that was previously reported. Within 90 days of the date the recall remedy becomes available, the manufacturer shall review its defect and noncompliance information report and certify its completeness and accuracy or supplement or amend it as necessary to comply with this section. Each manufacturer submitting new information relative to a previously submitted report shall refer to the notification campaign number when a number has been assigned by the NHTSA.

* * * * *

(c) * * *

(2) * * *

(iii) In the case of items of motor vehicle equipment, the identification shall be by the generic name of the component (tires, child seating systems, axles, etc.), part number (for tires, a range of tire identification numbers, as required by *49 CFR 574.5*), size and function if applicable, the inclusive dates (month and year) of manufacture if available, brand (or trade) name, model name, model number, as applicable, and any other information necessary to describe the items.

* * * * *

(3) The total number of vehicles or items of equipment potentially containing the defect or noncompliance, and, where available the number of vehicles or items of equipment in each group identified pursuant to paragraph (c)(2) of this section.

(i) If the manufacturer has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States 25,000 or more light vehicles or 5,000 or more motorcycles in the current calendar year or the calendar year prior, the reporting vehicle manufacturer shall provide the vehicle identification number (VIN) of each vehicle potentially containing the defect or noncompliance and, as to each VIN listed, the recall remedy status of the vehicle associated with that VIN identified by one of the following categories: Unremedied; inspected and repaired; inspected and determined not to require repair; exported; stolen; scrapped; the owner was unable to be notified; other (reason remedy could not be performed is specified); recall remedy not yet available; or deleted (vehicle removed from recall). For vehicles with a recall remedy status of inspected and repaired or inspected and determined not to require repair, the manufacturer shall provide the date those actions were completed. A manufacturer shall provide this information in accordance with the table ''VIN Table for Safety Recall,'' provided at Web page *http://www.safercar.gov/Vehicle+Manufacturers* and follow the instructions there for submitting this information and must, once daily at a time designated by the agency, for 10 years from the date it first provides its VIN list, provide any changes to this information using application programming interface via Hypertext Transfer Protocol (HTTP).

(ii) Each manufacturer of vehicles covered by (i) above, on a one-time basis only and no later than 180 days after [the effective date of final rule] (i), shall submit the same information as in (i) for each defect or noncompliance notification campaign filed within 24 months prior to [the effective date of final rule]. A manufacturer must provide this information in the same manner as in (i) above and must, once daily at a time designated by the agency, for 10 years from the date it first provided notification of the defect or noncompliance pursuant to this section, provide any changes to this information using application programming interface via Hypertext Transfer Protocol (HTTP). Manufacturers that did not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States 25,000 or more light vehicles or 5,000 or more motorcycles in the current calendar year or the calendar year prior to [the effective date of the final rule] are not subject to this requirement.

(iii) A manufacturer of motor vehicles not required to submit information under (i) above may voluntarily submit the Vehicle Identification Number (VIN) of each vehicle potentially containing the defect or noncompliance. A manufacturer that voluntarily submits information under this paragraph must submit VIN information in accordance with (i) and comply with the requirements of (ii) above.

* * * * *

(5) A description of the defect or noncompliance, including both a brief summary and a detailed description, with graphic aids as necessary, of the nature and physical location (if applicable) of the defect or noncompliance. In addition, the manufacturer shall identify and describe the risk to motor vehicle safety reasonably related to the defect or noncompliance consistent with its

evaluation of risk required by 49 CFR 577.5(f).

* * * * *

4. Revise the first sentence of paragraph (a) of § 573.7 to read as follows:

§ 573.7 Quarterly reports.

(a) With the exception of vehicle manufacturers that are required to supply information pursuant to § 573.6(c)(3)(i), each manufacturer who is conducting a defect or noncompliance notification campaign to manufacturers, distributors, dealers, or owners shall submit to NHTSA a report in accordance with paragraphs (b), (c), and (d) of this section.

* * * * *

5. Revise § 573.9 to read as follows:

§ 573.9 Address for submitting required reports and other information.

All submissions, except as otherwise required by this part, shall be submitted through the forms and links provided on the Web page *http://www.safercar.gov/Vehicle+Manufacturers.* Defect and noncompliance information reports required by section 573.6 of this part shall be submitted using one of the following forms, depending upon the type of product that is the subject of the report: ''Defect and/or Noncompliance Information Report Form—Vehicles;'' ''Defect and/or Noncompliance Information Report Form—Equipment;'' ''Defect and/or Noncompliance Information Report Form—Tires;'' ''Defect and/or Noncompliance Information Report Form—Child Restraints;'' ''Defect and/or Noncompliance Information Report—Vehicle Alterers.'' In addition, a printed copy of the information report as filed must be submitted by certified mail in accordance with 49 U.S.C. § 30118(c) and addressed to the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, Attention: Recall Management Division (NVS–215), 1200 New Jersey Avenue SE., Washington, DC 20590. The information required by paragraphs 573.6(c)(3)(i) and (ii) of this part shall be submitted using the form, ''VIN Table for Safety Recall'' located at *http://www.safercar.gov/Vehicle+Manufacturers.* Reports required under section 573.7 of this part shall be submitted using the form, ''Quarterly Report Form'' also located at this Web page.

* * * * *

6. Add § 573.15 as follows:

§ 573.15 Disclaimers.

(a) A report submitted to NHTSA pursuant to § 573.6 regarding a defect which relates to motor vehicle safety shall not contain any statement or implication that there is no defect, or that the defect does not relate to motor vehicle safety.

(b) A report submitted to NHTSA pursuant to § 573.6 regarding a noncompliance with an applicable motor vehicle safety standard shall not contain any statement or implication that there is not a noncompliance.

* * * * *

7. Add § 573.16 as follows:

§ 573.16 Reporting bankruptcy petition.

Each manufacturer that files a bankruptcy petition, or is the subject of an involuntary petition for which relief has been ordered, pursuant to Title 11 of the United States Code, 11 U.S.C. 101 et seq., shall provide NHTSA a report as specified below.

(a) The name of the court, the docket number, and the name, address and telephone number of the manufacturer's legal representative:

(b) a copy of the bankruptcy petition;

(c) a list of the recalls for which the manufacturer filed a ''Defect and noncompliance information report'' with NHTSA pursuant to 49 CFR 573.6; and

(d) the information specified in 49 CFR 573.7(b) for each recall listed pursuant to section (c) above.

Each report pursuant to this section must be received by NHTSA not more than 5 working days after the date the petition is filed in the United States Bankruptcy Court. Reports shall be addressed to the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, Attention: Recall Management Division (NVS–215), 1200 New Jersey Ave. SE., Washington, DC 20590, or submitted as an attachment to an email message to RMD.ODI@dot.gov in a portable document format (pdf.).

* * * * *

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

1. Revise the authority citation for part 577 to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

2. Amend § 577.5 by revising paragraphs (a) and (b) to read as follows:

§ 577.5 Notification pursuant to a manufacturer's decision.

(a) When a manufacturer of motor vehicles or replacement equipment determines that any motor vehicle or item of replacement equipment produced by the manufacturer contains a defect that relates to motor vehicle safety, or fails to conform to an applicable Federal motor vehicle safety standard, the manufacturer shall provide notification in accordance with *paragraph (a) of § 577.7,* unless the manufacturer is exempted by the Administrator (pursuant to *49 U.S.C. 30118(d)* or *30120(h))* from giving such notification. The notification shall contain the information specified in this section. The information required by paragraphs (b) and (c) of this section shall be presented in the form and order specified. The information required by paragraphs (d) through (h) of this section may be presented in any order. Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter, including any provisions or attachments related to reimbursement, to NHTSA's Recall Management Division (NVS–215) no fewer than five Federal Government business days before it intends to begin mailing it to owners. The manufacturer shall mark the outside of each envelope in which it sends an owner notification letter with a notation that includes the words ''SAFETY,'' RECALL,'' and ''NOTICE,'' all in capital letters and in a type that is larger than that used in the address section, and is also distinguishable from the other type in a manner other than size. It shall also imprint on the outside of this envelope a label, one inch by three inches in size and located in the bottom left corner of the envelope. The label to be used is located at *http://www.safercar.gov/Vehicle+Manufacturers/RecallsPortal/SafetyRecallLabel.* This label shall not be used for any purpose other than compliance with this paragraph by any entity outside of the Department of Transportation. Except where the format of the envelope has been previously approved by NHTSA's Recall Management Division (NVS–215), each manufacturer must submit the envelope format it intends to use to that division at least five Federal Government business days before mailing the notification to owners. Submission of envelopes and proposed owner notification letters shall be made by the means identified in 49 CFR 573.9. Notification sent to an owner whose address is in the Commonwealth of Puerto Rico shall be written in both English and Spanish.

(b) At the top of the notification, the statement ''URGENT SAFETY RECALL,'' in all capital letters and in a type size that is larger than that used in the remainder of the letter. Then followed beneath by, for vehicle recalls,

the statement ''This notice applies to your vehicle, (manufacturer to insert VIN for the particular vehicle).'' Then followed beneath by an opening statement: ''This notice is sent to you in accordance with the National Traffic and Motor Vehicle Safety Act.''

* * * * *

3. Amend § 577.7 by revising the first sentence of (a)(1) and adding a second sentence to read as follows:

§ 577.7 Time and manner of notification.

(a) * * *

(1) Be furnished no later than 60 days from the date the manufacturer files its defect or noncompliance information report in accordance with 49 CFR 573.6(a). In the event that the remedy for the defect or noncompliance is not available at the time of notification, the manufacturer shall issue a second notification in accordance with the requirements of this part once that remedy is available. * * *

* * * * *

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

1. Revise the authority citation for part 579 to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

Subpart A—General

2. In § 579.4 amend paragraph (c) by revising the definition of ''Service brake system'' and adding the definitions of ''Backover prevention system,'' ''Compressed natural gas (CNG),'' ''Compression ignition fuel (CIF),'' ''Electric battery power (EBP),'' ''Electronic stability control,'' ''Forward collision avoidance system,'' ''Fuel and/or propulsion system type,'' ''Fuel-cell power (FCP),'' ''Hybrid electric vehicle (HEV),'' ''Hydrogen based power (HBP),'' ''Lane departure prevention system,'' ''Plug-in hybrid (PHV),'' ''Roll stability control,'' ''Spark ignition fuel (SIF),'' and ''Visibility'' in alphabetical order to read as follows:

§ 579.4 Terminology.

* * * * *

(c) *Other terms.* * * *

* * * * *

Backover prevention system means a system that has:

• A visual image of the area directly behind a vehicle that is provided in a single location to the vehicle operator and by means of indirect vision.

* * * * *

Compressed natural gas (CNG) means, in the context of reporting fuel and/or propulsion system type, a system that uses compressed natural gas to propel a motor vehicle.

* * * * *

Compression ignition fuel (CIF) means, in the context of reporting fuel and/or propulsion system type, a system that uses diesel or any diesel-based fuels to propel a motor vehicle. This includes biodiesel.

* * * * *

Electric battery power (EBP) means, in the context of reporting fuel and/or propulsion system type, a system that uses only batteries to power an electric motor to propel a motor vehicle.

* * * * *

Electronic stability control system for light vehicles is used as defined in S4. of § 571.126 of this chapter.

For buses, emergency vehicles, and medium/heavy vehicles it means a system:

• That augments vehicle directional stability by applying and adjusting the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to induce correcting yaw moment to limit vehicle oversteer and to limit vehicle understeer;

• That enhances rollover stability by applying and adjusting the vehicle brake torques individually at each wheel position on at least one front and at least one rear axle of the vehicle to reduce lateral acceleration of a vehicle;

• That is computer-controlled with the computer using a closed-loop algorithm to induce correcting yaw moment and enhance rollover stability;

• That has a means to determine the vehicle's lateral acceleration;

• That has the means to determine the vehicle's yaw rate and to estimate its side slip or side slip derivative with respect to time;

• That has the means to estimate vehicle mass or, if applicable, combination vehicle mass;

• That has the means to monitor driver steering input;

• That has a means to modify engine torque, as necessary, to assist the driver in maintaining control of the vehicle and/or combination vehicle; and

• That, when installed on a truck tractor, has the means to provide brake pressure to automatically apply and modulate the brake torques of a towed semi-trailer.

* * * * *

Forward collision avoidance system means a system:

• That has an algorithm or software to determine distance and relative speed of an object or another vehicle directly in the forward lane of travel; and

• That provides an audible, visible, and/or haptic warning to the driver of a potential collision with an object in the vehicle's forward travel lane.

The system may also include a feature:

• That pre-charges the brakes prior to, or immediately after, a warning is issued to the driver;

• That closes all windows, retracts the seat belts, and/or moves forward any memory seats in order to protect the vehicle's occupants during or immediately after a warning is issued; or

• That applies any type of braking assist or input during or immediately after a warning is issued.

* * * * *

Fuel and/or propulsion system type means the variety of fuel and/or propulsion systems used in a motor vehicle, as follows: compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel-cell power (FCP); hybrid electric vehicle (HEV); hydrogen based power (HBP); plug-in hybrid (PHV); spark ignition fuel (SIF); and other (OTH).

* * * * *

Fuel-cell power (FCP) means, in the context of reporting fuel and/or propulsion system type, a system that uses fuel cells to generate electricity to power an electric motor to propel a motor vehicle.

* * * * *

Hybrid electric vehicle (HEV) means, in the context of reporting fuel and/or propulsion system type, a system that uses a combination of an electric motor and internal combustion engine to propel a motor vehicle.

* * * * *

Hydrogen based power (HBP) means, in the context of reporting fuel and/or propulsion system type, a system that uses hydrogen to propel a vehicle through means other than a fuel cell.

* * * * *

Lane departure prevention system means a system:

• That has an algorithm or software to determine the vehicle's position relative to the lane markers and the vehicle's projected direction; and

• That provides an audible, visible, and/or haptic warning to the driver of unintended departure from a travel lane.

The system may also include a feature:

• That applies the vehicle's stability control system to assist the driver to maintain lane position during or immediately after the warning is issued;

• That applies any type of steering input to assist the driver to maintain lane position during or immediately after the warning is issued; or

• That applies any type of braking pressure or input to assist the driver to maintain lane position during or immediately after the warning is issued.

* * * * *

Plug-in hybrid (PHV) means, in the context of reporting fuel and/or propulsion system type, a system that combines an electric motor and an internal combustion engine to propel a motor vehicle and is capable of recharging its batteries by plugging in to an external electric current.

* * * * *

Roll stability control system means a system:

• That enhances rollover stability by applying and adjusting the vehicle brake torques to reduce lateral acceleration of a vehicle;

• That is computer-controlled with the computer using a closed-loop algorithm to enhance rollover stability;

• That has a means to determine the vehicle's lateral acceleration;

• That has the means to determine the vehicle mass or, if applicable, combination vehicle mass;

• That has a means to modify engine torque, as necessary, to assist the driver in maintaining rollover stability of the vehicle and/or combination vehicle; and

• That, when installed on a truck tractor, has the means to provide brake pressure to automatically apply and modulate the brake torques of a towed semi-trailer.

* * * * *

Service brake system means all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including the foundation braking system, such as the brake pedal, master cylinder, fluid lines and hoses, braking assist components, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135 (except equipment relating specifically to a parking brake). This term also includes systems and devices for automatic control of the brake system such as antilock braking, traction control, and enhanced braking, but does not include systems or devices necessary for electronic stability control, forward collision avoidance, lane departure prevention, or backover prevention. The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

Spark ignition fuel (SIF) means, in the context of reporting fuel and/or propulsion system type, a system that uses gasoline, ethanol, or methanol based fuels to propel a motor vehicle.

* * * * *

Visibility means the systems and components of a motor vehicle through which a driver views the surroundings of the vehicle including windshield, side windows, back window, and rear view mirrors, and systems and components used to wash and wipe windshields and back windows. This term includes those vehicular systems and components that can affect the ability of the driver to clearly see the roadway and surrounding area, such as the systems and components identified in FMVSS Nos. 103, 104, and 111. This term also includes the defogger, defroster system, the heater core, blower fan, windshield wiper systems, mirrors, windows and glazing material, heads-up display (HUD) systems, and exterior view-based television systems for medium-heavy vehicles, but does not include exterior view-based television systems for light vehicles which are defined under ''Backover prevention system'' and exterior lighting systems which are defined under ''Lighting.'' This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

3. Amend § 579.6 by:

a. Redesignating paragraph (b) as paragraph (b)(1); and

b. Add paragraph (b)(2) to read as follows

* * * * *

(b)(1) Information, documents and reports that are submitted to NHTSA's early warning data repository must be submitted in accordance with § 579.29 of this part. Submissions must be made by a means that permits the sender to verify that the report was in fact received by NHTSA and the day it was received by NHTSA.

(2) The annual list of substantially similar vehicles submitted pursuant to § 579.11(e) of this part shall be submitted to NHTSA's early warning data repository identified on NHTSA's Web page *http://www-odi.nhtsa.dot.gov/ewr/ewr.cfm.* A manufacturer shall use the template provided at the early warning Web site, also identified on NHTSA's Web page *http://www-odi.nhtsa.dot.gov/ewr/xls.cfm,* for submitting the list.

* * * * *

Subpart C—Reporting of Early Warning Information

4. Amend § 579.21 by:

a. Revising the first sentence of paragraph (a);

b. Revising the first sentence of paragraph (b)(2);

c. Revising the first sentence of paragraph (c); and

d. Adding a fifth sentence to paragraph (c) to read as follows:

§ 579.21 Reporting requirements for manufacturers of 5,000 or more light vehicles annually.

* * * * *

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, the platform, the fuel/propulsion system type coded as follows: CNG (compressed natural gas), CIF (compression ignition fuel), EBP (electric battery power), FCP (fuel-cell power), HEV (hybrid electric vehicle), HBP (hydrogen based power), PHV (plug-in hybrid), SIF (spark ignition fuel) and OTH (Other), and production. * * *

* * * * *

(b) * * *

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, the type, the fuel/propulsion system type (as specified in paragraph (a)), and VIN of the vehicle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle that allegedly contributed to the incident, and whether the incident involved a fire or rollover, coded as follows: 01 steering system, 02 suspension system, 03 service brake system, 05 parking brake, 06 engine and engine cooling system, 07 fuel system, 10 power train, 11 electrical system, 12 exterior lighting, 13 visibility, 14 air bags, 15 seat belts, 16 structure, 17 latch, 18 vehicle speed control, 19 tires, 20 wheels, 22 seats, 23 fire, 24 rollover, 25 electronic stability control system, 26 forward collision avoidance system, 27 lane departure prevention system, 28 backover prevention system, 98 where a system or component not covered by categories 01 through 22 or 25 through 28, is specified in the claim or notice,

and 99 where no system or component of the vehicle is specified in the claim or notice. * * *

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 01 through 22, or 25 through 28 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). * * * For each report, the manufacturer shall separately state the vehicle type and fuel/propulsion type if the manufacturer stated more than one vehicle type or fuel/propulsion type for a particular make, model, model year in paragraph (a) of this section.

* * * * *

5. Amend § 579.22 by:

a. Revising the first sentence of paragraph (b)(2);

b. Revising the first sentence of paragraph (c); and

c. Revising the first sentence of paragraph (d) as follows:

§ 579.22 Reporting requirements for manufacturers of 100 or more buses, manufacturers of 500 or more emergency vehicles and manufacturers of 5,000 or more medium-heavy vehicles (other than buses and emergency vehicles) annually.

* * * * *

(b) * * *

* * * * *

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the bus, emergency vehicle or medium-heavy vehicle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle that allegedly contributed to the incident, and whether the incident involved a fire or rollover, coded as follows: 01 Steering system, 02 suspension system, 03 service brake system, hydraulic, 04 service brake system, air, 05 parking brake, 06 engine and engine cooling system, 07 fuel system, gasoline, 08 fuel system, diesel, 09 fuel system, other, 10 power train, 11 electrical, 12 exterior lighting, 13 visibility, 14 air bags, 15 seat belts, 16 structure, 17 latch, 18 vehicle speed control, 19 tires, 20 wheels, 21 trailer hitch, 22 seats, 23 fire, 24 rollover, 25 electronic stability control system/roll stability control system, 98 where a system or component not covered by categories 01 through 22 or 25 is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. * * *

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 01 through 22, or 25 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). * * *

(d) *Copies of field reports.* For all buses, emergency vehicles and medium-heavy vehicles manufactured during a model year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period, a copy of each field report (other than a dealer report or a product evaluation report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period.

* * * * *

BILLING CODE 4910–59–P

Appendix A

Figure 1 Amended Light Vehicle Production Template showing new columns D and E.

Make	Model	ModelYear	Type	FuelPropulsionSystem	Platform	TotalProduction

Figure 2 Amended Light Vehicle Death\Injury Template showing new columns F and G.

SeqID	ManUniqueID	Make	Model	ModelYear	Type	FuelPropulsionSystem	VIN	IncidentDate	NumDeaths	NumInjuries	StateOrFCntry	SysOrCompA	SysOrCompB	SysOrCompC	SysOrCompD	SysOrCompE

Figure 3 Amended Light Vehicle Aggregate Template showing new columns D, E, Z, AA, AB and AC.

Make	Model	ModelYear	Type	FuelPropulsionSystem	Steering-01	Suspension-02	ServiceBrake-03	ParkingBrake-05	EngAndEngCooling-06	FuelSys-07	PowerTrain-10	Electrical-11	ExtLighting-12	Visibility-13	AirBags-14	SeatBelts-15	Structure-16	Latch-17	SpeedControl-18	TiresRelated-19	Wheels-20	Seats-22	FireRelated-23	Rollover-24	ElectronicStabilityControl-25	ForwardCollision-26	LaneDeparture-27	BackoverPreventionSystem-28

Appendix B

Figure 1 Amended Heavy Vehicle Aggregate Template showing new column AB.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB
1	Make	Model	ModelYear	Steering-01	Suspension-02	ServiceBrake-03	ServiceBrakeAir-04	ParkingBrake-05	EngAndEngCooling-06	FuelSys-07	FuelSysDiesel-08	FuelSysOther-09	PowerTrain-10	Electrical-11	ExtLighting-12	Visibility-13	AirBags-14	SeatBelts-15	Structure-16	Latch-17	SpeedControl-18	TiresRelated-19	Wheels-20	TrailerHitch-21	Seats-22	FireRelated-23	Rollover-24	ESC/RSC-25
2																												
3																												

Appendix C

FORM C1—EXAMPLE VIN TABLE SUBMISSION

VIN	Recall	Date added	Recall disposition	Remedy date	Comment 30
1JN4B76Y2XB645813	09V165	03/07/09	R	07/23/09	
1JN4B76Y2XB645814	09V165	03/07/09	I	03/07/11	
1JN4B76Y2XB645815	09V165	03/07/09	U		
1JN4B76Y2XB645816	09V165	03/07/09	Z		
1JN4B76Y2XB645817	09V165	03/07/09	U		
1JN4B76Y2XB645818	09V165	03/07/09	U		
1JN4B76Y2XB645819	09V165	03/07/09	Z		
1JN4B76Y2XB645820	09V165	03/07/09	R	11/04/10	
1JN4B77Y2XB645816	09V165	03/07/09	R	07/05/09	
1JN4B76Y2XB445814	09V165	03/07/09	U		
1JN4B76Y2XB645821	09V165	03/07/09	R	03/07/11	
1JN4B76Y2XB645822	09V165	03/07/09	X		
1JN4B77Y2XB645817	09V165	03/07/09	Z		
1JN4B76Y2XB445815	09V165	03/07/09	I	08/09/11	
1JN4B76Y2XB645823	09V165	03/07/09	Z		
1JN4B76Y2XB645824	09V165	03/07/09	R	11/02/11	
1JN4B77Y2XB645818	09V165	03/07/09	U		
1JN4B76Y2XB645874	09V165	03/07/09	D		NOT RECALLED.
1JN4B76Y2XB645864	09V165	03/07/09	D		NOT RECALLED.
1JN4B76Y2XB445816	09V165	03/07/09	U		
1JN4B76Y2XB645825	09V165	03/07/09	U		
1JN4B76Y2XB645758	09V165	04/11/09	U		LATE ADDITION.
1JN4B76Y2XB645826	09V165	03/07/09	Z		
1JN4B77Y2XB645819	09V165	03/07/09	I	04/08/09	
1JN4B76Y2XB445817	09V165	03/07/09	I	11/02/11	
1JN4B76Y2XB645827	09V165	03/07/09	R	03/07/11	
1JN4B76Y2XB645813	09V165	03/07/09	R	01/23/10	
1JN4B76Y2XB645814	09V165	03/07/09	S		
1JN4B76Y2XB635815	09V165	03/07/09	X		
1JN4B76Y2XB945816	09V165	03/07/09	S		

RECALL DISPOSITION KEY

X	Recall Remedy Not Yet Available.
R	Inspected and Repaired.
U	Unremedied.
I	Inspected and Determined Not to Require Repair.
Z	The Owner was Unable to be Notified.

RECALL DISPOSITION KEY—Continued

E	Exported.
T	Stolen.
S	Scrapped.
D	Deleted.

Appendix D

Acme Motor Company
1 Chestnut Lane
Detroit, Michigan 54698

Stamp

Safety Recall Notice

Tom Bennett
358 Maple Lane
Wichita, KS 68954

IMPORTANT SAFETY RECALL INFORMATION
Issued in Accordance With Federal Law
U.S. Department of Transportation
NHTSA

Appendix E

	Vehicle manufacturers to submit daily VIN updates
1	American Suzuki Motor Corp.
2	BMW Of North America, LLC.
3	Bombardier Recreational Products Inc.
4	Chrysler Group LLC.
5	Ducati North America.
6	Ford Motor Company.
7	General Motors LLC.
8	Genuine Scooters, LLC.
9	Harley-Davidson Motor Company.
10	Honda (American Honda Motor Co.)
11	Hyundai Motor Company.
12	Kawasaki Motors Corp., U.S.A.
13	Kia Motors Corporation.
14	Land Rover.
15	Leggett & Pratt, Incorporated-Masterack.
16	Mazda Motor Corp.
17	Mercedes-Benz USA, LLC.
18	Mitsubishi Motors North America, Inc.
19	Nissan North America, Inc.
20	Piaggio USA, Inc.
21	Polaris Industries, Inc.
22	Porsche Cars North America, Inc.
23	STR Motorsports Inc. DBA Kymco USA.
24	Subaru Of America, Inc.
25	Toyota Motor Corporation.
26	Triumph Motorcycles America LTD.
27	Volkswagen Of America, Inc.
28	Volvo Cars Of N.A. LLC.
29	Yamaha Motor Corporation, USA.

Issued on: August 27, 2012.

Daniel C. Smith,

Senior Associate Administrator, Vehicle Safety.

[FR Doc. 2012–21574 Filed 9–7–12; 8:45 am]

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Deepwater Port in the Gulf of Mexico; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 110801452–2387–03]

RIN 0648–BB00

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Deepwater Port in the Gulf of Mexico

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from Port Dolphin Energy LLC (Port Dolphin) for authorization to take marine mammals incidental to port construction and operations at its Port Dolphin Deepwater Port in the Gulf of Mexico, over the course of five years; approximately June 2013 through May 2018. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requests information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than October 25, 2012.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number 110801452–2387–03, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the Submit a Comment icon, and then enter 110801452–2387–03 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the Submit a Comment icon on the right of that line.
- Hand delivery or mailing of comments via paper or disc should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding any aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via one of the means provided here and to the Office of Information and Regulatory Affairs, NEOB–10202, Office of Management and Budget, Attn: Desk Office, Washington, DC 20503, *OIRA@omb.eop.gov.*

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of Port Dolphin's application may be obtained by writing to the address specified above (see **ADDRESSES**), calling the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* To help NMFS process and review comments more efficiently, please use only one method to submit comments.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ['Level A harassment']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ['Level B harassment'].''

Summary of Request

On February 1, 2011, NMFS received a complete application from Port Dolphin for the taking of marine mammals incidental to port construction and operations at its Port Dolphin Deepwater Port (DWP) facility in the Gulf of Mexico (GOM). During the period of these proposed regulations (June 2013–May 2018), Port Dolphin proposes to construct the DWP and related infrastructure—expected to occur over an approximately 11-month period, beginning in June 2013—and to subsequently begin operations. The proposed DWP, which is designed to have an operational life expectancy of 25 years, would be an offshore liquefied natural gas (LNG) facility, located in the GOM approximately 45 km (28 mi) off the western coast of Florida, and approximately 68 km (42 mi) from Port Manatee, located in Manatee County, Florida, within Tampa Bay (see Figure S–1 in Port Dolphin's application). The DWP would be in waters of the U.S. Exclusive Economic Zone (EEZ) approximately 31 m (100 ft) in depth. The proposed DWP would consist principally of a permanently moored buoy system, designed for offloading of natural gas, leading to a single proposed new natural gas transmission pipeline that would come ashore at Port Manatee and connect to existing infrastructure.

Take of marine mammals would occur as a result of the introduction of sound into the marine environment during construction of the DWP and pipeline and during DWP operations, which would involve shuttle regasification

vessel (SRV) maneuvering, docking, and debarkation, as well as regasification activity. Because the specified activities have the potential to take marine mammals present within the action area, Port Dolphin requests authorization to incidentally take, by Level B harassment only, small numbers of bottlenose dolphin (*Tursiops truncatus*) and Atlantic spotted dolphin (*Stenella frontalis*).

Description of the Specified Activity

Port Dolphin proposes to own, construct, and operate a DWP in the U.S. EEZ of the GOM Outer Continental Shelf (OCS) approximately 45 km (28 mi) off the western coast of Florida to the southwest of Tampa Bay, in a water depth of approximately 31 m (100 ft). On March 29, 2007, Port Dolphin submitted an application to the U.S. Coast Guard (USCG) and the U.S. Maritime Administration (MarAd) for all federal authorizations required for a DWP license under the Deepwater Port Act of 1974 (DWPA). Port Dolphin received that license in October 2009. The Port would consist of a permanently moored unloading buoy system with two submersible buoys separated by a distance of approximately 5 km (3 mi). The buoys would be designed to moor a specialized type of LNG carrier vessel (i.e., SRVs) and would remain submerged when vessels are not present. Regasified natural gas would be sent out through the unloading buoy to a 36-in (0.9 m) pipeline that would connect onshore at Port Manatee with the existing Gulfstream Natural Gas System and Tampa Electric Company (TECO) Bayside pipeline. The DWP would only serve SRVs. Construction of the DWP would be expected to take 11 months. Port Dolphin DWP would be designed, constructed, and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 25 years. The locations of the DWP and associated pipeline are shown in Figure S–1 in Port Dolphin's application; Figure 1–1 of the same document depicts a conceptual site plan for the DWP.

The installation of the DWP facilities would include the construction and installation of offshore buoys, mooring lines, and anchors. The two unloading buoys, also known as submerged turret loading (STL) buoys, would each have eight mooring lines connected to anchor points, likely consisting of piles driven into the seabed. When not connected to a SRV, STL buoys would be submerged 60 to 70 ft (18 to 21 m) below the sea surface. The installation of the pipeline from the DWP to shore would include burial of the pipeline, selective placement of protective cover (either rock armoring or concrete mattresses) over the pipeline at several locations along the pipeline route where full burial is not possible, and the horizontal directional drilling (HDD) of three segments of the pipeline.

SRVs are specialized LNG carriers designed to regasify the LNG prior to off-loading for transport to shore. Each STL buoy would moor one SRV on location throughout the unloading cycle. An SRV would typically moor at the deepwater port for between 4 and 8 days, depending on vessel size and send-out rate. Unloading of natural gas (i.e., vaporization or regasification) would occur through a flexible riser connected to the STL buoy and into the pipeline end manifold (PLEM) for transportation to shore via the subsea pipeline. With two separate STL buoys, Port Dolphin may schedule an overlap between arriving and departing SRVs, thus allowing natural gas to be delivered in a continuous flow.

Port Dolphin is planning for an initial natural gas throughput of 400 million standard cubic feet per day (MMscfd). Although the Port would be capable of an average of 800 MMscfd with a peak capacity of 1,200 MMscfd, this level of throughput would not be achieved during the span of this proposed rule. Based on a regasification cycle of approximately 8 days and initial throughput of 400 MMscfd, maximum vessel traffic during operations over the lifetime of the proposed 5-year regulations is projected to consist of 46 SRV unloadings per year.

In the open ocean, SRVs typically travel at speeds of up to 19.5 kn (36.1 km/hr). When approaching the vicinity of the DWP (i.e., during approach to the DWP), the SRVs would typically slow to about half speed. In close proximity to the STL buoys, the SRVs would slow to dead slow and utilize thrusters to attain proper vessel orientation relative to the DWP, taking into consideration ambient ocean currents, wind conditions, and buoy position. The following subsections describe the Region of Activity and the preceding facets of construction and operation in greater detail.

Region of Activity

The GOM is a marine water body bounded by Cuba on the southeast; Mexico on the south and southwest; and the U.S. Gulf Coast on the west, north, and east. The GOM has a total area of 564,000 km^2 (217,762 mi^2). Shallow and intertidal areas (water depths of less than 20 m) compose 38 percent of the total area, with continental shelf (22 percent), continental slope (20 percent), and abyssal plain (20 percent) composing the remainder of the basin. The project site is located on the west Florida Shelf, a portion of the Inner Continental Shelf, in an area of relatively low wave energy and tidal variation (Gore, 1992).

The GOM is separated from the Caribbean Sea and Atlantic Ocean by Cuba and other islands, and has relatively narrow connections to the Caribbean and Atlantic through the Florida and Yucatan Straits. The GOM is composed of three distinct water masses, including the North and South Atlantic Surface Water (less than 100 m deep), Atlantic and Caribbean Subtropical Water (up to 500 m deep), and Subantarctic Intermediate Water.

Circulation within the GOM, and within the project area, is dominated by the Loop Current, which enters the GOM flowing north through the Yucatan Strait, flows south along the Florida coast in the vicinity of the project area, and exits the GOM through the Florida Straits. The velocity of the current in the project area ranges between 1.56 and 15.16 cm/s in summer, and 1.79 to 25.36 cm/s in winter (APL, 2006). The direction of flow in the project area is generally south to southeast.

In shallow areas along the west Florida Shelf, additional influences on water flow and circulation include wind stress, freshwater inflow, and variations in buoyancy (Gore, 1992). Wind speeds at the project site range from 2.26 to 7.61 m/s in summer, and 2.85 to 11.04 m/s in winter (APL, 2006). Tidal variation along Florida's west-central continental shelf is moderate, with an average range of approximately 2 ft (0.6 m) (Gore, 1992).

At the eastern edge of the Loop Current along the west Florida Shelf, circulation patterns result in an upwelling of deep nutrient-rich water. This upwelling supports a high level of biological activity, producing large concentrations of plankton. Nutrient levels (primarily nitrogen and phosphorus) are also affected by runoff from agricultural and urbanized areas and from submarine groundwater discharge, leading to red tide conditions. In the project area, red tide occurs on an almost annual basis (Hu *et al.,* 2006). Red tides are caused by rapid growth of the species *Karenia brevis,* a toxic species which produces brevetoxins (a type of neurotoxin) that can accumulate in bivalves and cause mortality in marine organisms (Hu *et al.,* 2006). The rapid growth of these organisms can also create a hypoxic zone (area with dissolved oxygen

concentrations below 2 mg/L), which can cause mortality among benthic communities, fish, turtles, birds, and marine mammals (Hu *et al.,* 2006).

Extreme variations in water circulation patterns, tides, and wave heights can occur along the west Florida coast during periodic tropical storms and hurricanes. Warm water within the Loop Current can act as an energy source in summer and fall months, fueling the development of these storms. Features of these storms that can affect natural circulation and topography include high winds, flooding, storm surges, and beach erosion.

Tampa Bay is an estuary formed by the rise of sea level into a former river valley. Tampa Bay consists of four subregions, including lower Tampa Bay, middle Tampa Bay, Old Tampa Bay, and Hillsborough Bay. The project area would only extend to Port Manatee, within Lower Tampa Bay, near the outlet of the bay into the GOM. The bay covers an area of 1,030 km^2 within Hillsborough, Manatee, and Pinellas counties. Freshwater inflow to the bay occurs through four major river systems (Alafia, Hillsborough, Little Manatee, and Manatee), as well as more than a hundred minor creeks and rivers.

Water circulation within the bay is driven by freshwater inflow, tides, and winds. The bay has an average depth of 3.5 to 4 m. There is well-developed horizontal stratification in the bay, with fresh water flowing along the surface out to sea, and denser saline water flowing into the bay along the bottom.

The Tampa Bay area has a population of more than two million people, and tributaries, habitat, runoff patterns, and water quality are all affected by urbanization. Specific actions that have affected the bay include removal of mangroves, dumping of sewage, artificial filling, and modification of runoff from paved surfaces (Peene *et al.,* 1992).

Dates of Activity

Port Dolphin has requested regulations governing the incidental take of marine mammals for the five-year period from June 2013 through May 2018. Construction and installation of the port and pipeline would last approximately 11 months, with subsequent operations (i.e., SRV docking and regasification) occurring for the remainder of the specified time period.

LNG and SRVs

The DWPA establishes a licensing system for ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States. Originally, the DWPA promoted the construction and operation of deepwater ports as a safe and effective means of importing oil into the United States and transporting oil from the OCS, while minimizing tanker traffic and associated risks close to shore. The Maritime Transportation Security Act of 2002 amended the definition of ''deepwater port'' to include facilities for the importation of natural gas.

LNG is natural gas that has been cooled to about −260 °F (−162 °C) for efficient shipment and storage as a liquid. LNG is more compact than the gaseous equivalent, with a volumetric differential of about 610 to 1. LNG can thus be transported long distances across oceans using specially designed ships (e.g., SRVs), allowing efficient access to stranded reserves of natural gas that cannot be transported by conventional pipelines.

This proposed STL buoy system differs from other common LNG offload technologies insofar as it does not involve any permanent storage or regasification facility at the DWP, thus minimizing required infrastructure at the DWP itself. Rather, STL buoys receive SRVs that contain onboard LNG vaporization equipment. After mooring, LNG is vaporized onboard the vessel and discharged via the unloading buoy and a flexible riser into the subsea pipeline. Because the LNG is vaporized with the SRV's onboard equipment, no permanent fixed or floating storage or vaporization facilities are required. However, this means that the offload process can take 5 to 8 days, as compared with a standard offload of 18 hours or less. As a result of this trade-off, continuous off-loading operations are essential to minimize fluctuations in the throughput of natural gas. The SRVs proposed for use would be equipped to transport, store, vaporize, and meter natural gas. A closed-loop, glycol/water-brine heat transfer system would be used to vaporize the LNG. Closed-loop systems burn vaporized LNG in order to heat an intermediate fluid (e.g., glycol/water-brine), which warms the LNG. The closed-loop system results in reduced environmental impacts on water quality and marine resources; although these systems do require seawater for use in cooling electrical generating equipment (resulting in subsequent entrainment of fish eggs and plankton, as well as discharge of water at elevated temperatures), such usage is significantly reduced from that required in an open-loop system.

SRVs with approximate cargo capacities of either 145,000 m^3 or 217,000 m^3 (189,653–283,825 yd^3) based on standard designs for oceangoing LNG carriers would be used to supply LNG to the Port. Approximate dimensions of each SRV would range from 280 m (919 ft) in length and 43 m (141 ft) in breadth, with a design draft of 11.4 m (37.4 ft) for the smaller vessels to 315.5 m (1,035 ft) in length and 50 m (164 ft) in breadth, with a design draft of 12 m (39 ft) for the larger vessels. The maximum height above the waterline would be 41.1 m (135 ft). The 145,000 m^3 SRV would displace 80,000 t (88,185 ton) and the 217,000 m^3 SRV would displace 108,000 t (119,050 ton). The vessels would be equipped with a trunk and mating cone to receive the unloading buoy, lifting and connection devices, an LNG vaporization system, and gas metering systems. All critical functions would be manned 24 hours per day; other functions would be accomplished on a regular, scheduled basis.

The SRVs would have two thrusters forward and could have one or two thrusters aft. Thrusters allow precise control of positioning while mooring with the STL buoy. The dynamic positioning system would be used while retrieving the submerged unloading buoy handling line and moving onto the buoy. The system normally would not be used while the SRV is moored to the unloading buoy. SRVs would be equipped with an acoustic position reporting system that would monitor the buoy's draft and position before and during connection/disconnection; this would be enabled by six transponders located on the buoy itself.

Seawater would be used to ballast the SRV, cool the dual-fuel diesel engines supplying power for the regasification process, and condense the steam produced by the boilers supplying heat to the vaporization process. Ballasting the SRV is required to maintain proper buoyancy as the LNG is vaporized and offloaded through the pipeline. Water intake for ballasting the SRV would require an average intake of 360 m^3 per hour (2.3 MGD) over the vaporization cycle. The cooling water system would require an additional intake of approximately 1,520 m^3 per hour (9.5 MGD) and would take in seawater through one of two sea chests, each measuring 1.5 x 2.0 m (4.9 x 6.6 ft). Water velocity through the lattice screens at the hull side shell would not exceed 0.15 m/s (0.49 ft/s) at the maximum flow rate of 1,520 m^3 per hour.

Cooling water discharges would be made at points removed from the intake sea chests to avoid recirculating warmed water through the cooling system. All of the cooling water would be discharged

at a temperature of approximately 10 °C (18 °F) above the ambient water temperature. Although the seawater system would be equipped with a chlorination system to prevent biofouling of heat transfer surfaces and system components, the chlorination system would not be used while the SRVs are approaching the Port or moored at the buoys.

Port Construction

In-water construction of Port Dolphin is expected to begin in June 2013 and last a total of approximately 11 months. Construction would include siting the STL buoys and associated equipment and laying the marine pipeline. Construction is assumed to be continuous from mobilization to demobilization with no work stoppages due to weather or other issues. Please see Table 2–1 of Port Dolphin's application for a graphical depiction of the complete timeline of proposed construction activities. Port Dolphin anticipates that construction/installation would be accomplished in the following sequence:

- Install the Port Manatee HDD section, with installation proceeding from onshore to the offshore location.
- Install the anchor piles and the mooring lines using the main installation vessel at the DWP.
- Construction and installation of the HDD pipe sections for the segments under the existing Gulfstream pipeline.
- Install seabed pipe segments between the Port Manatee HDD segment and the Gulfstream HDD segments.
- Install the Skyway Bridge section of the pipe (requiring dredging through the causeway).
- Install the STL Buoys.
- Install the two risers from the PLEMs.
- Install the north and south PLEMs.
- Perform pipelay and diving operations towards the Y-connector.
- Install the flowlines on the seafloor.
- Complete tie-ins and bury or armor the pipeline, as necessary.
- Conduct testing of the pipeline upon completion of burial operations.

These components of in-water construction are discussed in greater detail in the following subsections.

DWP Construction/Installation—As described previously, the Port would include two STL unloading buoy systems, separated by a distance of approximately 5 km (3.1 mi) in a water depth of approximately 31 m (100 ft). Each unloading buoy would have eight mooring lines, consisting of wire rope and chain, connecting to eight driven-pile anchor points on the sea floor, one 16-in (0.4-m) inside diameter flexible pipe riser, and one electrohydraulic control umbilical from the unloading buoy to the riser manifold. When not connected to a SRV, STL buoys would be submerged 60 to 70 ft (18 to 21 m) below the sea surface. A concrete or steel landing pad would be fixed to the sea floor by means of a skirted mud mat to allow lowering of the STL buoy to the ocean floor when it is not in use.

The mooring lines would be designed so that the SRV could remain moored in non-hurricane 100-year storm conditions, and would vary in length, from 1,800 to 4,000 ft (549 to 1,219 m) for the northern unloading buoy and from 2,500 to 3,600 ft (762 to 1,097 m) for the southern buoy. The mooring lines would consist of 132-mm (5.2-in) chain and 120-mm (4.7-in) spiral-strand wire rope. The riser system for each unloading buoy would consist of one 16-in interior diameter flexible riser in a steep-wave configuration. Total length of the riser would be approximately 82 m (269 ft). The riser would be directed between two of the mooring lines, and would lie on the seafloor when not in use.

The two PLEMs near the unloading buoys would connect the flexible risers to the flowlines and a Y-connection that would connect the two flowlines to the new gas transmission pipeline. Each of the two PLEMs would be approximately 75 m (246 ft) offset from the proposed unloading buoy locations. The purpose of a PLEM is to provide an interface between the pipeline system and the flexible riser, isolate the riser between gas unloading operations, and attach a subsea pig launcher or receiver as necessary. ''Pigs,'' or ''pipeline inspection gauges,'' travel remotely through a pipeline to conduct inspections of or clean the pipeline and collect data about conditions in the pipeline. Each PLEM would include a flange connection for attaching the flexible riser or the subsea pig launcher/receiver and a full-bore subsea hydraulic control valve and electrohydraulic umbilical termination assembly. Each PLEM would have a mud mat foundation to provide a stable base for bearing PLEM and riser weight and to resist sliding and overturning forces. Please see Figure 1–1 in Port Dolphin's application for a conceptual diagram of the DWP.

Offshore installation activities at the DWP would begin with installation of the PLEMs at both STL buoy locations (north and south), followed by placement of the buoy anchors, mooring lines, buoys, and risers. Installation activities at both STL buoy locations would require a cargo barge, supported by anchor-handling support vessels, a supply boat, a crew transfer boat, and a tug. Buoy anchors would likely be installed via impact pile driving.

Pipeline Installation—The pipeline would be laid on the seafloor by a pipelaying barge and then buried, typically using a plowing technique. Other techniques, such as dredging and HDD, are planned to be used in certain areas depending on the final geotechnical survey, engineering considerations, and equipment selection. At the western (seaward) end, the pipeline would consist of two 36-in (0.9-m) flowlines connected to the north and south PLEMs, which would connect at a Y-connection approximately 3.2 km (2 mi) away (see Figure 1–1 in Port Dolphin's application). From the Y-connection a 36-in (0.9-m) gas transmission line would travel approximately 74 km (46 mi) to interconnections with the Gulfstream and TECO pipeline systems. The pipelines would have a nominal outer diameter of 36 in, with a coating of fusion-bonded epoxy and a concrete weight coating thickness of 11.4 cm (4.5 in).

Pipeline trenching and burial requirements are governed by Department of the Interior regulations at 30 CFR 250 Subpart J, which requires pipelines and all related appurtenances to be protected by 3 ft (0.9 m) of cover for all portions in water depths less than 200 ft (61 m). Portions of the pipeline that travel through hard-bottom areas may not be able to be buried to the full 3 ft depth. In these areas, flexible concrete mattresses or other cover would be used to cover the pipeline. In places where the pipeline crosses shipping lanes, it would be buried 10 ft (3 m) deep if the sea floor permits plowing. Burying the pipeline and flowlines would protect them from potential damage from anchors and trawls and avoid potential fouling, loss, or damage of fishermen's trawls. The pipeline construction corridor would be 3,000 ft (914 m) wide in offshore areas. The permanent in-water right-of-way for the pipeline would be 200 ft (61 m) wide.

Under the plowing method, the pipeline is lowered below seabed level by shearing a V-shaped ditch underneath it. The plow is towed along and underneath the pipeline by the burial barge. As the ditch is cut, sediment is removed and passively pushed to the side by specially shaped moldboards that are fitted to the main plowshare. The trench is then backfilled with a subsequent pass of the plow. The estimated width of the trench (including sediments initially pushed to each side) is 67 ft (20.4 m) (see Figure 1–2 in Port

Dolphin's application for a conceptual diagram of this process).

In areas that cannot be plowed (e.g., due to hard/live bottom) or complete burial cannot be achieved, the pipeline would be covered with an external cover (e.g., concrete mattresses or rock armoring). Although plowing is the preferred methodology for pipeline burial, other techniques such as dredging and HDD would be used where required. Figure 1–3 of Port Dolphin's application uses color coding of the proposed pipeline route to show where these various methodologies would be used, based on bottom structure and other barriers. The total length of the pipeline route is 74 km. Burial techniques to be used along the pipeline route and their relative lengths are characterized as follows:

- Plowing/trenching soft sediments: 39.6 km (24.6 mi; 53.2 percent of total pipeline length);
- Plowing/external cover: 23.3 km (14.5 mi; 31.4 percent);
- External cover (concrete mattress/rock armoring): 8.5 km (5.3 mi; 11.7 percent);
- Clamshell dredging/dragline burial: 0.3 km (0.2 mi; 0.5 percent); and
- HDD: 2.4 km (1.5 mi; 3.2 percent).

HDD would be employed for installation of the pipeline at three locations along the inshore portion of the route. The proposed HDD locations include drilling from land to water at the Port Manatee shore approach and from water-to-water at two crossings of the existing Gulfstream pipeline. The eastern HDD crossing would be 898 m (2,947 ft) in length, and the western HDD crossing would be 407 m (1,335 ft) in length. Both crossings would be in a water depth of 6.4 m (21 ft). The Port Dolphin pipeline would be drilled to a depth of approximately 6 m (20 ft) below the existing Gulfstream Pipeline (Port Dolphin, 2007b).

HDD is a steerable method of installing pipelines underground along a prescribed bore path, with minimal impact on the surrounding area. The process starts with location of entry and exit points. The first stage drills a pilot hole on the designed path, and the second stage enlarges the hole by passing a larger cutting tool known as a reamer. This would involve using progressively larger drill strings to eventually produce a drill bore 48 in (1.22 m) in diameter. The third stage places the product or casing pipe in the enlarged hole by way of the drill steel and is pulled behind the reamer to allow centering of the pipe in the newly reamed path. Simultaneously, bucket dredging would be employed to produce an exit hole at the end of the bore. In-water HDD may involve significant distance between the seabed and the drilling rig, and so a casing pipe may be required during the initial pilot hole drilling to provide some rigidity to the drill pipe as it is pushed ahead by the rig. Structures known as ''goal posts'' provide support for the casing pipe and are typically comprised of two driven piles with cross members set at predetermined elevations.

Port Dolphin has identified the need to install goal posts as part of the HDD drilling effort at the two water-to-water HDD locations. One potential option is that the goal posts are designed to self-install; however, another option is that drilling may be required. Further, at the shore-to-water transition HDD, Port Dolphin would need to install sheet piling to form a coffer dam, designed to contain the HDD exit pit so as to not impact nearby aquatic vegetation. Sheet pile segments would be installed by vibratory means.

Clam shell dredging would be required for passage under the Skyway Bridge and would be performed from a fixed working platform. Although dredging, followed by conventional lay and bury, is the most likely scenario, HDD remains a possibility for this segment. In the area near Manbirtee Key, a flotation ditch—dredging operations may require such a ditch when the minimum water depth necessary to safely float equipment is not present—would be dredged using conventional dredging equipment (i.e., the same barge that would be used to pull-in the shore approach HDD). The anticipated locations where the various methods of pipeline installation would be used are shown in Figure 1–3 of Port Dolphin's application.

There are eleven locations where tie-in operations would be required to piece the pipeline sections together. This mechanical operation is accomplished with specially designed connectors and a manned diving rig. This common operation does not require welding. Tie-ins would be required at each end of all HDD crossings, the Y-connection, and the PLEMs.

Construction Vessels—A shallow-water lay barge, spud barge and clamshell dredge, and a jack-up barge would be mobilized for offshore pipe-laying activities. Jack-up barges are mobile work platforms that are fitted with long support legs that can be raised or lowered; upon arrival at the work location the legs would be lowered and the barge itself raised above the water such that wave, tidal and current loading acts only on the relatively slender legs and not on the barge hull. A spud barge is a type of jack-up barge that typically offers increased stability but does not raise the hull above the water. This equipment would be used where conventional installation methods are anticipated. An HDD spread, including four jack-up barges, three hopper barges (designed to carry materials), and two tugs for barge towing, would be used for the three planned HDD segments. Four diving support vessels would also support tie-in and mattressing operations. Construction equipment would make one round-trip to the project location, staying on location for the duration of construction activity. Work crew vessels and supply vessels would make on average two trips a day for the duration of offshore construction. Work crew and supply vessels are expected to make between 420 and 450 round-trips to the offshore construction location from shore-based facilities for the duration of the project.

Table 1 details the vessels that would be used during the DWP and pipeline construction and installation activities. The projected duration and duty load of each vessel are also provided. Duty load is a primary consideration when characterizing project-related sound sources.

TABLE 1—VESSELS TO BE EMPLOYED DURING PORT DOLPHIN CONSTRUCTION AND/OR FACILITY INSTALLATION OPERATIONS

Operation	Auxiliary equipment/notes	Engine specifications [1]	Operational usage [2]
Construction/Installation at DWP			
Barge		N/A	3.5 months at 100%.
Anchor-handling support vessels	ROV winches, hydraulic pumps, thrusters, sonar, survey equipment.	2 × 3,750-hp.	
Supply boat	Bow thruster	671-hp.	

TABLE 1—VESSELS TO BE EMPLOYED DURING PORT DOLPHIN CONSTRUCTION AND/OR FACILITY INSTALLATION OPERATIONS—Continued

Operation	Auxiliary equipment/notes	Engine specifications [1]	Operational usage [2]
Crew transfer boat		671-hp.	
Tug		800-hp.	
Impact hammer		N/A	As required.
Pipeline installation			
Jack-up: Port Manatee HDD	Jack-up	3,000-hp	27 days at 50%.
Spud lay barge: Shallow lay operation; no propulsion; uses two tugs.	Tug	1,200-hp	59.4 days at 75%.
	Tug	1,200-hp.	
East jack-ups	Jack-up	3,000-hp	27 days at 75%.
	Jack-up	3,000-hp.	
West jack-ups	Jack-up	3,000-hp	27 days at 75%.
	Jack-up	3,000-hp.	
Pipelay barge: Large lay barge operation; no propulsion; uses two tugs.	Tug	2,000-hp	37 days at 85%.
	Tug	2,000-hp.	
Dragline barge		600-hp	6 days at 100%.
Plow lay barge: Plow burial operation; no propulsion; uses two tugs.	Tug	2,000-hp	113 days at 85%.
	Tug	2,000-hp.	
DSVs for mattress armoring	Vessel	1,000-hp	108 days at 100%.
	Vessel	1,000-hp.	
DSVs for mattress armoring	Vessel	1,000-hp	12 days at 15%.
		1,000-hp.	
	Vessel	1,000-hp.	
		1,000-hp.	
Pipeline gauge, fill, test, dewater, and drying	Vessel	300-hp	13 days at 35%.
		300-hp.	
	Vessel	300-hp.	
		300-hp.	
Survey vessel	Vessel	1,000-hp	54 days at 50%.
	Vessel	1,000-hp.	
Spud lay barge: Shallow lay barge operation; no propulsion; uses two tugs.	Tug	1,200-hp	6.6 days at 15%.
	Tug	1,200-hp.	
East jack-ups	Jack-up	2,000-hp	3 days at 15%.
	Jack-up	2,000-hp.	
West jack-ups	Jack-up	2,000-hp	3 days at 15%.
	Jack-up	2,000-hp.	
Pipelay barge: Large lay barge operation; no propulsion; uses two tugs.	Tug	2,000-hp	4 days at 15%.
	Tug	2,000-hp.	
Dragline barge	Barge	600-hp	1 day at 15%.
Plow lay barge: Plow burial operation; no propulsion; uses two tugs.	Tug	2,000-hp	13 days at 15%.
	Tug	2,000-hp.	
DSVs for mattress armoring	Vessel	1,000-hp	12 days at 15%.
		1,000-hp.	
	Vessel	1,000-hp.	
		1,000-hp.	
Pipeline gauge, fill, test, dewater, and drying	Vessel	300-hp	1 day at 15%.
		300-hp.	
	Vessel	300-hp.	
		300-hp.	
Survey vessel	Vessel	1,000-hp	6 days at 15%.
HDD operations			
Jack-up: Port Manatee HDD	Jack-up	3,000-hp	3 days at 15%.
Spud barge	Crane-mounted drill and vibratory drill; ancillary equipment includes welding equipment, air compressor, and generator.	N/A	Maximum 4 days for vibratory drilling at each HDD location.
Tug		800-hp	Maximum 4 days for vibratory drilling at each HDD location.

DSV = Diving spread vessels
[1] All specifications are for diesel engines.
[2] All figures assume 24 hrs/day; percentages refer to percent maximum duty load.

Port Operations

The proposed DWP operations would include SRV maneuvering/docking, regasification of LNG cargo, and debarkation. The SRVs are expected to approach the DWP from the south. In the open ocean, the SRVs typically travel at speeds of up to 19.5 kn (36.1 km/hr), reducing to less than 14 kn (25.9 km/hr) while maintaining full maneuvering speed. However, once approaching the vicinity of the DWP—within approximately 16 to 25 km (10–16 mi) of the DWP—the SRVs would begin approach by slowing to about half speed, and then to slow ahead. Inside of 5 km (3.1 km) from the DWP, the SRVs' main engines would be placed in dead slow ahead and decreased upon approach to dead slow, with final positioning and docking to occur using thrusters. Expected SRV transit, approach, and maneuvering/docking characteristics are outlined in Table 2. Only the maneuvering/docking activities and their associated sound sources (i.e., thrusters) are considered in this document; transit and approach maneuvers are considered part of routine vessel transit and are not considered further.

TABLE 2—SRV SPEEDS AND THRUSTER USE DURING TRANSIT, APPROACH, AND MANEUVERING/DOCKING OPERATIONS AT THE DWP

Zone	Speed limit	Thrusters in use?
>33 km from DWP	Full service speed (19.5 kn)	No
25–33 km from DWP	Full maneuvering speed (<14 kn)	No
16–25 km from DWP	Half ahead (<10 kn)	No
5–16 km from DWP	Slow ahead (<6 kn)	No
Inside 5 km from DWP	Dead slow ahead (<4.5 kn, decreasing to <3 kn)	Bow and stern thrusters
Docking	Dead slow	Two bow thrusters; possibly one or two stern thrusters

Based on a regasification cycle of approximately 8 days and projected DWP throughput during the first several years of 400 MMscfd, vessel traffic during operations is projected to consist of a maximum of 46 SRV trips per year. During DWP operations, sound would be generated by the maneuvering of SRVs upon approach to the Port, regasification of LNG aboard the SRVs, and subsequent debarkation from the Port.

Once an SRV is connected to a buoy, the vaporization of LNG and send-out of natural gas can begin. Each SRV would be equipped with up to five vaporization units, each with the capacity to vaporize 250 MMscfd. Under normal operation, two or more units would be in service simultaneously, with at least one unit on standby mode.

Method of Incidental Taking

Incidental take is anticipated to result from elevated levels of sound introduced into the marine environment by the construction and operation of the DWP, as described in preceding sections. Specifically, sound from pile driving, drilling, dredging, and vessel operations during the construction and installation phase, and sound from SRV maneuvering, docking, and regasification during operations would likely result in the behavioral harassment of marine mammals present in the vicinity. Table 3 shows these proposed activities by the time of year they are anticipated to occur.

TABLE 3—PROJECTED CONSTRUCTION, INSTALLATION, AND OPERATIONS ACTIVITIES, BY SEASON

Activity	Season
Construction and installation	
Buoy installation	Summer 2013
Offshore impact hammering.	Summer 2013
Pipelaying offshore	Late Summer 2013 through early Winter 2013–14
Pipelaying inshore	Late Summer 2013 through early Winter 2013–14
Offshore pipeline burial.	Fall 2013 through Winter 2013–14
Inshore pipeline burial	Fall 2013 through Winter 2013–14
HDD	Summer 2013
HDD vibratory driving	Summer 2013
Operations	
SRV maneuvering/docking.	Year-round; maximum 46 visits per year
Regasification	Year-round; 8 days estimated per visit

During construction, underwater sound would be produced by construction vessels (e.g., barges, tugboats, and supply/service vessels) and machinery (e.g., pile driving and pipe laying equipment, trenching equipment, and goal post installation equipment at the HDD locations) operating either intermittently or continuously throughout the area during the construction period. Vessel traffic associated with construction would be a relatively continuous sound source during the construction phase. Vessel sound would be created by propulsion machinery, thrusters, generators, and hull vibrations and would vary with vessel and engine size. Machinery sound from underwater construction would be transmitted through water and would vary in duration and intensity. Port construction (i.e., field construction and installation operations) would require approximately 11 months.

While the main sound source during SRV transit and approach to the DWP would originate from the SRV main engines (i.e., predominantly in low frequencies), the primary sound source during maneuvering and docking would be the SRV thrusters. An additional underwater sound source would be the sound produced by the flow of gas through the proposed pipeline, although very little sound would be expected to result (JASCO, 2008); therefore, this source is not considered further.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds, which is why the lower frequency sound associated with the proposed activities would attenuate more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio

between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards), and is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

The underwater acoustic environment consists of ambient sound, defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The ambient underwater sound level of a region is defined by the total acoustical energy being generated by known and unknown sources, including sounds from both natural and anthropogenic sources. These sources may include physical (e.g., waves, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction). Even in the absence of anthropogenic sound, the sea is typically a loud environment. A number of sources of sound are likely to occur within Tampa Bay and the adjoining shelf, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km (5.3 mi) from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- *Precipitation sound:* Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- *Biological sound:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- *Anthropogenic sound:* Sources of ambient sound related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies (Richardson *et al.,* 1995). Shipping sound typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they would attenuate (decrease) rapidly (Richardson *et al.,* 1995). Typical SPLs for various types of ships are presented in Table 4.

TABLE 4—UNDERWATER SPLS FOR REPRESENTATIVE VESSELS

Vessel description	Frequency (Hz)	Source level (dB)
Outboard drive; 23 ft; 2 engines @ 80 hp	630	156
Twin diesel; 112 ft	630	159
Small supply ships; 180–279 ft	1,000	125–135 (at 50 m)
Freighter; 443 ft	41	172

Source: Richardson *et al.,* 1995.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, the ambient sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995).

Very few measurements of ambient sound from Tampa Bay and the adjoining shelf are available. There are no specific data on ambient underwater sound levels for the area of the proposed Port and pipeline route. Shooter *et al.* (1982) analyzed approximately 12 hours of data collected in deep (3,280 m) waters in the western GOM and reported median ambient sound levels of 77–80 dB re: 1 $\mu Pa^2/Hz$. These levels are likely to be somewhat lower than those occurring in the vicinity of Tampa Bay, due in large part to the reduced contribution from surf in deep water.

Known sound levels and frequency ranges associated with anthropogenic sources similar to those that would be used for this project are summarized in Table 5. Details of each of the sources are described in the following text.

TABLE 5—ANTICIPATED SOURCE LEVELS FOR CONSTRUCTION/INSTALLATION AND OPERATIONS AT THE PORT DOLPHIN DWP

Source	Activity	Location	Maximum broadband source level (re: 1 μPa)
Barge	Anchor installation operations	STL buoys (DWP)	177 dB
Tug	Anchor installation operations	STL buoys (DWP)	205 dB
Impact hammer [1]	Pile driving	STL buoys (DWP)	217 dB
Barge	Pipe laying	Pipeline corridor, DWP to shore	174 dB
Tug	Transit	Offshore/Inshore	191 dB
Dredge	Dredging	Likely inshore, offshore if necessary	188 dB
HDD	Drilling	Two locations in Tampa Bay	157 dB
Vibratory driving	Sheet pile installation	Two locations in Tampa Bay	186 dB
SRV	Maneuvering/docking, with thrusters	DWP	183 dB
SRV	Regasification	DWP	165 dB

Source: JASCO, 2008, 2010.
[1] Source level for impact hammer estimated assuming pulse length of 100 ms.

The sounds produced by these activities fall into one of two sound types: Pulsed and non-pulsed (defined in next paragraph). The distinction between these two general sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (e.g., Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sounds (e.g., explosions, gunshots, sonic booms, impact pile driving) are brief, broadband, atonal transients (ANSI, 1986; Harris, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a decay period that may include a period of diminishing, oscillating maximal and minimal pressures. Pulsed sounds generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulse (intermittent or continuous) sounds can be tonal, broadband, or both. Some of these non-pulse sounds can be transient signals of short duration but without the essential properties of pulses (e.g., rapid rise time). Examples of non-pulse sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment. Many of the sounds produced by the project would be transient in nature (i.e., the source moves), such as during vessel docking. Regasification sounds are continuous (while the SRV is docked) and stationary. The positioning (maneuvering and docking) of SRVs using thrusters is intermittent (i.e., every 8 days) and of short duration (i.e., 10 to 30 minutes).

For this project, the only pulsive sounds are associated with pile driving activities at the offshore Port location (i.e., associated with anchor installation activities). Impact hammers (proposed for use in driving buoy anchors) operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers, which would be used to install sheet pile and possibly pilings for goal posts inshore, install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Caltrans, 2009). Rise time is slower, reducing the probability and severity of injury (USFWS, 2009), and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2001).

Sound Attenuation Devices

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices. There are several types of sound attenuation devices including bubble curtains, cofferdams, and isolation casings (also called temporary sound attenuation piles [TNAP]), and cushion blocks. Port Dolphin considers the installation of cofferdams to be infeasible for this project. The information available suggests that bubble curtains, cushion blocks and caps, and TNAP design offer comparable levels of sound attenuation for pile driving. Port Dolphin proposes to implement one or more of these techniques during the pile driving activities needed to install components of the STL buoys and will make a final decision with regard to the technology to be used prior to beginning work.

Bubble curtains create a column of air bubbles rising around a pile from the substrate to the water surface. The air bubbles absorb and scatter sound waves emanating from the pile, thereby reducing the sound energy. Bubble curtains may be confined or unconfined. An unconfined bubble curtain may consist of a ring seated on the substrate and emitting air bubbles from the bottom. A confined bubble curtain contains the air bubbles within a flexible or rigid sleeve made from plastic, cloth, or pipe. Confined bubble curtains generally offer higher attenuation levels than unconfined curtains because they may physically block sound waves and they prevent air bubbles from migrating away from the pile. For this reason, the confined bubble curtain is commonly used in areas with high current velocity (Caltrans, 2009).

An isolation casing is a hollow pipe that surrounds the pile, isolating it from the in-water work area. The casing is dewatered before pile driving. This device provides levels of sound attenuation similar to that of bubble curtains (Caltrans, 2009). Sound levels can be reduced by 8 to 14 dB. Cushion blocks consist of materials (e.g., wood, nylon) placed atop piles during impact pile driving activities to reduce source levels. Typically sound reduction can range from 4 to a maximum of 26 dB.

Both environmental conditions and the characteristics of the sound attenuation device may influence the

effectiveness of the device. According to Caltrans (2009):

- In general, confined bubble curtains attain better sound attenuation levels in areas of high current than unconfined bubble curtains. If an unconfined device is used, high current velocity may sweep bubbles away from the pile, resulting in reduced levels of sound attenuation.
- Softer substrates may allow for a better seal for the device, preventing leakage of air bubbles and escape of sound waves. This increases the effectiveness of the device. Softer substrates also provide additional attenuation of sound traveling through the substrate.
- Flat bottom topography provides a better seal, enhancing effectiveness of the sound attenuation device, whereas sloped or undulating terrain reduces or eliminates its effectiveness.
- Air bubbles must be close to the pile; otherwise, sound may propagate into the water, reducing the effectiveness of the device.
- Harder substrates may transmit ground-borne sound and propagate it into the water column.

The literature presents a wide array of observed attenuation results for bubble curtains (see, e.g., WSF, 2009; WSDOT, 2008; USFWS, 2009; Caltrans, 2009). The variability in attenuation levels is due to variation in design, as well as differences in site conditions and difficulty in properly installing and operating in-water attenuation devices. As a general rule, reductions of greater than 10 dB cannot be reliably predicted (Caltrans, 2009).

Sound Thresholds

Since 1997, NMFS has used generic sound exposure thresholds to determine when an activity in the ocean that produces sound might result in impacts to a marine mammal such that a take by harassment or injury might occur (NMFS, 2005b). To date, no studies have been conducted that examine impacts to marine mammals from which empirical sound thresholds have been established. Current NMFS practice regarding exposure of marine mammals to high level sounds is that cetaceans exposed to impulsive sounds of 180 dB rms or above are considered to have been taken by Level A (i.e., injurious) harassment. Behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (e.g., impact pile driving) and 120 dB rms for continuous sound (e.g., vessel sound, vibratory pile driving) but below injurious thresholds.

Distance to Sound Thresholds

This section details sound source modeling produced under contract by the applicant (JASCO, 2008, 2010) and describes the predicted distances to relevant regulatory sound thresholds for the specified activities. NMFS has determined that this information represents the best information available for project sound sources and has used the information to develop mitigation measures and to estimate potential incidental take in this document. The modeling scenarios considered all sound sources associated with the project and were developed to thoroughly characterize the various construction/installation and operation activities expected. The relevant information is summarized in Table 6. The equipment list associated with each activity is based on current construction plans for the Port (Ocean Specialists, 2007). For each piece of equipment specified, proxy vessels were selected from JASCO Research's database of underwater sound measurements. The sound propagation model used several parameters, including expected water column sound speeds, bathymetry (water depth and shape of the ocean bottom), and bottom geoacoustic properties (which indicate how much sound is reflected off of the ocean bottom), to estimate the radii of sound impacts (JASCO, 2008). Modeling scenario locations are depicted in Figure 1–4 of Port Dolphin's application. Please see Appendices C and D in Port Dolphin's application for a detailed description of this sound source modeling.

TABLE 6—REPRESENTATIVE SCENARIOS MODELED DURING THE PORT DOLPHIN SOUND SOURCE ANALYSIS AND RADIAL DISTANCE TO THRESHOLDS

Activity	Source	Modeled location	Distance to threshold [1,2]	Approximate area encompassed by threshold [2]
Buoy installation	Crane vessel, cargo barge, support vessel.	North STL buoy; offshore DWP site	180 dB: <0.2 km 120 dB: 3.9 km	180 dB: <0.13 km^2 120 dB: 48 km^2
Impact hammering	Impact hammer	Y-connector; offshore DWP site	180 dB: 0.18 km 160 dB: 4.5 km	180 dB: 0.10 km^2 160 dB: 64 km^2
Pipelaying, offshore	Barge, two anchor handling tugs, support tug.	15-m isobath	180 dB: <0.2 km 120 dB: 7.5 km	180 dB: <0.13 km^2 120 dB: 177 km^2
Pipelaying, inshore	Barge, two anchor handling tugs, support tug.	Tampa Bay	180 dB: <0.2 km 120 dB: 6.0 km	180 dB: <0.13 km^2 120 dB: 113 km^2
Pipeline burial, offshore.	Plow system, two anchor handling tugs.	15-m isobath	180 dB: <0.2 km 120 dB: 8.4 km	180 dB: <0.13 km^2 120 dB: 222 km^2
Pipeline burial, inshore.	Plow system, two anchor handling tugs.	Tampa Bay	180 dB: <0.2 km 120 dB: 6.7 km	180 dB: <0.13 km^2 120 dB: 141 km^2
HDD	Floating spud barge, crane mounted drill, welding equipment, air compressor, generator.	Tampa Bay	180 dB: <0.01 km 120 dB: 0.24 km	180 dB: <0.00 km^2 120 dB: 0.2 km^2
HDD vibratory driving.	Floating spud barge, vibrator, welding equipment, air compressor, generator.	Tampa Bay	180 dB: <0.01 km 120 dB: 12.6 km	180 dB: <0.00 km^2 120 dB: 499 km^2
Docking at buoy, dead slow, two bow thrusters and one stern thruster.	SRV	STL buoy; offshore DWP site	180 dB: <0.01 km 120 dB: 3.6 km	180 dB: <0.00 km^2 120 dB: 41 km^2
Regasification	SRV	STL buoy; offshore DWP site	180 dB: 0.00 km 120 dB: 0.17 km	180 dB: <0.00 km^2 120 dB: 0.09 km^2

Source: JASCO, 2008, 2010.

[1] All distances are unweighted, 95th percentile radial distances.

[2] For distances not given precisely (e.g., <0.2 km) area of ensonification was modeled using a radial distance of 200 m. Although the distance to threshold would be less than 200 m, it is not possible to specifically calculate the distance because the scenarios involve multiple vessel components.

Note that in many cases the scenarios involve multiple pieces of equipment. Although equipment spacing would vary during the course of operations, a single layout must be assumed for modeling purposes. As such, where multiple vessels were involved in the scenarios listed in Table 6 the following layout was assumed:

- The barge used for the main operation in each scenario (e.g., crane vessel, pipe laying barge, pipe burial barge) was set in the middle of the group of vessels.
- For four or fewer tugs (anchor handling and/or support), tugs were spaced at a range of 100 m (328 ft) from the center of the barge. Note that the pipe laying/burial barge itself is 122 m long x 30 m wide (400 x 100 ft).

The radii to sound thresholds vary for the same activity depending on water depth, because the transmission of lower-frequency sound waves can be significantly reduced in shallower water. As a result, the radii to the Level A and Level B harassment isopleths in Tampa Bay (i.e., shallower water) are shorter than those that would occur offshore. In addition, much of the energy from the vessels associated with pipelaying occurs at low frequencies and would propagate poorly in shallower water.

Although sounds created by construction equipment and vessels would be continuous during pipeline installation, activities would progress slowly along the pipeline route as the pipeline is laid and buried and the trench backfilled. Any one area would be subject to the maximum sound levels for only 1 to 2 days at a time as the construction activities pass that area. Sound modeling indicates that, overall, operational sound associated with the proposed project is consistent with other man-made underwater sound sources in the area (e.g., commercial shipping and dredging). Appendix E of Port Dolphin's application presents Level B harassment sound field graphics for construction activities.

Specific Activity Descriptions—As described previously, the applicant provided detailed sound source modeling for all sound-producing activities associated with the project. In the following sections, each specific type of activity is described in terms of the modeling scenario; the type, duration, and timing of sound produced by the activity; and the radial distances to relevant sound thresholds. All radial distances to thresholds presented in the following sections are modeled, and may be different from the actual distances as determined through site-specific acoustic monitoring conducted during the specified activities.

Buoy Installation—Proxies were selected for the crane and support vessels based on vessel specifications. While a cargo barge may be present on-site for a portion of the operations, Port Dolphin assumed that this barge would typically not be under power. Installation of the buoys at the Port would produce continuous sound for a relatively short period of time during summer, with the 120-dB isopleth located 3.9 km (2.4 mi) from each STL buoy location.

Impact Pile Driving—During the construction period, impact hammering would produce the loudest sound levels but would likely occur only for short periods of time. The source depth for pile driving was set to approximately half the local water depth. In actuality, sound would radiate from all portions of the pilings; this midwater column value is a precautionary estimate of the depth for an equivalent point source, as losses due to bottom and surface interactions would be less for a source at mid-depth than for one near the sea floor or surface. Impact hammering operations would involve a pipe lay barge and tugs, similar to pipe laying operations. However, because the potential impact to marine mammals is different for impulsive and continuous sources, impact hammering sound (an impulsive source) is considered separately from vessel sound (non-pulsed sources). Note that the source levels from impact hammering are much higher than those from the vessels that are likely to be on-site. Impact hammering offshore would encompass an area with a radius of approximately 180 m (591 ft) to the Level A threshold; radii to the 160-dB isopleths for this impulsive source would be at 4.5 km (2.8 mi).

Pipe Laying—Pipe laying activities would generate continuous, transient, and variable sound levels during construction predominantly during fall, with some activity during late summer and early winter. Two sites were selected for pipe laying: one approximately midway along the offshore portion of the pipeline and another along the inshore portion. Equipment lists for the offshore and inshore sites are identical: a pipe laying barge, two tugs involved in re-setting of anchors, and a third tug in transit. Sound impacts from pipelaying would produce a 6.0 or 7.5 km (3.7–4.7 mi) radius to the 120-dB isopleth inshore and offshore, respectively.

Pipe Burial—Pipeline burial using the plow system would generate continuous, transient, and variable sound levels during construction, primarily during fall and winter. Pipeline burial would be used infrequently during the construction period. Similarly to pipe laying, pipe burial using a trenching plow system would consist of an anchored barge accompanied by two anchor handling tugs. In addition, sound would be generated by the plow used to bury the pipeline. Detailed source level data were not available for plow operations. However, Aspen Environmental Group (2005) reported a broadband source level of 185 dB. Based on this information, similar source levels from dredge operations (Greene, 1987) were used for the applicant's modeling purposes. Note that the dredge source levels include the sound from the barge upon which the dredge is operated; consequently, a separate barge is not specified for plowing operations in Table 6. The modeling scenario used the depth of the barge hull under the water as the sound source depth, rather than the depth of the actual dredge work. This is because observations from clamshell dredging show that the highest levels of underwater sound are emitted from equipment on the barge (propagating through the hull) rather than from the scraping sounds of the dredge itself (Richardson *et al.,* 1995). Pipeline burial using the plow system produces sound attenuating to the 120-dB isopleth at 6.7 km (4.2 mi) inshore and 8.4 km (5.2 mi) offshore.

HDD—HDD within Tampa Bay would produce continuous sound levels and is expected to occur during summer. Installation of the goal posts (described previously under ''Pipeline Installation'') at each HDD location would produce a continuous sound for a relatively short period of time and would only occur during summer. HDD would be employed for installation of the pipeline at a number of locations along the inshore portion of the route, including the Port Manatee shore approach and two crossings of the existing Gulfstream pipeline. Drilling and vibratory driving (for goal posts/sheet pile) would be conducted from a floating spud barge approximately 41 m in length. Drilling would involve a crane-mounted drill, suspended from a crawler crane on the barge. The barge would also be equipped with welding equipment, an air compressor, and a generator.

Source levels for drilling of the pilot holes are based on measurements made by Greene (1987) during drilling operations in the Beaufort Sea. As with drilling from a barge, these measurements include contributions from both the drill assembly itself and from equipment on the drill platform

(e.g., generators). Because the dominant sound source is equipment located on the drilling vessel (Richardson *et al.,* 1995) rather than the drilling or scraping itself, a source level height of 2.2 m was used, as it was for other barge-mounted activities modeled by JASCO.

Source levels for the vibratory driver were derived from measurements made by JASCO. The vibratory driver was mounted on a moored barge during the measurements, and so sound contributions from equipment on the barge are included in the source level estimates. The measured driver is larger than the vibratory driver planned for use at Port Dolphin. However, very few measurements of underwater sound exist for pile drivers of this size, and in most cases the available reports do not describe the vibratory driver used. Additionally, scaling by vibratory driver specifications (e.g., the eccentric moment) is made difficult by the fact that pile driving source levels depend not only on the equipment but also on the piling, substrate and environment. As such, JASCO's un-scaled measurements of underwater sound are used here as a conservative estimate of the sound likely to be generated during installation of the goal posts/sheet pile. As for the impact pile driving described previously, the source depth for pile driving was conservatively set to half the local water depth, i.e., 3.5 m.

Modeling results (JASCO, 2010) indicate that the 120-dB isopleth would extend 240 m (787 ft) from the drilling operation, while the 120-dB isopleth for HDD vibratory driving would extend 12.6 km (7.8 mi) from the source.

SRV Docking—Once the SRV completes its approach to Port Dolphin and is within approximately 5.6 km (3.5 mi) of the Port, bow and stern thrusters would be utilized. Thruster use would vary, operating for 10 to 30 minutes to allow for the proper positioning of the vessel and for connection to the STL buoy. Docking or berthing would occur at alternate STL buoys approximately every 8 days. Sound modeling, assessing the periodic use of the thrusters (i.e., every 8 days) producing an intermittent and moving sound, indicated that the 120-dB isopleth would occur at 3.6 km (2.2 mi) from the SRV.

Operational procedures for the SRVs specify probable use of thrusters during approach and docking. Speed is gradually reduced as the SRV approaches the unloading buoys, until main propulsion is at dead slow. Bow and stern thrusters are used during docking. Once moored, ship's propulsion is not required for positioning. Based on these operational procedures, the sample situation described in Table 6 was selected for modeling; i.e., docking at the northern buoy, using both bow thrusters and one stern thruster.

Very little information is available on the underwater sound levels produced by LNG carriers. However, some data and empirical formulas have been developed for large tankers in general. At typical cruising speeds, source levels from such vessels are dominated by propeller cavitation (Sponagle, 1988; Seol *et al.,* 2002). As described by LGL and JASCO (2005), an empirical expression for the source spectrum level (1 Hz bandwidth) in the frequency range between 100 Hz and 10 kHz is

$$SL = 163 + 10 \log BD^4N^3 f^{-2}$$

where B is the number of blades, D is the propeller diameter in meters, N is the number of propeller revolutions per second, and f is the frequency in Hz. For frequencies less than 100 Hz, the source level is assumed to be constant at the 100 Hz level. In the case of ducted propellers (e.g., bow and stern thrusters), the constant is approximately 7 dB larger. Specifications for the main propulsion system are based on a typical carrier, and are similar to those described by LGL and JASCO (2005). Bow and stern thrusters are expected to be single-speed, controllable-pitch devices, with power ratings of 2,000 kW each for the bow thrusters and 1,200 kW each for the stern thrusters. Based on these values, diameters and rates of revolution for the thrusters were based on specifications for the most common models currently available. The above model is not able to take into account the reduction in source levels that would result from a change in pitch at lower power outputs; hence, the modeled source levels are conservative (i.e., represent maximum expected levels of underwater sound).

Regasification—The SRV would regasify its LNG cargo while moored at the STL buoy. Sound levels for regasification are low, and the modeling predicts that the 120-dB isopleths would be only 170 m (558 ft) from the source.

The following additional sources of underwater sound are expected to be present during construction of the DWP, but were not modeled:

- *Dredging:* Dredging would be involved in a few stages of construction, including HDD (discussed later) and pipelaying at the Sunshine Bridge crossing (Ocean Specialists, 2007). This would involve a clamshell or bucket-style dredge, operated from a barge while one or more additional barges carry out other tasks nearby. Measurements taken by JASCO during operation of a clamshell dredge indicated source levels of approximately 150–155 dB, i.e., roughly 20 dB lower than the source levels associated with the barge used during pipe laying operations. As such, dredging may be considered an insignificant source of sound compared with operation of the barges that would also be present.
- *Transponders:* Once the port is operational, an additional source of underwater sound in the vicinity of the unloading buoys would be the acoustic transponders installed on the buoys. Information was not available on the specific transponders intended for use at the DWP; however, specifications from commercially available buoy positioning transponders indicate operating frequencies of a few tens of kHz, and source levels of approximately 190 dB. Given this estimated broadband source level, we may estimate ranges to various threshold values assuming simple spherical spreading, i.e., $RL = SL - 20\log_{10}(r)$. Solving for r shows that received levels would drop to 180 dB at a range of approximately 3 m, and to 160 dB at a range of approximately 32 m; further, this sound source would be highly intermittent, as the transponders would only transmit, briefly, when interrogated by the SRV-based command unit. As such, only marine mammals passing very near the unloading buoys during the brief period of transmittance would potentially be affected, and effects from these sources may be considered discountable.

Comments and Responses

On March 1, 2011, NMFS published a notice of receipt of an application for a Letter of Authorization (LOA) in the **Federal Register** (76 FR 11205) and requested comments and information from the public for 30 days. NMFS did not receive any substantive comments.

Description of Marine Mammals in the Area of the Specified Activity

Twenty-nine marine mammals (28 cetaceans and the Florida manatee [*Trichechus manatus*]) have documented occurrences in the GOM (Wursig *et al.,* 2000). The manatee is under the jurisdiction of the U.S. Fish and Wildlife Service, and will not be discussed further in this document. Of the cetaceans, seven are mysticetes (baleen whales) and 21 are odontocetes (toothed whales, including dolphins). Table 7 contains a summary of relevant information for each of these 28 species.

TABLE 7—MARINE MAMMALS IN THE GULF OF MEXICO

Species	Status [a]	Occurrence [b]	Typical habitat		
			Coastal	Shelf	Slope/Deep
Order Cetacea					
Suborder Mysticeti					
Family Balaenidae:					
North Atlantic right whale (*Eubalaena glacialis*)	E	1		X	X
Family Balaenopteridae.					
Blue whale (*Balaenoptera musculus*)	E	1		X	X
Bryde's whale (*Balaenoptera edeni*)		3		X	X
Fin whale (*Balaenoptera physalus*)	E	2		X	X
Humpback whale (*Megaptera novaeangliae*)	E	2		X	X
Minke whale (*Balaenoptera acutorostrata*)		2		X	X
Sei whale (*Balaenoptera borealis*)	E	2		X	X
Suborder Odontoceti					
Family Physeteridae:					
Dwarf sperm whale (*Kogia sima*)		3		X	X
Pygmy sperm whale (*Kogia breviceps*)		3		X	X
Sperm whale (*Physeter macrocephalus*)	E	4		X	X
Family Ziphiidae:					
Blainville's beaked whale (*Mesoplodon densirostris*)		2 [c]		X	X
Cuvier's beaked whale (*Ziphius cavirostris*)		2 [c]		X	X
Gervais' beaked whale (*Mesoplodon europaeus*)		3 [c]		X	X
Sowerby's beaked whale (*Mesoplodon bidens*)		1 [c]		X	X
Family Delphinidae:					
Atlantic spotted dolphin (*Stenella frontalis*)		4	X	X	X
Bottlenose dolphin (*Tursiops truncatus*)		4	X	X	X
Clymene dolphin (*Stenella clymene*)		4		X	X
False killer whale (*Pseudorca crassidens*)		3		X	X
Fraser's dolphin (*Lagenodelphis hosei*)		4		X	X
Killer whale (*Orcinus orca*)		3			X
Melon-headed whale (*Peponocephala electra*)		4			X
Pantropical spotted dolphin (*Stenella attenuata*)		4		X	X
Pygmy killer whale (*Feresa attenuata*)		3		X	X
Short-finned pilot whale (*Globicephala macrorhynchus*)		4		X	X
Risso's dolphin (*Grampus griseus*)		4		X	X
Rough-toothed dolphin (*Steno bredanensis*)		4		X	X
Spinner dolphin (*Stenella longirostris*)		4		X	X
Striped dolphin (*Stenella coeruleoalba*)		4		X	X

Source: Würsig *et al.,* 2000
[a] Status: E = Listed as endangered under the Endangered Species Act.
[b] Occurrence: 1 = extralimital; 2 = rare; 3 = uncommon; 4 = common.
[c] Beaked whales in the GOM may be somewhat more common than survey data indicate, as beaked whales are difficult to sight and identify to species. Most surveys have been conducted in sea states that are not optimal for sighting beaked whales.

Of these 28 cetacean species, based on available survey data, only the bottlenose dolphin and Atlantic spotted dolphin are likely to occur regularly in the vicinity of the project area (i.e., coastal and shelf waters of the eastern GOM) (Fulling *et al.,* 2003). Because a small portion of the sound produced by the activity is predicted to extend into the mid-shelf depth stratum, three other species of cetacean—pygmy and dwarf sperm whales and the rough-toothed dolphin—could be affected. Other species of dolphins and an occasional whale are sometimes observed in nearshore GOM waters and might infrequently strand, but these are not considered normal occurrences for those deepwater species that occur more regularly in waters around and seaward of the continental shelf break (Mullin and Fulling, 2003a; Mullin *et al.,* 2004). As a result, the potential effects of the specified activity are analyzed only for these five species. As the species to be most affected by the specified activity, bottlenose and spotted dolphin occurrences relative to the project area are discussed in more detail in the following paragraphs.

The cetacean fauna of the northern and eastern GOM continental shelf, including the project area, typically consists of the bottlenose dolphin and the Atlantic spotted dolphin (Davis and Fargion, 1996; Jefferson and Schiro, 1997; Davis *et al.,* 1998; Davis *et al.,* 2000; Würsig *et al.,* 2000). At the shelf edge and within the deeper waters of the continental slope, the cetacean community typically includes nineteen species, including the Bryde's whale, sperm whale, pygmy and dwarf sperm whales, three species of beaked whales, and twelve species of oceanic dolphins. Oceanographic and bathymetric features (e.g., eddies, water temperature, salinity) are important factors in determining the distribution of marine mammals, in large part because the presence of prey is frequently influenced by such features (Katona and Whitehead, 1988; Biggs *et al.,* 2000; Wormuth *et al.,* 2000; Davis *et al.,* 2002). The presence of specific hydrographic and/or bathymetric features and discontinuities (e.g., abrupt

temperature differentials, current edges, upwelling areas, sea mounts, banks, shoals, the continental shelf edge) may also affect marine mammal distribution (USDON, 2003).

The following discussions of the population status of GOM marine mammals use categories adapted from Würsig *et al.* (2000):

- *Common:* A species that is abundant and widespread throughout the region in which it occurs;
- *Uncommon:* A species that does not occur in large numbers and may or may not be widely distributed throughout the region in which it occurs;
- *Rare:* A species present in such small numbers throughout the region that it is seldom seen; and
- *Extralimital:* A species known on the basis of few records that are probably the result of unusual movements of few individuals into the region.

Data historically acquired during aerial and shipboard surveys conducted within the eastern GOM were analyzed by marine mammal researchers and summarized in USDON (2003). To increase the utility of the species sightings data, marine mammal occurrence and distribution data were partitioned into both seasonal and water depth categories. This partitioning is supported by distribution patterns (e.g., sightings over the continental shelf, sightings beyond the continental shelf) observed during large-scale surveys (e.g., Cetacean and Turtle Assessment Program [CETAP] surveys; CETAP, 1982; Hain *et al.,* 1985; Winn *et al.,* 1987). Seasonal categories included in USDON (2003) and employed in this analysis were:

- *Winter:* December 21 through March 20;
- *Spring:* March 21 through June 20;
- *Summer:* June 21 through September 20; and
- *Fall:* September 21 through December 20.

Water depth categories, or depth strata, included in USDON (2003) and employed in this analysis were as follows:

- *Nearshore:* 0 to 120 ft (0 to 36.6 m);
- *Mid-shelf:* 120 to 300 ft (36.6 to 91.4 m);
- *Shelf-edge:* 300 to 6,600 ft (91.4 to 2,000 m); and
- *Slope:* > 6,600 ft (> 2,000 m).

The U.S. Department of the Navy (USDON, 2003) reviewed available marine mammal survey data for the eastern GOM and summarized species presence and distribution on a seasonal basis. Relevant findings pertinent to marine mammals include the following:

- Spring is the season with the highest number of cetacean occurrence records, although high numbers of cetacean occurrence records were also noted for summer;
- Fall and winter are the two seasons with the lowest number of occurrence records and total number of cetaceans;
- Higher numbers in spring and summer are possibly due to the higher survey effort usually expended during those months (when sighting conditions are optimal); and
- There are fewer sighting records in fall than in the other seasons, likely attributable to suboptimal survey conditions (i.e., reduction in sightability).

Mysticetes

The Bryde's whale is the most frequently sighted mysticete in the Gulf, though considered uncommon. Strandings and sightings data suggest that this species may be present throughout the year, generally in the northeastern Gulf near the 100-m (328-ft) isobath between the Mississippi River delta and southern Florida (Davis *et al.,* 2000; Würsig *et al.,* 2000). The remaining six mysticete whales (blue, fin, humpback, minke, sei, and North Atlantic right whales) are considered rare or extralimital in the GOM (Jefferson, 1996; Jefferson and Schiro, 1997). Mysticete whales, including the Bryde's whale, could occur within the project area although such occurrence would be extremely unlikely.

Odontocetes

Bottlenose dolphins and spotted dolphins are known to occur regularly in the project area and are the species to be most affected by the project. In addition, there is some possibility that pygmy and dwarf sperm whales and rough-toothed dolphins could occur in deeper waters ensonified by some offshore project activities. Most of the odontocetes known to occur within the Gulf (Table 7) are considered common. Exceptions include the beaked whales, with most being rare or extralimital, and the dwarf and pygmy sperm whales, which are considered uncommon. The frequency of occurrence of beaked whales and dwarf and pygmy sperm whales are most likely underestimated because these cryptic species are submerged much of the time and avoid aircraft and ships (Würsig *et al.,* 1998). Consequently, these species may be somewhat more common than is indicated by survey data but are still likely to be relatively uncommon. The sperm whale is considered common in the Gulf (Jefferson, 1996; Jefferson and Schiro, 1997; Davis *et al.,* 2000; Waring *et al.,* 2006). Sightings data suggest a Gulf-wide distribution on the continental slope. Congregations of sperm whales are common along the continental shelf edge in the vicinity of the Mississippi River delta in water depths of 500 to 2,000 m (1,640–6,562 ft). As a result of these consistent sightings, it is believed that there is a resident population of sperm whales in the Gulf consisting of adult females, calves, and immature individuals (Brandon and Fargion, 1993; Mullin *et al.,* 1994; Sparks *et al.,* 1993; Jefferson and Schiro, 1997). Though most odontocetes (including delphinids) are considered common in the GOM, they prefer waters of the continental shelf edge (approximately 200 m [656 ft]) or deeper waters of the continental slope. Therefore, it is unlikely that these species would occur within the project area (i.e., Tampa Bay and nearshore waters). Due to the rarity of the majority of odontocete species, as well as the mysticetes discussed previously, in the proposed project area and the remote chance they would be affected by Port Dolphin's proposed port operations, these species are not considered further in this analysis.

The most commonly sighted cetaceans on the GOM continental shelf (in terms of numbers of individual sightings) during systematic surveys conducted in the mid to late 1990s (i.e., GulfCet II) were bottlenose dolphins and Atlantic spotted dolphins. Brief discussions of these commonly sighted marine mammal species are provided in the following subsections.

Bottlenose dolphins—The bottlenose dolphin is a common inhabitant of both the continental shelf and slope in the GOM, generally in waters less than 20 m (66 ft) (Griffin and Griffin, 2003). The species is also distributed throughout the bays, sounds, and estuaries of the GOM (Mullin *et al.,* 1990). Bottlenose dolphins are opportunistic feeders, taking a wide variety of fish, cephalopods, and shrimp (Wells and Scott, 1999) and using a wide variety of feeding strategies (Shane, 1990). In the GOM, bottlenose dolphins often feed in association with shrimp trawlers (Fertl and Leatherwood, 1997). In addition to the use of active echolocation to find food, bottlenose dolphins likely detect and orient to fish prey by listening for the sounds prey produce—so-called 'passive listening' (Barros and Myrberg, 1987; Gannon *et al.,* 2005). Nearshore bottlenose dolphins prey predominately on coastal fish and cephalopods, while offshore individuals prey on pelagic cephalopods and a large variety of epi- and mesopelagic fish species (Van Waerebeek *et al.,* 1990; Mead and Potter, 1995).

NMFS recognizes several stocks of bottlenose dolphins in the GOM, including a northern oceanic stock; a continental shelf and slope stock; western, northern, and eastern coastal stocks; and a group of 32 bay, sound, and estuarine stocks (Blaylock *et al.,* 1995; Waring *et al.,* 2006). Bottlenose dolphins likely occur within both offshore and nearshore waters of the project area. Bottlenose dolphins present in the project area would likely be represented by individuals from the eastern coastal stock and the relevant bay, sound, and estuarine stocks.

Bottlenose dolphins along the U.S. coastline are believed to be organized into local populations, or stocks, each occupying a small region of coast with some migration to and from inshore and offshore waters (Schmidly, 1981). The seaward boundary for coastal stocks, the 20-m (66-ft) isobath, generally corresponds to survey strata (Scott, 1990; Blaylock and Hoggard, 1994; Fulling *et al.,* 2003) and represents a management boundary rather than an ecological boundary. Both ''coastal/nearshore'' and ''offshore'' ecotypes of bottlenose dolphins (Hersh and Duffield, 1990) occur in the GOM (LeDuc and Curry, 1998), and both could potentially occur in coastal waters. The best abundance estimate available for the northern GOM eastern coastal stock of bottlenose dolphins is 7,702, with a minimum population estimate of 6,551. The status of the eastern coastal stock relative to optimum sustainable population (OSP) level is not known and population trends cannot be determined due to insufficient data. The eastern coastal stock is not considered a strategic stock under the MMPA because the stock's average annual human-related mortality and serious injury does not exceed potential biological removal (PBR) (Waring *et al.,* 2010).

Bottlenose dolphins are distributed throughout the bays, sounds and estuaries of the GOM (Mullin, 1988). The identification of biologically-meaningful ''stocks'' of bottlenose dolphins in these waters is complicated by the high degree of behavioral variability exhibited by this species (Shane *et al.,* 1986; Wells and Scott, 1999; Wells, 2003), and by the lack of requisite information for much of the region. However, distinct stocks are provisionally identified in each of 32 areas of contiguous, enclosed or semi-enclosed bodies of water adjacent to the northern GOM. Bay, sound, and estuarine dolphins found in the project area would likely be from Tampa Bay or Sarasota Bay.

These ''communities'' include resident dolphins that regularly share large portions of their ranges, exhibit similar distinct genetic profiles, and interact with each other to a much greater extent than with dolphins in adjacent waters. While these communities do not constitute closed demographic populations, the geographic nature of these areas and long-term, multi-generational stability of residency patterns suggest that they may exist as discrete, functioning units of their ecosystems. Members of these stocks emphasize use of the bay, sound, or estuary waters, with limited movements through passes to the GOM (Shane, 1977, 1990; Gruber, 1981; Irvine *et al.,* 1981; Maze and Würsig, 1999; Lynn and Würsig, 2002; Fazioli *et al.,* 2006). These habitat use patterns are reflected in the ecology of the dolphins in some areas; for example, residents of Sarasota Bay, Florida, lack squid in their diet, unlike non-resident dolphins found stranded on nearby Gulf beaches (Barros and Wells, 1998).

Genetic exchange occurs between resident communities; hence the application of the demographically and behaviorally-based term ''community'' rather than ''population'' (Wells, 1986a; Sellas *et al.,* 2005). A variety of potential exchange mechanisms occur in the Gulf. Small numbers of inshore dolphins traveling between regions have been reported, with patterns ranging from traveling through adjacent communities (Wells, 1986b; Wells *et al.,* 1996a,b) to movements over distances of several hundred kilometers in Texas waters (Gruber, 1981; Lynn and Würsig, 2002). In many areas, year-round residents co-occur with non-resident dolphins, providing potential opportunities for genetic exchange. Non-residents exhibit a variety of patterns, ranging from apparent nomadism recorded as transience to apparent seasonal or non-seasonal migrations. Passes, especially the mouths of the larger estuaries, serve as mixing areas. For example, several communities mix at the mouth of Tampa Bay (Wells, 1986a). Seasonal movements of dolphins into and out of some of the bays, sounds and estuaries provide additional opportunities for genetic exchange with residents, and complicate the identification of stocks in coastal and inshore waters.

In larger bay systems (e.g., Tampa Bay), seasonal changes in abundance suggest possible migrations, and fall/winter increases in abundance have been noted for Tampa Bay (Scott *et al.,* 1989). A number of geographically and socially distinct subgroupings of dolphins in some regions, including Tampa Bay, have been identified, but the importance of these distinctions to stock designations remains undetermined. For Tampa Bay, Urian *et al.* (2009) recently described fine-scale population structuring into five discrete communities (including the adjacent Sarasota Bay community) that differed in their social interactions and ranging patterns. Structure was found despite a lack of physiographic barriers to movement within this large, open embayment.

In the vicinity of the action area, there are distinct geographic subdivisions with year-round resident animals from Tampa Bay, Sarasota Bay, and Charlotte Harbor as well as a seasonal coastal stock (discussed previously; 1 to 12 km [0.6–7.5 mi] offshore) with mixing on a limited basis (Wells *et al.,* 1996; Wells and Scott, 2002; Sellas *et al.,* 2005). The Sarasota community's range extends from southern Tampa Bay southward through Sarasota Bay, and into the GOM about 1 km offshore. Waring *et al.* (2010) identified the animals in Tampa Bay as having a best estimate of abundance of 559 individuals (based on 1994 data) and those in Sarasota Bay as having a best abundance estimate of 160 individuals (based on 2007 data). The status of the stock relative to OSP is unknown. Because most of the stock sizes are currently unknown, but likely small, and relatively few mortalities or serious injuries would exceed PBR, NMFS considers that each of these stocks is a strategic stock under the MMPA (Waring *et al.,* 2010).

Atlantic spotted dolphins—Atlantic spotted dolphins are widely distributed in warm temperate and tropical waters of the Atlantic Ocean, including the GOM (Waring *et al.,* 2006). In the northern Gulf, these animals occur mainly on the continental shelf (Jefferson and Schiro, 1997). During GulfCet II aerial and shipboard surveys in the northern GOM, Atlantic spotted dolphins were seen at water depths ranging from 22 to 222 m (72–728 ft) (Mullin and Hoggard, 2000). On the shelf, they were second in abundance to bottlenose dolphins. Atlantic spotted dolphins can be expected to occur on the continental shelf during all seasons. However, they may be more common during spring (Jefferson and Schiro, 1997; Mullin and Hoggard, 2000). It is expected that Atlantic spotted dolphins could occur within offshore waters of the project area.

Atlantic spotted dolphins in the northern GOM are abundant in continental shelf waters from between 10 and 200 m (33 to 656 ft) to slope waters < 500 m (1,640 ft) (Fulling *et al.* 2003; Mullin and Fulling, 2003a). Griffin and Griffin (2003) reported that

on the west Florida Shelf they are more common in waters from 20 to 180 m (66 to 591 ft), while Mullin *et al.* (2004) found that Atlantic spotted dolphins were sighted in waters with a bottom depth typically < 300 m (984 ft). Griffin and Griffin (2004) reported higher abundances of spotted dolphins on the west Florida Shelf between the months of November and May than during the rest of the year.

Atlantic spotted dolphins in the GOM have been seen feeding cooperatively on clupeid fishes (e.g., herring, sardine) and are known to feed in association with shrimp trawlers (Fertl and Würsig, 1995; Fertl and Leatherwood, 1997, respectively). In the Bahamas, this species has been observed to chase and catch flying fish (MacLeod *et al.,* 2004). The only information on dive depth for this species is based on a satellite-tagged individual from the GOM (Davis *et al.,* 1996). This individual made short, shallow dives (more than 76 percent of the time to depths < 10 m) over the continental shelf, although some dives were as deep as 40 to 60 m (Davis *et al.,* 1996).

The GOM population is considered a separate stock for management purposes. The most recent abundance estimate for Atlantic spotted dolphin in the GOM, based on pooled survey data from 2000 and 2001, was 37,611 (Waring *et al.,* 2009). These animals were found entirely in OCS waters; the abundance estimate for oceanic waters, from surveys conducted in 2003–04, was zero. There is insufficient information for this stock to determine PBR or its status relative to OSP. Despite an undetermined PBR and unknown population size, the GOM stock is not considered a strategic stock under the MMPA because previous estimates of population size have been large compared to the number of cases of documented human-related mortality and serious injury.

In addition to bottlenose and spotted dolphins, three other species that frequent the mid-shelf stratum could be exposed to sound from certain project activities and the potential for incidental harassment of these species has been evaluated (see ESTIMATED INCIDENTAL HARASSMENT). Dwarf and pygmy sperm whales and rough-toothed dolphins may be expected to occur in the mid-shelf stratum on a seasonal basis. The area of actual construction and operations for Port Dolphin is entirely contained within the nearshore depth stratum (0 to 37 m; depth strata were listed earlier). Maximum depth at the DWP is approximately 31 m, while the pipeline route transits increasingly shallower waters until entering Tampa Bay and subsequently making landfall. However, while the actual construction activities will be entirely contained within the nearshore stratum, the sound field produced by certain construction activity, and thus the area of effect, extends into the mid-shelf depth stratum (37 to 91 m). Most sound would be contained within the nearshore stratum. The one exception is for the offshore pipelaying activity, which would occur only from late summer 2013 through early winter 2013–14. The Level B sound field for this activity would be 99.9 percent contained within the nearshore stratum, with 0.1 percent potentially entering the mid-shelf stratum.

Background on Marine Mammal Hearing

Different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designated functional hearing groups for marine mammals and estimated the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low-frequency cetaceans (mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (dolphins, larger toothed whales, beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (true porpoises, river dolphins, *Kogia* sp.): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, two species of cetacean, bottlenose and Atlantic spotted dolphins, are likely to occur in the project area. These two species are both classified as mid-frequency cetaceans (Southall *et al.,* 2007).

Potential Effects of the Specified Activity on Marine Mammals

Potential effects of Port Dolphin's proposed port construction and subsequent operations are likely to be acoustic in nature. In-water construction activities (e.g., pile driving, pipeline installation) and LNG port operations introduce sound into the marine environment and have the potential to have adverse impacts on marine mammals. The potential effects of sound from the proposed activities associated with the Port might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, non-auditory physical effects, and temporary or permanent hearing impairment (Richardson *et al.,* 1995). However, for reasons discussed later in this document, Port Dolphin's activities would not likely cause any cases of non-auditory physical effects or temporary or permanent hearing impairment. As outlined in previous NMFS documents, the effects of sound on marine mammals are highly variable and can be categorized as follows (based on Richardson *et al.,* 1995):

- The sound may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient sound level, the hearing threshold of the animal at relevant frequencies, or both);
- The sound may be audible but not strong enough to elicit any overt behavioral response;
- The sound may elicit reactions of varying degrees and variable relevance to the well-being of the marine mammal. Reactions can range from temporary alert responses to active avoidance reactions such as vacating an area until the stimulus ceases, but potentially for longer periods of time;
- Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;
- Any anthropogenic sound that is strong enough to be heard has the potential to result in masking, or reduce the ability of a marine mammal to hear biological sounds at similar frequencies, including calls from conspecifics and underwater environmental sounds such as surf sound;
- If mammals remain in an area for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to sound, the possibility exists for sound-induced physiological stress; this might

in turn have negative effects on the well-being or reproduction of the animals involved; and

• Very strong sounds have the potential to cause a temporary or permanent reduction in hearing sensitivity, also referred to as threshold shift. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment (PTS). In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration, and other functions. This trauma may include minor to severe hemorrhage.

Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many kilometers. However, other studies have shown that marine mammals at distances more than a few kilometers away often show no apparent response to industrial activities of various types (Miller *et al.* 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (e.g., Malme *et al.,* 1986; Richardson *et al.,* 1995; Madsen and Mohl, 2000; Croll *et al.,* 2001; Jacobs and Terhune, 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). In general, small odontocetes seem to be more tolerant of exposure to some types of underwater sound than are baleen whales.

Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey. Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and thermal sound, at frequencies above 30 kHz, resulting from molecular agitation (Richardson *et al.,* 1995).

In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. The majority of sound produced during the construction of Port Dolphin would be transient. Masking is typically of greater concern for those marine mammals that utilize low-frequency communications, such as baleen whales and, as such, is not likely to occur for the mid-frequency cetaceans in the project area.

Disturbance

Behavioral disturbance is one of the primary potential impacts of anthropogenic sound on marine mammals. Disturbance can result in a variety of effects, such as subtle or dramatic changes in behavior or displacement but may be highly dependent upon the context in which the potentially disturbing stimulus occurs. For example, an animal that is feeding may be less prone to disturbance from a given stimulus than one that is not. For many species and situations, there is no detailed information about reactions to sound. While there are no specific studies of the reactions of marine mammals to sounds produced by the construction or operation of a LNG facility, information from studies of marine mammal reactions to other types of continuous and transient anthropogenic sound (e.g., drillships) are described here as a proxy.

Behavioral reactions of marine mammals to sound are difficult to predict because they are dependent on numerous factors, including species, maturity, experience, activity, reproductive state, time of day, and weather. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of that change may not be important to the individual, the stock, or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be important.

Based on the literature reviewed in Richardson *et al.* (1995), most small and medium-sized toothed whales exposed to prolonged or repeated underwater sounds are unlikely to be displaced unless the overall received level is at least 140 dB, although the limited available data indicate that the sperm whale is sometimes, though not always, more responsive to underwater sounds than other toothed whales. Baleen whales, with better hearing sensitivities at lower sound frequencies, have been shown in several studies to react to continuous sounds at received sound levels of approximately 120 dB. Toothed whales appear to exhibit a greater variety of reactions to anthropogenic underwater sound than do baleen whales. Toothed whale reactions can vary from attraction (e.g., bow riding) to strong avoidance, while baleen whale reactions range from neutral (little or no change in behavior) to strong avoidance. Potential disturbance reactions of odontocetes are discussed in somewhat more detail.

In their comprehensive literature review, Southall *et al.* (2007) reported that combined field and laboratory data for mid-frequency cetaceans exposed to non-pulse sounds did not lead to clear conclusions about behavioral responses that may be expected from given received levels of sound. In some settings, individuals in the field showed significant behavioral responses to exposures from 90 to 120 dB, while others failed to exhibit such responses for exposure to received levels from 120 to 150 dB. Species differences, as well as uncontrolled contextual variables other than exposure, are the likely reasons for this variability. Captive subjects were often directly reinforced with food for tolerating exposure to high levels of sound, which likely explains the disparity seen in results from field and laboratory settings—where exposures typically exceeded 170 dB before inducing behavioral responses.

Dolphins and other toothed whales may show considerable tolerance of floating and bottom-founded drill rigs and their support vessels, though reactions are variable. Kapel (1979) reported that pilot whales congregated within visual range of drillships and their support vessels off of Greenland. Beluga whales (*Delphinapterus leucas*) have been observed swimming within 100–150 m (328–492 ft) of an artificial island while drilling was underway and within 1 mi (1.6 km) of a drillship engaged in active drilling (Fraker and Fraker, 1979, 1981). However, other belugas, when exposed to playbacks of drilling sounds, showed avoidance reactions, including altering course, increased swimming speed, and reversed direction of travel (Stewart *et al.,* 1982; Richardson *et al.,* 1995). Reactions of beluga whales to semi-submersible drillship sound were less

pronounced than were their reactions to motorboats with outboard engines (Thomas *et al.,* 1990). There may be a significant contextual element to these reactions.

Morton and Symonds (2002) used census data on killer whales in British Columbia to evaluate avoidance of non-pulse acoustic harassment devices (AHDs). Avoidance ranges around the AHDs were about 2.5 mi (4 km). Also, there was a dramatic reduction in the number of days resident killer whales were sighted during AHD-active periods compared to pre- and post-exposure periods and a nearby control site.

Some species of small toothed whales avoid vessels when they are approached to within 0.5–1.5 km (0.31–0.93 mi), with occasional reports of avoidance at greater distances (Richardson *et al.,* 1995). Some toothed whale species, especially beaked whales and belugas, appear to be more responsive than others. However, dolphins may tolerate vessels of all sizes, often approaching and riding the bow and stern waves (Shane *et al.,* 1986). At other times, dolphin species that are known to be attracted to vessels will avoid them. Such avoidance is often linked to previous vessel-based harassment of the animals (Richardson *et al.,* 1995). Coastal bottlenose dolphins that are the object of dolphin-watching activities have been observed to swim erratically (Acevedo, 1991), remain submerged for longer periods of time (Janik and Thompson, 1996; Nowacek *et al.,* 2001), display less cohesiveness among group members (Cope *et al.,* 1999), whistle more frequently (Scarpaci *et al.,* 2000), and rest less often (Constantine *et al.,* 2004) when vessels were nearby. Pantropical spotted dolphins and spinner dolphins in the Eastern Tropical Pacific, where they have been targeted by commercial fishing vessels because of their association with tuna, display avoidance of survey vessels of up to 11.1 km (6.9 mi; Au and Perryman, 1982; Hewitt, 1985), whereas spinner dolphins in the GOM were observed bow riding the survey vessel in all fourteen sightings during one survey (Würsig *et al.,* 1998). As evidenced by these observations, the level of response of odontocetes to vessels is thought to be partly a learned behavior, e.g., a function of habituation or a response to some previous negative interaction.

Hearing Impairment and Other Physiological Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. Non-auditory physiological effects might also occur in marine mammals exposed to strong underwater sound. Possible types of non-auditory physiological effects or injuries that may occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (e.g., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds, particularly at higher frequencies. Non-auditory physiological effects are not anticipated to occur as a result of the proposed activities, which largely do not include strong pulsed sounds. The following subsections discuss in more detail the possibilities of TTS and PTS.

TTS—TTS, reversible hearing loss caused by fatigue of hair cells and supporting structures in the inner ear, is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends.

NMFS considers TTS to be a form of Level B harassment rather than injury, as it consists of fatigue to auditory structures rather than damage to them. The NMFS-established 180-dB injury criterion is considered to be the received level above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals became available, one could not be certain that there would be no injurious effects, auditory or otherwise, to cetaceans. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

Human non-impulsive sound exposure guidelines are based on exposures of equal energy (the same sound exposure level [SEL]; SEL is reported here in dB re: 1 μPa^2-s for in-water sound) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007). Three newer studies, two by Mooney *et al.* (2009a,b) on a single bottlenose dolphin either exposed to playbacks of U.S. Navy mid-frequency active sonar or octave-band sound (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band sound (centered at 2.5 kHz), concluded that for all sound exposure situations, the equal energy relationship may not be the best indicator to predict TTS onset levels. Generally, with sound exposures of equal energy, quieter sound exposures (lower SPL) with longer duration were found to induce TTS onset more than those of louder (higher SPL) and shorter duration. Given the available data, the received level of a single seismic pulse (with no frequency weighting) might need to be approximately 186 dB SEL in order to produce brief, mild TTS.

Data on TTS from continuous sound (such as that produced by Port Dolphin's proposed activities) are limited, so the available data from seismic activities are used as a proxy. Exposure to several strong seismic pulses that each have received levels near 175–180 dB SEL might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Given that the SPL is approximately 10–15 dB higher than the SEL value for the same pulse, an odontocete would need to be exposed to a SPL of 190 dB in order to incur TTS.

TTS was measured in a single, captive bottlenose dolphin after exposure to a continuous tone with maximum SPLs at frequencies ranging from 4 to 11 kHz that were gradually increased in intensity to 179 dB and in duration to 55 minutes (Nachtigall *et al.,* 2003). No threshold shifts were measured at SPLs of 165 or 171 dB. However, at 179 dB, TTSs greater than 10 dB were measured during different trials with exposures ranging from 47 to 54 minutes. Hearing sensitivity apparently recovered within 45 minutes after sound exposure.

Although underwater sound levels produced by the Port Dolphin project may exceed levels produced in studies that have induced TTS in odontocetes, there is a general lack of controlled, quantifiable field studies related to this phenomenon, and existing studies have had varied results (Southall *et al.,* 2007). Therefore, it is difficult to extrapolate from these data to site-specific conditions for the Port Dolphin project. For example, because most of the studies have been conducted in laboratories, rather than in field settings, the data are not conclusive as to whether elevated levels of sound will cause odontocetes to avoid the project area, thereby reducing the likelihood of TTS, or whether sound will attract them, increasing the likelihood of TTS. In any case, there are no universally

accepted standards for the amount of exposure time likely to induce TTS. While it may be inferred that TTS could theoretically result from the proposed activities, it is impossible to exactly quantify the magnitude of exposure, the duration of the effect, or the number of individuals likely to be affected. Exposure is likely to be brief because the majority of proposed activities would be transient. It is expected that elevated sound would have only a negligible probability of causing TTS in individual odontocetes because (1) of the relatively low SPLs produced by most project activities; (2) the transient nature of most sounds produced by the activities; (3) the short duration of certain activities that are expected to produce higher SPLs (i.e., offshore pile driving); and (4) the location of the project in, primarily, offshore open waters where marine mammals may easily avoid areas of ensonification.

PTS—When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to underwater industrial sounds can cause PTS in any marine mammal (see Southall *et al.,* 2007). However, given the possibility that marine mammals might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to industrial activities might incur PTS. Richardson *et al.* (1995) hypothesized that PTS caused by prolonged exposure to continuous anthropogenic sound is unlikely to occur in marine mammals, at least for sounds with source levels up to approximately 200 dB. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS.

Southall *et al.* (2007) propose that sound levels inducing 40 dB of TTS may result in onset of PTS in marine mammals. The authors present this threshold with precaution, as there are no specific studies to support it. Because direct studies on marine mammals are lacking, the authors base these recommendations on studies performed on other mammals. Additionally, the authors assume that multiple pulses of underwater sound result in the onset of PTS in mid-frequency cetaceans when levels reach 230 dB peak or 198 dB SEL; non-pulsed (continuous) sound would require levels of 230 dB peak or 215 dB SEL (Southall *et al.,* 2007). Sound levels this high are not expected to occur as a result of the proposed activities.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the PROPOSED MITIGATION and PROPOSED MONITORING AND REPORTING sections). Because of the characteristics of sound produced by most construction activities (i.e., they are typically low intensity, non-pulsed, and transient), it is highly unlikely that marine mammals would receive sounds strong enough (and over a sufficient duration) to cause PTS (or even TTS). When taking the mitigation measures proposed for inclusion in the regulations into consideration (e.g., shutdown zones to prevent Level A harassment), it is highly unlikely that any type of hearing impairment would occur as a result of the proposed activities.

Anticipated Effects on Habitat

The proposed activities could have some impacts on marine mammal habitat, primarily by producing temporary disturbances through elevated levels of underwater sound, and to a lesser extent, temporarily reduced water quality and temporary and permanent physical habitat alteration. These impacts would not be expected to have tangible direct effects to marine mammals, but could result in minor effects to fish or other elements of the marine mammal prey base. Elevated levels of sound may be considered to affect the habitat of marine mammals through impacts to acoustic space (described in previous sections) or via impacts to prey species. The direct loss of habitat available during construction due to sound impacts is expected to be minimal.

Seafloor Disturbance

Installation of port components and pipelines would cause short- and long-term disruption of benthic habitat in the immediate vicinity of the construction areas; permanent alteration of benthic habitat would result from buoy anchor sweep during port operations. Destruction of bottom habitat, along with resident benthic organisms within the area, is an unavoidable component of pipeline installation. This affects not only the benthic communities, but also the fish assemblages that rely on those communities for food and/or shelter; these fish may in turn be preyed upon by marine mammals. Immediately upon cessation of disturbance, the substrate would be available for recruitment of benthic organisms and reestablishment of the community.

The areas affected by seafloor disturbance are essentially negligible in comparison with the habitat available to marine mammals in the surrounding area. The pipeline route was selected to avoid marine protected areas and areas of submerged aquatic vegetation to the extent possible. During and shortly after installation of the buoy array components and the pipeline, marine mammal prey species are expected to avoid feeding in the immediate vicinity of the project area, thus reducing the utility of habitat in the area. Displaced organisms would likely return to the area shortly after construction activities cease.

Turbidity

Turbidity refers to any insoluble particulate matter suspended in the water column that impedes light passage by scattering and absorbing light energy. Decreased light penetration reduces the depth of the photic zone, in turn reducing the depth at which primary productivity could occur. Impacts to marine mammals would be indirect, resulting from impacts to prey species. Water turbidity appears to have little or no direct impact on bottlenose dolphins, which are regularly seen in turbid waters. Turbidity may adversely affect prey species by direct mortality or reduction of growth rates, modifying migration patterns, reducing available food abundance or habitat (in part by reducing primary production), or burial of benthic shellfish.

However, these potential impacts would be spatially limited and short-term in nature, as the suspended sediment would redeposit soon after the buoy system array and pipeline components were installed.

Seawater Intake and Discharge

During the construction phase, seawater would be used for hydrostatic testing of the offshore pipeline and flowlines. Hydrostatic testing is a one-time temporary event that would require filling the pipeline twice; a total of approximately 24 million gallons would be used. Hydrostatic integrity testing could nevertheless indirectly impact marine mammals, because plankton and fish larvae and eggs could be entrained and subsequently killed by the seawater intake system. This could have either primary or secondary indirect impacts

on marine mammals through impacts to prey species.

During regasification, seawater would be taken into an SRV through one of two sea chests covered with a lattice screen. Similar to uptake described for hydrostatic testing, marine mammals may be indirectly impacted through the entrainment of plankton and fish eggs and larvae. Cooling water would be discharged at 10 °C (18 °F) above ambient seawater temperature, and would affect a relatively small area. The discharge would produce detectable temperature increases over a maximum radius of 106 m (348 ft). The cooling water discharge is not expected to reach the seafloor, and would thus not impact benthic communities. The cooling water plume would affect a relatively small area. Considering the short-term nature of impacts and the overall amount of plankton and fish eggs and larvae in the area, these impacts may be considered negligible.

Sound Disturbance

Elevated levels of sound produced by port construction and operation could potentially directly impact marine mammals by reducing the attractiveness of a given area for foraging, i.e., marine mammals may be less likely to forage in a given area in the presence of elevated levels of sound. In addition, sound may indirectly impact marine mammals through effects to fish or other prey species. However, sound produced by project activities is unlikely to be of sufficient intensity or duration to result in significant pathological, physiological, or behavioral effects to fish.

All of the potential adverse impacts to marine mammal habitat would likely be indirect, and would result from impacts on the food web (i.e., adverse impacts directly to marine mammal prey species or to species lower in the food chain) from the proposed activities. The impact to marine mammals of temporary and permanent habitat changes from the proposed activities is expected to be minimal. Any potential impacts would likely be negligible relative to the amount of habitat available on the west Florida Shelf or in adjacent nearshore waters. These effects are summarized here:

- Seafloor disturbance and turbidity: Marine mammals could be indirectly impacted if benthic prey species were displaced or destroyed. Affected species would be expected to recover after construction ceased, and would represent only a small portion of food available to marine mammals in the area. Indirect adverse impacts of limited spatial extent could occur as a result of short- and long-term turbidity increases caused by construction and operations.
- Seawater intake and discharge: This activity, primarily occurring during regasification, would result in the entrainment and destruction of plankton and larvae and discharge of heated seawater. The resulting adverse impact to the prey base would be negligible.
- Sound disturbance: Elevated levels of sound during construction would cause temporary modification of habitat and could harm prey species, potentially reducing utility of habitat for marine mammal foraging. Elevated levels of sound during operation of the DWP would result in essentially permanent habitat modification to a limited area in the immediate vicinity of each STL buoy.

In conclusion, NMFS has preliminarily determined that Port Dolphin's proposed activities are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). NMFS and Port Dolphin worked to devise a number of mitigation measures designed to minimize impacts to marine mammals to the level of least practicable adverse impact, described in the following and in Port Dolphin's Marine Protected Species Management Plan; please see Appendix B of Port Dolphin's application to review that plan in detail.

In addition to the measures described later, Port Dolphin would employ the following standard mitigation measures:

- All work would be performed according to the requirements and conditions of the regulatory permits issued by federal, state, and local governments.
- Briefings would be conducted between the Port Dolphin project construction supervisors and the crew, protected species observer(s) (PSO), and acoustical monitoring team (when present) prior to the start of all discrete construction activities, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.
- Port Dolphin would comply with all applicable equipment sound standards and ensure that all construction equipment has sound control devices no less effective than those provided on the original equipment. In addition, vessel crew and contractors would be required to minimize sound to the extent possible. Equipment and/or procedures used may include the use of enclosures and mufflers on equipment, minimizing the use of thrusters, and turning off engines and equipment when not in use.

Additional mitigation measures, which are discussed in greater detail below, include the following:

- Visual monitoring program (marine mammal watch);
- Vessel strike avoidance measures;
- Line and cable entanglement avoidance measures; and
- Marine debris and waste management protocols.

Monitoring and Shutdown

The modeling results for acoustic zones of influence (ZOIs; described in following sections) were used to develop mitigation measures for the proposed activities. Those zones would initially be set at the distances derived through modeling (or be larger than those distances), but may be adjusted as necessary on the basis of acoustic monitoring conducted by Port Dolphin in order to verify source levels and local acoustic propagation characteristics (see Proposed Monitoring and Reporting, later in this document). The ZOIs effectively represent the mitigation zone that would be established around each activity to prevent Level A harassment and to monitor authorized Level B harassment of marine mammals.

For each of the described proposed activities, a shutdown zone (to include areas where SPLs equal or exceed 180 dB rms) and a disturbance zone (defined as where SPLs equal or exceed 120 dB or 160 dB rms for non-pulsed or pulsed sound sources, respectively) would be established. Shutdown zones include all areas where the underwater SPLs are anticipated to equal or exceed the Level A (injury) harassment criteria for marine mammals and are used in concert with mitigation monitoring in order to prevent the occurrence of Level A harassment. Disturbance zones typically include all areas where the underwater SPLs are anticipated to equal or exceed the Level B (behavioral) harassment criteria. These are intended as zones in which occurrence of marine mammals would be noted and recorded as

incidental take while also alerting PSOs to potential close approach to the shutdown zone. In actual practice, the disturbance zones are often so large as to make comprehensive monitoring and fine-scale behavioral observation impracticable. The initial shutdown and disturbance zones would be established based on the worst-case underwater sound modeled as described, although shutdown zones may be larger than the actual modeled distances. Please see the discussion of ''Distance to Sound Thresholds'' under ''Description of Sound Sources,'' previously in this document.

Conservative shutdown zones would be employed in most instances. Impact pile driving (described later) and non-stationary activities would employ zones larger than what is predicted for the Level A harassment threshold. Radial distances to shutdown zones for HDD activities were predicted to be less than 10 m. For all activities, and regardless of modeled shutdown zone (applicable to HDD activities), all equipment would be shut down if any marine mammal enters a precautionary 100 yd (91 m) zone in order to avoid potential risk of vessel strike or direct interaction with equipment. However, these shutdown requirements would not be required for cases in which delphinids voluntarily make such close approaches to vessels (e.g., for bow riding). In addition, for scenarios in which the modeled sound source is a spread of vessels employed for a given construction task, the shutdown/disturbance zone would be measured from the central vessel in the spread, or the vessel that is the primary sound producer if it is not the central vessel. In most cases, the disturbance zone is of sufficient size to make comprehensive monitoring impracticable, although PSOs would be aware of the size and location of the modeled zone and would record any observations made within the zone as takes. Radial distances to Level B thresholds range up to 12.6 km; please refer to Table 6 for those distances.

Monitoring Protocols

The established zones would be monitored by qualified PSOs for mitigation purposes, as described here. Port Dolphin's marine mammal monitoring plan (see Appendix B of Port Dolphin's application) would be implemented, requiring collection of sighting data for each marine mammal observed during the proposed construction activities described in this document.

At least two PSOs would conduct monitoring of shutdown and disturbance zones (as described previously) for all concurrent specified construction activities during daylight hours (civil dawn to civil dusk). PSOs would have no other duties for the duration of the watch. Shutdown and disturbance zones would be monitored from an appropriate vantage point that affords the PSOs an optimal view of the sea surface while not interfering with operation of the vessel or in-water activities. Full observation of the shutdown zone would occur for the duration of the activity.

Monitoring would occur before, during, and after specified construction activity, beginning 30 minutes prior to initiation and concluding 30 minutes after the activity ends. If marine mammals are present within the shutdown zone prior to initiation, the start would be delayed until the animals leave the shutdown zone of their own volition, or until 30 minutes elapse without resighting the animal(s). PSOs will be on watch at all times during daylight hours when in-water operations are being conducted, unless conditions (e.g., fog, rain, darkness) make observations impossible. If conditions deteriorate during daylight hours such that the sea surface observations are halted, visual observations must resume as soon as conditions permit. While activities will be permitted during low-visibility conditions, they (1) must have been initiated following proper clearance of the ZOI under acceptable observation conditions; and (2) must be restarted, if halted for any reason, using the appropriate ZOI clearance procedures.

If a marine mammal is observed approaching or entering the shutdown zone, the PSO will call for the immediate shutdown of in-water operations. The equipment operator must comply with the shutdown order unless human safety is at risk. Any disagreement must be resolved after the shutdown takes place. Construction operations would be discontinued until the animal has moved outside of the shutdown zone. The animal would be determined to have moved outside the shutdown zone through visual confirmation by a qualified PSO or after 15 minutes have elapsed since the last sighting of the animal within the shutdown zone. The following additional measures would apply to visual monitoring:

- Monitoring would be conducted using binoculars and the unaided eye. The limits of the designated ZOI will be determined using binocular reticle or other equipment (e.g., electronic rangefinder, range stick). A GPS unit or range finder would be used for determining the observation location and distance to marine mammals and sound sources.
- Each PSO would have a dedicated two-way radio for contact with the other PSO or field operations manager.

Whenever a marine mammal species is observed, the PSO will note and monitor the position (including relative bearing and estimated distance to the animal) until the animal dives or moves out of visual range of the PSO. The PSO will continue to observe for additional animals that may surface in the area. Often, there are numerous animals that may surface at varying time intervals. Records will be maintained of all marine mammal species sightings in the area, including date and time, weather conditions, species identification, approximate distance from the activity, direction and heading in relation to the activity, and behavioral correlation to the activity. For animals observed in the shutdown zone, additional information regarding actions taken, such as duration of the shutdown, behavior of the animal, and time spent in the shutdown zone will be recorded. During pile driving activities, data regarding the type of pile driven (e.g., material construction and pile dimensions), type and power of the hammer used, number of cold starts, strikes per minute, and duration of the pile driving activities will be recorded.

Monitoring would be conducted by qualified PSOs. In order to be considered qualified, PSOs must meet the following criteria:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target.
- Advanced education in biological science, wildlife management, mammalogy, or related fields (bachelor's degree or higher is required).
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Experience or training in the field identification of marine mammals, including the identification of behaviors.
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.
- Writing skills sufficient to prepare a report of observations, including, but not limited to, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and

times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior.

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Pile Driving

Mitigation measures specific to pile driving would include use of (1) a sound attenuation device and (2) ramp-up procedures. In addition, the power of impact hammers will be reduced to minimum energy levels required to drive a pile, thus reducing the amount of sound produced in the marine environment. As for other construction activities, vibratory pile driving may continue into nighttime hours/low-visibility conditions only if ramp-up protocols have been conducted under acceptable observation conditions. Impact pile driving may occur only during daylight hours of good visibility. In the event of a shutdown during low-visibility conditions, the pile driving cannot resume until visual monitoring activities are resumed under acceptable observation conditions. The minimum shutdown zone for impact pile driving would be established conservatively at 250 m.

One or more sound attenuation device will be utilized during all impact pile driving activities needed to install components of the STL buoys at the deepwater port. The sound attenuation device(s) will be selected and designed by the marine construction and design contractor(s), but would likely be either a bubble curtain or a temporary sound attenuation pile (TNAP), potentially used in conjunction with cushion block. Please see the discussion of ''Sound Attenuation Devices'' under ''Description of Sound Sources,'' previously in this document.

The objective of a ramp-up is to alert any animals close to the activity and allow them time to move away, which would expose fewer animals to loud sounds. This procedure also ensures that any marine mammals missed during shutdown zone monitoring would move away from the activity and not be injured. The following ramp-up procedures would be used for in-water pile installation:

• To allow any marine mammals that may be in the immediate area to leave before pile driving reaches full energy, a ramp-up technique would be used at the beginning of each day's in-water pile driving activities or if pile driving has ceased for more than 1 hour.

• If a vibratory driver is used, contractors would be required to initiate sound from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved.

• If a non-diesel impact hammer is used, contractors would be required to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent sets.

• If a diesel impact hammer is used, contractors would be required to turn on the sound attenuation device (e.g., bubble curtain or other approved sound attenuation device) for 15 seconds prior to initiating pile driving to flush marine mammals from the area.

Vessel Strike Avoidance

Several construction and support vessels will be used during offshore construction activities. Certain vessel activities, including transits, may not be subject to the visual monitoring and shutdown protocols described previously in this section. Consequently, there is the possibility for vessel strike of protected species to occur within the project area. Port Dolphin would inform all personnel associated with the project of the potential presence of protected species. All vessel crew members and contractors would participate in training for protected species presence and emergency procedures in the unlikely event a protected species is struck by a vessel. Construction and support vessels will follow the NMFS Vessel Strike Avoidance Measures and Reporting for Mariners. Standard measures would be implemented to reduce the risk associated with vessel strikes.

The following vessel strike mitigation measures for cetaceans for active construction/installation vessel operations would be implemented during project activities:

• Vessel operators and crews must maintain a vigilant watch for marine mammals and slow down or stop their vessels, to the extent possible as dictated by safety concerns, to avoid striking sighted protected species.

• Construction or support vessels, while underway, would remain 100 yd (91 m) from all marine mammals to the extent possible.

• If a marine mammal is within 15 m of a construction or support vessel underway, all operations will cease until it is > 100 yd from the vessel. If the marine mammal is observed within 100 yd of an active construction or support vessel underway, the vessel would cease power to the propellers as long as sea conditions permit for safety. After the marine mammal leaves the area the vessel would proceed with caution, following the guidelines below:

▪ Resume vessel at slow speeds while avoiding abrupt changes in direction,

▪ Stay on parallel course with the marine mammal, following behind or next to at an equal or lesser speed,

▪ Do not cross the path of the animal,

▪ Do not attempt to steer or direct the marine mammal away,

▪ If a marine mammal exhibits evasive or defensive behavior, stop the vessel until the marine mammal has left the immediate area, and

▪ Do not allow the vessel to come between a mother and her calf.

• Cetaceans can surface in unpredictable locations or approach slowly moving vessels. When an animal is sighted in the vessel's path or in close proximity to a moving vessel, the Master would reduce speed and shift the engine to neutral and would not engage the engines until the animals are clear of the area.

• If a sighted marine mammal is believed to be a North Atlantic right whale, federal regulation requires a minimum distance of 500 yd (457 m) from the animal be maintained (50 CFR 224.103 (c)).

• Practical speeds would be maintained to the extent possible. Guidelines for speeds include the following:

▪ Reduce vessel speed to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near an underway vessel, when safety permits. A single cetacean at the surface can indicate the presence of submerged animals in the vicinity of the vessel; therefore, prudent precautionary measures should always be exercised.

▪ No wake/idle speeds where the draft of the vessel provides less than a 4-ft (1.2-m) clearance from the bottom. All vessels would follow deep-water routes whenever possible.

▪ All construction vessels transiting to and from the port from shore would not exceed 14 kn during regular operations.

▪ Avoid sudden changes in speed and direction.

▪ Speeds approaching and departing the buoys would be reduced to 10 kn maximum.

▪ Speeds during installation would be well under 14 kn; vessels may be stationary during certain phases of installation.

• If a collision seems likely, emergency collision procedures would be followed.

• Members of the vessel crew would be encouraged to undergo NMFS training prior to activity, including instruction in reporting procedures, collision emergency procedures, and marine mammal presence detection (surfacing near wake).

• During construction of the facility, an Environmental Coordinator would be on site and responsible for communicating with NMFS and other relevant agencies, as appropriate.

• During construction/installation, transiting vessels would have lookouts required to scan for surfacing marine mammals and report sightings to the Master, who would notify the Environmental Coordinator.

• Offshore vessel activities not required to implement visual monitoring protocols described previously in this document would be temporarily terminated if marine mammals were observed in the area and there is the potential for harm of an individual. The Environmental Coordinator would be called in to determine the appropriate course of action.

Best Management Practices

Port Dolphin, in conjunction with NMFS and other regulatory agencies, has proposed a number of BMPs that will reduce project environmental impacts. Although these measures are not designed specifically to reduce project impacts on marine mammals to the level of least practicable adverse impact, they do have the effect of either directly or indirectly reducing the potential for adverse effects to marine mammals. These BMPs are briefly described here. See Port Dolphin's application or Environmental Impact Statement for more details about these measures.

Lighting—BMPs would be implemented to minimize the attraction of marine mammals to the project area and prevent potential impacts to protected species from nighttime lighting. Lighting would be down-shielded to prevent unnecessary upward illumination while illuminating the vessel decks only. To the extent possible, they would not illuminate surrounding waters. Lighting used during all activities would be regulated according to USCG requirements, without using excessive wattage or quality of lights. Once an activity is completed, all lights used only for that activity would be extinguished.

Entanglement—BMPs would be implemented to prevent entanglement in any lines or cables or siltation barriers used in any construction area. For example, lines, cables, and in-water barriers would not be made of any materials in which a protected species can become entangled (e.g., monofilament), would be properly secured, and would be regularly monitored to avoid protected species entrapment.

Marine Debris—BMPs would be implemented to prevent potential impacts to protected species from debris discarded within any construction area, including mandatory marine debris training consistent with Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) NTL 2007–G03 Marine Trash and Debris Awareness and Elimination (*http://www.gomr.boemre.gov/homepg/regulate/regs/ntls/2007NTLs/07-g03.pdf*).

Turbidity—Measures related to turbidity are designed to reduce project impacts to water quality in the marine environment. These include requirements to reduce sediment resuspension from pipeline trenching and burial through the use of certain technology.

Benthic Habitat

• Anchor locations would be optimized to minimize impacts on benthic habitat; avoidance zones would be identified of critical habitat areas for placement of installation barge anchors. An anchoring plan would be developed that would provide procedures for anchor deployment to minimize impacts on hard- and live-bottom habitat.

• Required vessels would be selected to minimize the number and type of anchors, where possible, while still providing vessels adequate to perform the work.

• Midline buoys would be utilized to the extent practicable on anchor chains to reduce the amount of anchor chain sweep.

• A Mitigation Plan to compensate for unavoidable impacts on hard bottom would be developed.

Pelagic Habitat—As described previously in this document, SRV seawater intake/discharge and other vessel discharge protocols would be designed to minimize impacts to water column habitat by reducing seawater intake requirements, creating limits for seawater intake velocity and discharge temperature, and reducing other vessel discharges.

Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

• The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

• The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

• The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures and the measures added by NMFS, NMFS has preliminarily determined that the mitigation measures proposed by both NMFS and Port Dolphin provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

The proposed rule comment period will afford the public an opportunity to submit recommendations, views, and/or concerns regarding this action and the proposed mitigation measures. While NMFS has determined preliminarily that the proposed mitigation measures presented in this document would effect the least practicable adverse impact on the affected species or stocks and their habitat, NMFS will consider all public comments to help inform the final decision. Consequently, the proposed mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on public comments received, and where appropriate, further analysis of any additional mitigation measures.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization (ITA) for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Port Dolphin proposed a protected species monitoring plan in their application (see Appendix B of Port

Dolphin's application). The plan may be modified or supplemented based on comments or new information received from the public during the public comment period. All monitoring methods identified herein have been developed through coordination between NMFS and Port Dolphin. The methods are based on the parties' professional judgment supported by their collective knowledge of marine mammal behavior, site conditions, and proposed project activities. Any modifications to this protocol would be coordinated with NMFS. A summary of the plan, as well as the proposed reporting requirements, is contained here.

The intent of the monitoring plan is to:

- Comply with the requirements of the MMPA Letter of Authorization as well as the ESA section 7 consultation;
- Avoid injury to marine mammals through visual monitoring of identified shutdown zones; and
- To the extent possible, record the number, species, and behavior of marine mammals in disturbance zones for the proposed activities.

As described previously, monitoring for marine mammals would be conducted in specific zones established to avoid or minimize effects of elevated levels of sound created by the specified activities. Initial shutdown and disturbance zones would be based on the applicant's modeled values. Shutdown zones for non-stationary activities would conform to NMFS Vessel Strike Avoidance Measures and Reporting for Mariners (i.e., 100 yd)—a distance much larger than actual areas ensonified to 180 dB rms or greater. However, shutdown requirements would not be triggered upon voluntary approach by small marine mammals (i.e., delphinids). The actual zone monitored for disturbance would be based upon logistical considerations, as described previously in this document, as the full disturbance zones would be so large as to make monitoring impracticable. Zones may be modified on the basis of actual recorded SPLs from acoustic monitoring.

Port Dolphin proposed a visual monitoring program in its application. In cooperation with NMFS, Port Dolphin has supplemented that plan with an acoustic monitoring program that would be conducted primarily to verify the sound source levels and local acoustic propagation characteristics that were assumed in the acoustic modeling.

Acoustic Monitoring

Port Dolphin would implement an acoustic monitoring program during construction and operation of the deepwater port and appurtenant marine facilities. Please see Port Dolphin's Sound Level Verification Plan (see Supplemental Information) for more detail. The objectives of this program are to: (1) Empirically measure the sound source levels associated with project activities and verify estimated source levels used in modelling, and (2) empirically determine ranges to relevant threshold levels, verifying the accuracy of the acoustic propagation model that was used to predict the size of sound fields generated by construction and operation of the port. Ambient sound levels would also be measured when no project activities are occurring.

Source level measurements would be made using a combination of bottom deployed autonomous multi-channel acoustic recorders (AMARs) and cabled acoustic data acquisition and monitoring systems (ADAMs), and would require that accurate measurements of distance from source to the monitoring hydrophones be made. Range measurements are required for scaling the measured levels to a standard reference range (typically one meter from the source). Range measurements would be performed using a combination of GPS, radar and laser range finders. Both systems would obtain measurements at 1.5 m (5 ft) above the sea floor, with the depth of the hydrophones determined using collocated pressure-sensitive depth gauges. The hydrophone depth measurement is accurate to within 1 m. Received sound levels would be measured at pre-determined distances (as specified here) and would be used to determine site-specific propagation characteristics and verify ranges to the relevant sound exposure thresholds.

The recording system would have a frequency response of ±3 dB from 10 Hz to 64,000 Hz over the anticipated measurement range of 100 dB to 220 dB (linear peak re: 1 μPa). Hydrophones with differing sensitivities may be required at different locations depending upon the acoustic environment and source to be measured. Analysis of the recorded data would determine the amplitude, time history, and frequency of sounds associated with construction activity. Acoustic data to be reported include:

- Mean squared pressure (integral of the squared pressure for duration of impulse, divided by the impulse duration; dB re: 1 $\mu Pa^2/s$, rms) for pulsed sounds;
- SPL (dB re: 1 μPa, rms) for non-pulsed sounds;
- The maximum averaging time and representative range of SPLs;
- Representative range of frequency spectra; 1/3rd octave band center frequency SPLs dB re:1 μPa measured over the frequency range of 10 Hz to 64,000 Hz; and
- Peak SPL (dB re: 1 μPa; the largest absolute value of the instantaneous sound pressure over the minimum frequency range of 10 Hz to 64,000 Hz).

The maximum and representative range of peak SPLs would be recorded for each activity.

The activities to be monitored are:

- Pipelaying activities;
- Pipeline burial using the plow system and dredging;
- Pile driving at the buoy locations;
- Installation of the STL buoys;
- HDD within Tampa Bay;
- Vibratory driving (if conducted); and
- SRV maneuvering and docking.

Verification of sound source levels emitted by each of the various activities is required. Although most types of construction activity would be conducted at more than one location and on more than one occasion during the construction period, it is only necessary to determine their sound source level once because local acoustic propagation characteristics should have little effect on the source level calculation. Some construction activities are of long duration and may vary in source level during the operation. For these longer-duration activities (i.e., pipelaying and burial, HDD), a sound level monitoring program of 7 days of continuous recording at a sample rate of 128 kHz would be implemented to capture and consider potential variability when determining the source level associated with these activities. During the 7-day program, logs of the various activities would be collected, permitting a correlation between the activities occurring and the sound levels recorded. For all construction activities, sound level monitoring stations would consist of bottom deployed autonomous recorders at ranges of 500, 1,000 and 1,500 m, perpendicular to the construction spread's direction of travel when applicable. In addition a cabled recording system would be deployed from the appropriate vessel in order to capture close range data suitable for determining a source level estimate. The distances and directions of any of these sound monitoring locations from the activity may be changed if, in the opinion of either Port Dolphin or the marine construction contractors, activities at the planned monitoring locations could pose health and safety risks or impede vessels or construction. If the locations must be changed, the

monitoring would occur at the safest location that is closest to the proposed location that would not interfere with vessels or construction. Specific details of monitoring locations for each activity type are discussed in the next paragraph.

For dredging, Port Dolphin is planning to monitor the operation at either the exit or entry pit dredges of the western Gulfstream HDD. The proposed HDD locations are drilling from land to water at the Port Manatee shore approach and from water-to-water at two crossings of the Gulfstream pipeline. Port Dolphin is planning to monitor the HDD operations at the entry pit of the western Gulfstream HDD. For the pipeline laying, plowing and backfilling the pipeline trench, Port Dolphin plans to conduct the sound level verification in the Sarasota Bay Estuarine System. During these activities, the construction spread would be moving relative to the acoustic monitoring stations. This would provide a more detailed record of data on received sounds levels as a function of range and direction from the construction spread.

The commissioning of a new SRV type (i.e., different cargo containment capacity) at the port may involve the unloading of more than one shipment of LNG through the port. The sound level verification program is planned to be implemented only once for each new SRV type during the approach, unloading, and departure during the first commissioning shipment. Once the SRV completes its approach to Port Dolphin and is within approximately 5.6 km of the Port, bow and stern thrusters would be utilized. Thruster use would vary, operating for 10 to 30 minutes to allow for the proper positioning of the vessel and allow for connection to the STL buoy. Docking or berthing is expected to occur at alternate STL buoys approximately every 8 days. The monitoring program would consist of a similar combination of autonomous and cabled acoustic recorders as outlined here.

For SRV maneuvering (i.e., approach, docking, unloading, undocking and departure) operations, Port Dolphin would establish four sound level measuring stations. As part of the DWPL issued by the MarAd, a safety zone, an area to be avoided (ATBA), and a no-anchoring zone have been established around the deepwater port. The boundary of the safety zone has been set at a distance of 850 m (2,790 ft) from both the northern and southern STL buoys. The boundaries of both the ATBA and no-anchoring zone have been set at 1,500 m (4,925 ft) from both the northern and southern STL buoy.

For the SRV maneuvering to docking/undocking at and departure from the two STL buoys, the sound level verification measurements would be taken at the boundary of the ATBA. Three bottom-deployed autonomous recording stations would therefore be set at a distance of 1,500 m from the STL buoys. This would ensure that sufficient data is collected regardless of the SRV's specific approach to the STL buoy. In addition, a fourth autonomous system would be deployed on a platform directly below the STL buoy. The recording system used here would have a frequency response of ±1 dB from 10 Hz to 20,000 Hz over the anticipated measurement range of 100 dB to 220 dB (linear peak re: 1 μPa) due to the lower frequencies expected.

Visual Monitoring

Visual monitoring of relevant zones would be conducted as described previously (see 'Proposed Mitigation'). Shutdown or delay of activities would occur as appropriate. The monitoring biologists would document all marine mammals observed in the monitoring area. Data collection would include a count of all marine mammals observed by species, sex, age class, their location within the zone, and their reaction (if any) to construction activities, including direction of movement, and type of construction that is occurring, time that activity begins and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as wind speed, wind direction, visibility, and temperature would also be recorded. No monitoring would be conducted during inclement weather that creates potentially hazardous conditions, as determined by the PSO(s). No monitoring would be conducted when visibility is significantly limited, such as during heavy rain or fog. During these times of inclement weather, in-water work that may produce sound levels in excess of 180 dB rms may continue, but may not be started. Impact pile driving shall not occur when visibility is significantly limited.

All monitoring personnel must have appropriate qualifications as identified previously. These qualifications include education and experience identifying marine mammals and the ability to understand and document marine mammal behavior. All monitoring personnel would meet at least once for a training session provided by Port Dolphin, and Port Dolphin would be responsible for verifying to NMFS that PSOs meet the minimal qualifications described previously. Topics would include, at minimum, implementation of the monitoring protocol, identification of marine mammals, and reporting requirements. All monitoring personnel would be provided a copy of the LOA. Monitoring personnel must read and understand the contents of the LOA as they relate to coordination, communication, and identifying and reporting incidental harassment of marine mammals. All sightings must be recorded on approved marine mammal field sighting logs.

Proposed Reporting

Reports of data collected during monitoring would be submitted to NMFS weekly. In addition, a final report summarizing all marine mammal monitoring and construction activities would be submitted to NMFS annually. The report would include:

- All data described previously under monitoring, including observation dates, times, and conditions; and
- Correlations of observed behavior with activity type and received levels of sound, to the extent possible.

Port Dolphin would also submit a report(s), as necessary, concerning the results of all acoustic monitoring. The final report for acoustic monitoring of construction activities would be provided at the completion of all marine construction activities. Reporting for acoustic monitoring of operational activities would be provided at the completion of the commissioning period for each new SRV servicing the port. Port Dolphin would to submit these reports to NMFS within 60 working days of the completion of each monitoring event.

Acoustic monitoring reports would include:

- A detailed description of the monitoring protocol;
- A description of the sound monitoring equipment;
- Documentation of calibration activities;
- The depth of water at the hydrophone locations and the depth of the hydrophones;
- The background SPL reported as the 50 percent cumulative density function;
- A summary of the data recorded during monitoring; and
- Analysis of the recorded data and conclusions.

Analysis of the data should include the frequency spectrum, ranges and means including the standard deviation/error for the peak and rms SPLs, and an estimation of the distance at which rms values reach the relevant marine mammal thresholds and background sound levels. Vibratory driving results

would include the maximum and overall average rms calculated from 30-s rms values during driving of the pile. In addition, for pile driving, the report would include:

- Size and type of any piles driven, correlated with SPLs;
- A detailed description of any sound attenuation device used, including design specifications;
- The impact hammer energy rating used to drive the piles, make and model of the hammer(s), and description of the vibratory hammer;
- The physical characteristics of the bottom substrate into which the piles were driven; and
- The total number of strikes to drive each pile.

During all phases of construction activities and operation, sightings of any injured or dead marine mammals will be reported immediately (except as described later in this section) to the NMFS Southeast Region Marine Mammal Stranding Network, regardless of whether the injury or death is caused by project activities. In addition, if a marine mammal is struck by a project vessel (e.g., SRV, support vessel), or in the unanticipated event that project activity clearly resulted in the injury, serious injury, or death (e.g., gear interaction, and/or entanglement) of a marine mammal, USCG and NMFS must be notified immediately, and a full report must be provided to NMFS, Southeast Regional Office, and NMFS, Office of Protected Resources. The report must include the following information: (1) The time, date, and location (latitude/longitude) of the incident; (2) the name and type of vessel involved, if applicable; (3) the vessel's speed during and leading up to the incident, if applicable; (4) a description of the incident; (5) water depth; (6) environmental conditions (e.g., wind speed and direction, sea state, cloud cover, visibility); (7) the species identification or description of the animal(s) involved; (8) the fate of the animal(s); and (9) photographs or video footage of the animal (if equipment is available). Following such an incident, activities must cease until NMFS is able to review the circumstances of the incident. NMFS would work with Port Dolphin to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Port Dolphin may not resume activity until notified to do so by NMFS. If a prohibited take should occur, the NMFS Office of Law Enforcement and the Florida Fish and Wildlife Conservation Commission law enforcement would be notified.

In the event that an injured or dead marine mammal is discovered, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), Port Dolphin will immediately report the incident to NMFS, Office of Protected Resources. The report must include the same information identified in the preceding paragraph. However, activity may continue while NMFS reviews the circumstances of the incident, and NMFS will work with Port Dolphin to determine whether modifications to the activities are appropriate. If the lead PSO determines that the discovered animal is not associated with or related to project activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Port Dolphin would report the incident to NMFS, Office of Protected Resources, within 24 hours of the discovery. Port Dolphin should provide photographs or video footage (if available) or other documentation of the sighting. Activities may continue while NMFS reviews the circumstances of the incident.

An annual report on marine mammal monitoring and mitigation would be submitted to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office, each year. The weekly and annual reports would include data collected for each distinct marine mammal species observed in the project area. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to activities would also be included in the annual reports. Additional information that would be recorded during activities and contained in the reports include: date and time of marine mammal detections, weather conditions, species identification, approximate distance from the source, and activity at the construction site when a marine mammal is sighted.

In addition to annual reports, Port Dolphin would submit a draft comprehensive final report to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office, 180 days prior to the expiration of the regulations. This comprehensive technical report would provide full documentation of methods, results, and interpretation of all monitoring during the first 4.5 years of the regulations. A revised final comprehensive technical report, including all monitoring results during the entire period of the regulations would be due 90 days after the end of the period of effectiveness of the regulations.

Adaptive Management

The final regulations governing the take of marine mammals incidental to the specified activities at Port Dolphin would contain an adaptive management component. In accordance with 50 CFR 216.105(c), regulations for the proposed activity must be based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review. The use of adaptive management would allow NMFS to consider new information from different sources to determine if mitigation or monitoring measures should be modified (including additions or deletions) if new data suggest that such modifications are appropriate for subsequent LOAs.

The following are some of the possible sources of applicable data:

- Results from Port Dolphin's monitoring from the previous year;
- Results from general marine mammal and acoustics research; or
- Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

If, during the effective dates of the regulations, new information is presented from monitoring, reporting, or research, these regulations may be modified, in whole, or in part after notice and opportunity of public review, as allowed for in 50 CFR 216.105(c). In addition, LOAs would be withdrawn or suspended if, after notice and opportunity for public comment, the Assistant Administrator finds, among other things, that the regulations are not being substantially complied with or that the taking allowed is having more than a negligible impact on the species or stock, as allowed for in 50 CFR 216.106(e). That is, should substantial changes in marine mammal populations in the project area occur or monitoring and reporting show that Port Dolphin actions are having more than a negligible impact on marine mammals, then NMFS reserves the right to modify the regulations and/or withdraw or suspend LOAs after public review.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine

mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].'' Take by Level B harassment only is anticipated as a result of Port Dolphin's proposed activities. Take of marine mammals is anticipated to occur as a result of elevated levels of sound from the previously described activities associated with construction and installation of the port and from port operations. No take by injury, serious injury, or death is anticipated.

As described previously in the ''Distance to Sound Thresholds'' section of this document, JASCO Research modeled a series of scenarios that thoroughly characterize the various construction/installation and operation activities expected. JASCO used proxy sound sources selected from a database of underwater sound measurements. The selected proxy sound sources were input to a sound propagation model with multiple parameters, including expected water column sound speeds, bathymetry, and bottom geoacoustic properties, to estimate the radii of sound impacts (JASCO, 2008, 2010). Note that for some scenarios, 180-dB threshold values only occur in the immediate vicinity of individual pieces of equipment that combine to form a construction ''spread,'' or modeled scenario, with little or no overlap of the sound fields from neighboring vessels. These scenarios are for transient activities—for example, pipelaying and burial activities require a spread of vessels and equipment (e.g., barges, tugs) rather than a single point source of sound. These modeled scenarios combine the sound output from multiple vessels/pieces of equipment. The overall radius depends primarily on the spacing between the vessels, and a single scenario-specific radius for the 180-dB threshold cannot sensibly be defined. All activity types considered here would produce sound source levels attenuating to less than 180 dB within 200 m; thus, 200 m is used as a conservative estimator for 180-dB area calculations in most cases.

JASCO's modeling reports the radial distance from each modeled source to received levels in 10 dB increments (i.e., from 120 dB through 180 dB), and this information is used here to report the intensity of sound source levels relative to this 200 m radius in subsequent sections. Please see Appendices C and D in Port Dolphin's application for a detailed description of this sound source modeling and Appendix E for a graphical depiction of the sound fields from various activities. Results of the modeled underwater analysis for Port Dolphin construction and operation are summarized as follows:

- *Buoy installation:* Installation of the buoys at the Port would produce continuous, transient (non-pulsed) sound for a relatively short period of time during summer, with 120-dB isopleths located 3.9 km from each STL buoy location and corresponding ensonification of approximately 48 km^2. At 200 m distance, sound produced by buoy installation would attenuate to less than 150 dB.
- *Pipelaying:* Pipelaying activities would generate continuous (non-pulsed) sound, and would be transient as the pipelaying operation moved along the pipeline route. Construction is expected to occur during summer and fall. Depending on location, the 120-dB isopleth for pipelaying activities would extend either 6.0 (offshore) or 7.5 km (inshore) from the source, encompassing approximately 113 or 178 km^2, respectively. At 200 m distance, sound produced by pipelaying would attenuate to less than 160 dB.
- *Pipeline burial:* Pipeline burial using the plow system would generate continuous, transient sound during construction similar to pipelaying and is expected to occur during fall and winter. Pipeline burial would only be used in those locations with suitable substrate conditions. Distances to the 120-dB isopleth would be 6.7 (offshore) or 8.4 km (inshore) from the source and would encompass approximately 141 or 222 km^2. At 200 m distance, sound produced by pipeline burial would attenuate to less than 160 dB.
- *Pile driving:* Offshore installation of anchors via impact pile driving is slated to occur during summer. This impulsive sound source would produce a 160-dB isopleth at 4.5 km from each STL buoy location, encompassing approximately 64 km^2. The 180-dB isopleths would extend to 180 m from the source, encompassing approximately 0.1 km^2.
- *HDD:* Horizontal directional drilling within Tampa Bay would produce continuous, non-pulsed sound and is expected to occur during summer. The 120-dB isopleth would extend 240 m from the drilling operation, encompassing approximately 0.2 km^2. Calculations based on the area of ensonification for HDD indicate that no marine mammals would be harassed as a result of this activity. Source levels for this activity are expected to be below the 180-dB threshold; therefore, consideration of Level A harassment is not relevant.
- *HDD vibratory driving:* Installation of the goal posts at each HDD location would produce continuous, non-pulsed sound for a relatively short period of time, exclusively during summer. The 120-dB isopleth for HDD vibratory driving would extend 12.6 km from the source, encompassing approximately 499 km^2. The 180-dB isopleths would be less than 10 m from the source.
- *SRV maneuvering:* Once an SRV completes its approach to Port Dolphin and is within approximately 5.6 km of the port, bow and stern thrusters would be utilized. Thruster use would vary, operating for 10 to 30 minutes to allow for the proper positioning of the vessel and connection to the STL buoy. Docking or berthing would occur at alternate STL buoys approximately every 8 days. The periodic use of the thrusters would produce continuous, non-pulsed sound that would be transient as the vessel moves, with the 120-dB isopleth occurring at 3.6 km from the SRV, encompassing approximately 41 km^2. The 180-dB isopleths would be less than 10 m from the source.
- *Regasification:* SRVs would regasify LNG cargo while docked at a STL buoy, producing continuous, non-pulsed sound. Sound levels for regasification are low, with the 120-dB isopleth at 170 m from the source, encompassing approximately 0.09 km^2. Calculations based on this area of ensonification indicate that no marine mammals would be harassed as a result of this activity. Source levels for this activity are below the 180-dB threshold.

Density of marine mammals in the project area was derived from a U.S. Navy review of available marine mammal survey data for the eastern Gulf of Mexico which summarized species presence and distribution on a seasonal basis (USDON, 2003). As described previously, marine mammal densities are determined on the basis of both seasonality and depth stratum. While the area of actual construction and operations for Port Dolphin is entirely contained within the nearshore depth stratum (0 to 37 m), the sound field from certain construction activity, and thus the area of effect, extends into the mid-shelf depth stratum (37 to 91 m). This has implications for the species of marine mammals that may potentially be affected by the activity. Almost all sound produced by construction activities would occur within the nearshore stratum. The only activity with a sound field extending to the mid-shelf depth stratum is offshore pipelaying, which would occur only

during construction, from approximately late summer 2013 through early winter 2013–14. The Level B sound field for this activity would be 99.9 percent contained within the nearshore stratum, with 0.1 percent projected to enter the mid-shelf stratum. Densities for marine mammals that may be affected by the proposed activities are presented in Table 8.

TABLE 8—DENSITY ESTIMATES FOR MARINE MAMMALS IN THE NEARSHORE AND MID-SHELF DEPTH STRATA, EASTERN GOM

Species	Density (Individuals/100 km^2 (39 mi^2))			
	Winter	Spring	Summer	Fall
Nearshore depth stratum:				
Atlantic spotted dolphin	2.243	10.752	2.524	10.752
Bottlenose dolphin	10.913	21.986	8.241	26.744
Mid-shelf depth stratum:				
Atlantic spotted dolphin	11.630	21.699	17.354	22.916
Bottlenose dolphin	7.410	2.588	11.707	10.856
Dwarf/pygmy sperm whale	0.000	0.011	0.011	0.000
Rough-toothed dolphin	0.000	0.000	0.000	0.400

Source: USDON, 2003.

Incidental take estimates are calculated based on: (1) The number of marine mammals that occur within each respective depth stratum, using species- and season-specific density estimates; (2) the percentage of sound field within each depth stratum, by source (this is relevant for offshore pipelaying only); (3) the areal extent of Level A and Level B sound fields, by sound source; and (4) the time or distance component of the activity. Areas of ensonification, by appropriate threshold, are presented in Table 6. With regard to the fourth component (time/distance), there are two types of construction activities: stationary and transient. Stationary activities would occur near specific sites (e.g., locations for buoy installation), while transient activities would occur while traveling along a pre-determined trackline (i.e., the pipeline route). Incidental take associated with stationary activities is determined by considering the estimated number of days of effect. Buoy installation, impact pile driving, and vibratory pile driving activities are expected to take 6, 32, and 8 days, respectively. The pre-determined pipeline route along which the pipelaying and burial activities would occur is approximately 72 km long (37 km offshore, 35 km inshore). For these transient activities, the overall area of effect (i.e., distance × width of ensonified area) is used in calculating estimated incidental take.

For stationary activities, season-specific estimated take was determined by first multiplying the modeled ZOI (i.e., the area ensonified using the appropriate thresholds) and the appropriate species-specific seasonal densities within each depth stratum (USDON, 2003). These results were then rounded to the nearest whole number and multiplied by the estimated number of days of effect to provide an estimate of take.

For transient activities, season-specific estimated take was determined by multiplying the overall area of effect for offshore and inshore portions, respectively, by the appropriate density and, because some of these activities are expected to occur during multiple seasons, by the proportion of trackline expected to be completed during a given season. For offshore pipelaying, approximately 43 percent of effort is expected to occur during summer and 57 percent occur during fall. The inshore portion would occur entirely during fall. For offshore pipe burial, approximately 12 percent of effort is expected to occur during fall and 88 percent occurring during winter. The inshore portion would occur entirely during winter.

For offshore pipelaying, the estimated take within each depth stratum was then integrated into the seasonal, species-specific calculations. Calculations indicate that, on the basis of the densities shown in Table 8 and the 0.1 percent of the sound field for pipelaying that would occur in the mid-shelf depth stratum, no incidental take of dwarf/pygmy sperm whales (i.e., *Kogia* spp.) or rough-toothed dolphins would occur. Similarly, take of spotted and bottlenose dolphins would occur only in the nearshore depth stratum (i.e., the 0.1 percent of effect occurring in the mid-shelf depth stratum would not add to the total take). Dwarf/pygmy sperm whales and rough-toothed dolphins are not covered by this proposed rule because incidental take is not anticipated, and no incidental take is proposed to be authorized. The results of take estimation calculations for bottlenose dolphins and spotted dolphins for construction activities are shown in Table 9.

TABLE 9—ESTIMATED INCIDENTAL TAKE, CONSTRUCTION ACTIVITIES

Activity	Season	Species	
		Atlantic spotted dolphin	Bottlenose dolphin
Buoy installation	Summer	6	24
Impact pile driving	Summer	64	160
Pipelaying—Offshore	Summer	6	20
	Fall	34	85
Pipelaying—Inshore	Fall	45	112
Pipeline burial—Offshore	Fall	8	20
	Winter	12	60
Pipeline burial—Inshore	Winter	11	51

TABLE 9—ESTIMATED INCIDENTAL TAKE, CONSTRUCTION ACTIVITIES—Continued

Activity	Season	Species	
		Atlantic spotted dolphin	Bottlenose dolphin
Vibratory pile driving	Summer	104	328
Total, by species		290	860

When the Port reaches operational status, an estimated 46 SRV visits would occur per year. Visits would be equally distributed across seasons, with 12 visits expected during winter and summer seasons and 11 visits per season during spring and fall. Each visit includes arrival and departure of the SRV, so 46 visits would result in 92 episodes that may result in incidental take. The results of take estimation calculations for operational activities, for a given year, are shown in Table 10.

TABLE 10—ESTIMATED YEARLY INCIDENTAL TAKE, PORT OPERATIONS

Activity	Season	Trips	Atlantic spotted dolphin		Bottlenose dolphin	
			Single visit [1]	Seasonal	Single visit [1]	Seasonal
SRV maneuvering	Summer	12	2	24	7	84
	Fall	11	9	99	22	242
	Winter	12	2	24	9	108
	Spring	11	9	99	18	198
Totals [2]		46		246		632

[1] Single-visit take calculated by multiplying appropriate density and appropriate area, then doubling the result to account for arrival and departure of the SRV in a single trip.
[2] Total represents the single visit take multiplied by the total number of trips.

Assuming that this proposed rulemaking would be in effect during 1 year of construction and 4 years of operations, the total estimated taking, by Level B harassment only, would be 1,274 Atlantic spotted dolphins and 3,388 bottlenose dolphins.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

Incidental take, in the form of Level B harassment only, is likely to occur primarily as a result of marine mammal exposure to elevated levels of sound resulting from the specified activities. No take by injury, serious injury, or death is anticipated or proposed for authorization. The expected impacts from this activity would be Level B harassment in the form of behavioral disturbance resulting in, for example, changed direction or speed, or temporary avoidance of an area. Anticipated behavioral disturbance is likely to be of low intensity due to the sound source characteristics—the majority of activities considered here would produce low source levels of non-pulsed sound that would be either intermittent or transient—and relatively short in duration associated with the specified activities. For the same reasons, no individual marine mammals are expected to incur any hearing impairment, whether temporary or permanent in nature. That is, non-pulsed sound does not produce the rapid rise times that are more likely to produce hearing impairment in marine mammals, and the low intensity of the sources would result in Level A isopleths within a short distance. Several activities would produce source levels below those considered capable of causing hearing impairment, even in close proximity to marine mammals. The shutdown zone monitoring proposed as mitigation, and the small size of the zones in which injury may occur, further reduces the potential for any injury of marine mammals, making the possibility of hearing impairment extremely unlikely and therefore discountable.

For the greater portion of the life of this proposed rule (i.e., 4 years remaining after the first year of construction), only port operations would occur. Each episode of SRV arrival/departure (requiring thruster use for a period of several hours) would be separated by approximately 8 days of regasification, an activity not expected to result in incidental take. The likely effects of behavioral disturbance from port operations are minor, as many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel (24-hour) cycle. Behavioral reactions to sound exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Operational activities would occur on a single day (i.e., arrival or departure of a SRV), would not recur for a period of 8 days, and, as for the majority of construction activities, would produce only low levels of non-pulsed sound. NMFS' current criterion for Level B harassment from non-pulsed, underwater sound levels (the vast majority of sound produced by the proposed activities) is 120 dB rms. However, not all marine mammals react to sounds at this low level, and many will not show strong reactions (and in some cases any

reaction) until sounds are much stronger.

Neither the bottlenose dolphin nor spotted dolphin is listed under the ESA. However, NMFS considers the bay, sound, and estuarine stock of bottlenose dolphins (of which the Tampa Bay/Sarasota Bay populations are a component) to be strategic under the MMPA. NMFS is in the process of writing individual stock assessment reports for each of the 32 bay, sound and estuary stocks of bottlenose dolphins, but none has been completed for the Tampa Bay/Sarasota Bay populations. There is insufficient data to determine population trends or status of the relevant stocks relative to optimum sustainable population. Population estimates for these species were provided earlier in this document (see the ''Description of Marine Mammals in the Area of the Specified Activity'' section).

The maximum estimated take per year of Atlantic spotted dolphins (290) would be small relative to the stock size (37,611; 0.1 percent); this would decline for subsequent years of operations. As a result, only small numbers of Atlantic spotted dolphins would be taken. For bottlenose dolphins, the maximum estimated total take per year for all bottlenose dolphins (860) is small relative to the coastal stock size (7,702; 11 percent); this would decline for subsequent years of operations. As a result, only small numbers of bottlenose dolphins from the coastal stock could be taken. However, it is difficult to partition potential takings between the coastal stock (7,702) and the smaller bay, sound, and estuarine stock (719) because the possibility for mixing of the stocks precludes any quantitative understanding of how the total estimated taking might be apportioned between stocks.

Although it is not possible to predict that portion of overall incidental take that might accrue to bay dolphin populations, NMFS believes that the potential effects of the proposed activities represent a negligible impact for bay dolphins. Only a subset of the specified activities has the potential to affect bay dolphins. Buoy installation and impact pile driving, as well as the entire offshore portion of pipelaying and burial, would occur offshore and would not have the potential to affect the bay dolphin populations. Vibratory pile driving would occur entirely within Tampa Bay, as would a portion of inshore pipelaying and burial, and could impact the bay populations. Vibratory pile driving would occur for only 8 days (at two piles per day), meaning that any harassment experienced by bay dolphins from this activity would be of very short duration. In addition, Tampa Bay is significantly industrialized and urbanized and is heavily used by recreational boaters. Bottlenose dolphins occurring in Tampa Bay are somewhat acclimated to disturbance and would not be expected to experience significant disruption to behavioral patterns on the basis of short-term and low intensity disturbance, such as is proposed for this project. The proposed activities would not take place in areas known to be of special significance for feeding or breeding.

In summary, NMFS believes that potential impacts to bay dolphins represent a negligible impact for the following reasons: (1) Only a subset of project activities have the potential to affect bay dolphins; (2) any takes would be of low intensity (resulting from exposure to low levels of non-pulsed sound over a limited duration) and likely would not result in significant alteration of dolphin behavior in the heavily urbanized/industrialized area where the activity would occur; (3) any takes are likely to represent repeated takes of individuals using the area where the activity is occurring, rather than each take being of a new individual; and (4) an unknown, but possibly large, number of coastal stock dolphins may be mixing in inshore waters at any given time, and it is not possible to accurately determine how many of the takes may occur to individuals of the coastal stock versus individuals of the bay stock. Finally, following the initial year of construction, all operations would occur offshore, and there would be no potential for incidental take of bay dolphins.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that construction and operation of Port Dolphin would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from Port Dolphin's proposed activities would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

On August 4, 2009, NMFS concluded consultation with MarAd and USCG under section 7 of the ESA on the proposed construction and operation of the Port Dolphin LNG facility. The result of that consultation was NMFS' concurrence with Port Dolphin's determination that the proposed activities may affect, but are not likely to adversely affect, listed species under NMFS' jurisdiction. NMFS does not propose to authorize incidental take of any ESA-listed marine mammal species. No listed species will be impacted by the specified activities.

National Environmental Policy Act (NEPA)

The USCG and the MarAd initiated the public scoping process in July 2007, with the publication of a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register**. The NOI included information on public meetings and informational open houses; requested public comments on the scope of the EIS; and provided information on how the public could submit comments. A Notice of Availability for the Draft EIS was published in the **Federal Register** in April 2008. Subsequently, a final EIS was published in July 2009. MarAd issued a Record of Decision (ROD) approving, with conditions, the Port Dolphin Energy Deepwater Port License application on October 26, 2009.

Because NMFS was a cooperating agency in the development of the Port Dolphin EIS, NMFS will adopt the EIS and, if appropriate, issue its own ROD for issuance of authorizations pursuant to section 101(a)(5)(A) of the MMPA for the activities proposed by Port Dolphin.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the content of the proposed regulations to authorize the taking (see **ADDRESSES**).

Classification

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Port Dolphin Energy LLC is the only

entity that would be subject to the requirements in these proposed regulations. Port Dolphin is ultimately owned by the Norway-based shipping company Höegh LNG AS, which is itself held by Leif Höegh & Co, a global shipping company. Therefore, it is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required, and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS and the OMB Desk Officer (see **ADDRESSES**).

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: September 4, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart P is added to part 217 to read as follows:

Subpart P—Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Deepwater Port in the Gulf of Mexico

Sec.

217.151 Specified activity and specified geographical region.
217.152 Effective dates.
217.153 Permissible methods of taking.
217.154 Prohibitions.
217.155 Mitigation.
217.156 Requirements for monitoring and reporting.
217.157 Letters of Authorization.
217.158 Renewals and Modifications of Letters of Authorization.

Subpart P—Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Deepwater Port in the Gulf of Mexico

§ 217.151 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Port Dolphin Energy LLC (Port Dolphin) and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to construction and operation of the Port Dolphin Deepwater Port (Port).

(b) The taking of marine mammals by Port Dolphin may be authorized in a Letter of Authorization (LOA) only if it occurs in the vicinity of the Port Dolphin Deepwater Port in the eastern Gulf of Mexico or along the associated pipeline route.

§ 217.152 Effective dates.

[Reserved]

§ 217.153 Permissible methods of taking.

(a) Under LOAs issued pursuant to § 216.106 and § 217.157 of this chapter, the Holder of the LOA (hereinafter ''Port Dolphin'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.151(b) of this chapter, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in § 217.151(a) of this chapter is limited to the following species and is limited to Level B Harassment:

(1) Bottlenose dolphin (*Tursiops truncatus*)—3,388 (860 the first year and an average of 632 annually thereafter)

(2) Atlantic spotted dolphin (*Stenella frontalis*)—1,274 (290 the first year and an average of 246 annually thereafter)

§ 217.154 Prohibitions.

Notwithstanding takings contemplated in § 217.151 of this chapter and authorized by a LOA issued under § 216.106 and § 217.157 of this chapter, no person in connection with the activities described in § 217.151 of this chapter may:

(a) Take any marine mammal not specified in § 217.153(b) of this chapter;

(b) Take any marine mammal specified in § 217.153(b) of this chapter other than by incidental, unintentional Level B Harassment;

(c) Take a marine mammal specified in § 217.153(b) of this chapter if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 and § 217.157 of this chapter.

§ 217.155 Mitigation.

(a) When conducting the activities identified in § 217.151(a) of this chapter, the mitigation measures contained in any LOA issued under § 216.106 and § 217.157 of this chapter must be implemented. These mitigation measures include but are not limited to:

(1) General Conditions:

(i) Briefings shall be conducted between the Port Dolphin project construction supervisors and the crew, protected species observer(s) (PSO), and acoustic monitoring team prior to the start of all construction activity, and when new personnel join the work, to explain responsibilities, communication procedures, protected species monitoring protocol, and operational procedures.

(ii) Port Dolphin shall comply with all applicable equipment sound standards and ensure that all construction equipment has sound control devices no less effective than those provided on the original equipment. Vessel crew and contractors shall minimize the production of underwater sound to the extent possible. Equipment and/or procedures used may include the use of enclosures and mufflers on equipment, minimizing the use of thrusters, and turning off engines and equipment when not in use.

(iii) All vessels associated with Port Dolphin construction and operations shall comply with NMFS Vessel Strike Avoidance Measures and Reporting for Mariners and applicable regulations. All vessels associated with Port Dolphin construction and operations shall remain 500 yd (457 m) away from North Atlantic right whales (*Eubalaena glacialis*) and 100 yd (91 m) away from all other marine mammals, except in cases where small marine mammals (i.e., delphinids) voluntarily approach within 100 yd or unless constrained by human safety concerns or navigational constraints.

(2) Shutdown and Monitoring:

(i) *Shutdown zone:* For all activities, shutdown zones shall be established. These zones shall include all areas where underwater sound pressure levels

(SPLs) are anticipated to equal or exceed 180 dB re: 1 μPa rms, as determined by modeled scenarios approved by NMFS for each specific activity. The actual size of these zones shall be empirically determined and reported by Port Dolphin. For all non-stationary activities (e.g., pipeline burial, shuttle regasification vessel (SRV) maneuvering), Port Dolphin shall maintain a minimum 100 yd (91 m) distance from marine mammals, with the exception that voluntary approach (e.g., bow riding) within the 100 yd zone by delphinids shall not trigger shutdown requirements.

(ii) *Disturbance zone:* For all activities, disturbance zones shall be established. For impact pile driving, these zones shall include all areas where underwater SPLs are anticipated to equal or exceed 160 dB re: 1 μPa rms. For all other activities these zones shall include all areas where underwater SPLs are anticipated to equal or exceed 120 dB re: 1 μPa rms. These zones shall be established on the basis of modeled scenarios approved by NMFS for each specific activity. The actual size of disturbance zones shall be empirically determined and reported by Port Dolphin, and on-site PSOs shall be aware of the size of these zones. However, because of the large size of these zones, monitoring of the zone is required only to maximum line-of-sight distance from established monitoring locations.

(iii) Monitoring of shutdown and disturbance zones shall occur for all activities. The following measures shall apply:

(A) Shutdown and disturbance zones shall be monitored from the appropriate vessel or work platform, or other suitable vantage point. Port Dolphin shall at all times employ, at minimum, two PSOs in association with each concurrent specified construction activity.

(B) The shutdown zone shall be monitored for the presence of marine mammals before, during, and after construction activity. For all activities, the shutdown zone shall be monitored for 30 minutes prior to initiating the start of activity and for 30 minutes following the completion of activity. If marine mammals are present within the shutdown zone prior to initiating activity, the start shall be delayed until the animals leave the shutdown zone of their own volition or until 15 minutes has elapsed without observing the animal. If a marine mammal is observed within or approaching the shutdown zone, activity shall be halted as soon as it is safe to do so, until the animal is observed exiting the shutdown zone or 15 minutes has elapsed. If a marine mammal is observed within the disturbance zone, a take shall be recorded and behaviors documented.

(C) PSOs shall be on watch at all times during daylight hours when in-water operations are being conducted, unless conditions (e.g., fog, rain, darkness) make observations impossible. If conditions deteriorate during daylight hours such that the sea surface observations are halted, visual observations must resume as soon as conditions permit. While activities will be permitted to continue during low-visibility conditions, they (1) must have been initiated following proper clearance of the shutdown zone under acceptable observation conditions; and (2) must be restarted, if halted for any reason, using the appropriate shutdown zone clearance procedures as described in § 217.155(a)(2)(iii)(B) of this chapter.

(3) Pile driving:

(i) A minimum shutdown zone of 250 m radius shall be established around all impact pile driving activity.

(ii) Contractors shall reduce the power of impact hammers to minimum energy levels required to drive a pile.

(iii) Port Dolphin shall use a sound attenuation measure for impact driving of pilings. Prior to beginning construction, Port Dolphin must provide information to NMFS about the device to be used, including technical specifications. NMFS must approve use of the device before construction may begin. If a bubble curtain or similar measure is used, it shall distribute small air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure (e.g., temporary sound attenuation pile) must provide 100 percent coverage in the water column for the full depth of the pile. Prior to any impact pile driving, a performance test of the sound attenuation device must be conducted in accordance with a NMFS-approved acoustic monitoring plan. If a bubble curtain or similar measure is utilized, the performance test shall confirm the calculated pressures and flow rates at each manifold ring.

(iv) Ramp-up:

(A) A ramp-up technique shall be used at the beginning of each day's in-water pile driving activities and if pile driving resumes after it has ceased for more than 1 hour.

(B) If a vibratory driver is used, contractors shall be required to initiate sound from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure shall be repeated two additional times before full energy may be achieved.

(C) If a non-diesel impact hammer is used, contractors shall be required to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 1-minute waiting period, then two subsequent sets.

(D) If a diesel impact hammer is used, contractors shall be required to turn on the sound attenuation device for 15 seconds prior to initiating pile driving.

(v) No impact pile driving shall occur when visibility in the shutdown zone is significantly limited, such as during heavy rain or fog.

(4) Additional mitigation measures:

(i) Use of lights during construction activities shall be limited to areas where work is actually occurring, and all other lights must be extinguished. Lights must be shielded such that they illuminate the deck and do not intentionally illuminate surrounding waters, to the extent possible.

(ii) Additional mitigation measures as contained in a LOA issued under § 216.106 and § 217.157 of this chapter.

(b) [Reserved]

§ 217.156 Requirements for monitoring and reporting.

(a) Visual monitoring program:

(1) Port Dolphin shall employ, at minimum, two qualified PSOs during specified construction-related activities at each site where such activities are occurring. All PSOs must be selected in conformance with NMFS' minimum qualifications, as described in the preamble to this rule, and must receive training sponsored by Port Dolphin, with topics to include, at minimum, implementation of the monitoring protocol, identification of marine mammals, and reporting requirements. The PSOs shall be responsible for visually locating marine mammals in the shutdown and disturbance zones and, to the extent possible, identifying the species. PSOs shall record, at minimum, the following information:

(i) A count of all marine mammals observed by species, sex, and age class, when possible.

(ii) Their location within the shutdown or disturbance zone, and their reaction (if any) to construction activities, including direction of movement.

(iii) Activity that is occurring at the time of observation, including time that activity begins and ends, any acoustic or visual disturbance, and time of the observation.

(iv) Environmental conditions, including wind speed, wind direction, visibility, and temperature.

(2) Port Dolphin shall sponsor a training course to designated crew members assigned to vessels associated

with construction activities or support of operations who will have responsibilities for watching for marine mammals. This course shall cover topics including, but not limited to, descriptions of the marine mammals found in the area, mitigation and monitoring requirements contained in a LOA, sighting log requirements, provisions of NMFS Vessel Strike Avoidance Measures and Reporting for Mariners, and procedures for reporting injured or dead marine mammals.

(3) Monitoring shall be conducted using appropriate binoculars, such as 8x50 marine binoculars. When possible, digital video or still cameras shall also be used to document the behavior and response of marine mammals to construction activities or other disturbances.

(4) Each PSO shall have two-way communication capability for contact with other PSOs or work crews. PSOs shall implement shut-down or delay procedures when applicable by calling for the shut-down to the equipment/vessel operator.

(5) A GPS unit and/or appropriate range finding device shall be used for determining the observation location and distance to marine mammals, vessels, and construction equipment.

(6) During arrival and departure of SRVs and regasification, qualified PSOs may not be required. During SRV arrival and departure, while thrusters are engaged for maneuvering, an additional lookout shall be designated to exclusively and continuously monitor for marine mammals. All sightings of marine mammals by the designated lookout, individuals posted to navigational lookout duties, or any other crew member while the SRV is maneuvering or in transit to or from the Port shall be immediately reported to the watch officer who shall then alert the Master. The SRV must report to Port Dolphin any observations of marine mammals while maneuvering with thrusters.

(b) Acoustic monitoring program:

(1) Port Dolphin must provide NMFS with an acoustic monitoring plan describing the planned measurement of underwater sound pressure levels from designated construction and operation activities as well as the characterization of site-specific sound propagation. NMFS must approve this plan before activities may begin, and acoustic monitoring must be conducted in accordance with the plan.

(2) Port Dolphin shall provide NMFS with empirically measured source level data for designated sources of sound associated with Port construction and operation activities and shall verify distances to relevant sound thresholds. Measurements shall be carefully coordinated with sound-producing activities.

(3) [Reserved]

(c) Reporting—Port Dolphin must implement the following reporting requirements:

(1) A report of data collected during monitoring shall be submitted to NMFS following conclusion of construction activities. Subsequent reports concerning Port operations shall be submitted annually. The reports shall include:

(i) All data required to be collected during monitoring, as described under 217.156(a) of this chapter, including observation dates, times, and conditions;

(ii) Correlations of observed behavior with activity type and received levels of sound, to the extent possible; and

(iii) Estimations of total incidental take of marine mammals, extrapolated from observed incidental take.

(2) Port Dolphin shall also submit a report(s) concerning the results of all acoustic monitoring. Acoustic monitoring reports shall include information as described in a NMFS-approved acoustic monitoring plan.

(3) Reporting injured or dead marine mammals:

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by a LOA (if issued), such as an injury (Level A harassment), serious injury, or mortality, Port Dolphin shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the following information:

(A) Time and date of the incident;

(B) Description of the incident;

(C) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(D) Description of all marine mammal observations in the 24 hours preceding the incident;

(E) Species identification or description of the animal(s) involved;

(F) Fate of the animal(s); and

(G) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Port Dolphin to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Port Dolphin may not resume their activities until notified by NMFS.

(ii) In the event that Port Dolphin discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), Port Dolphin shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the same information identified in 217.156(b)(3)(i) of this chapter. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Port Dolphin to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that Port Dolphin discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the LOA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Port Dolphin shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Port Dolphin shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) Annual Reports.

(i) A report summarizing all marine mammal monitoring and construction activities shall be submitted to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office (specific contact information to be provided in LOA) following the conclusion of construction activities. Thereafter, Port Dolphin shall submit annual reports summarizing marine mammal monitoring and operations activities.

(ii) The annual reports shall include data collected for each distinct marine mammal species observed in the project area. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to activities shall also be included in the reports. Additional information that shall be recorded during activities and contained in the reports include: Date and time of marine mammal detections, weather conditions, species

identification, approximate distance from the source, and activity at the construction site when a marine mammal is sighted.

(5) Five-year Comprehensive Report.

(i) Port Dolphin shall submit a draft comprehensive final report to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office (specific contact information to be provided in LOA) 180 days prior to the expiration of the regulations. This comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first 4.5 years of the activities conducted under the regulations in this Subpart.

(ii) Port Dolphin shall submit a revised final comprehensive technical report, including all monitoring results during the entire period of the LOAs, 90 days after the end of the period of effectiveness of the regulations to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office (specific contact information to be provided in LOA).

§ 217.157 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Port Dolphin must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Port Dolphin must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Port Dolphin must apply for and obtain a modification of the LOA as described in § 217.158 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.158 Renewals and modifications of Letters of Authorization.

(a) A LOA issued under § 216.106 and § 217.157 of this chapter for the activity identified in § 217.151(a) of this chapter shall be renewed or modified upon request by the applicant, provided that: (1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in § 217.158(c)(1) of this chapter), and (2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in § 217.158(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under § 216.106 and § 217.157 of this chapter for the activity identified in § 217.151(a) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Port Dolphin regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Port Dolphin's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.153(b) of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

53769–54352 4
54353–54786 5
54787–55104 6
55105–55410 7
55411–55680 10

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
13642 54779
13625 54783

7 CFR

Proposed Rules:
1710 54839
1717 54839
1721 54839
1724 54839
1730 54839

10 CFR

2 53769
171 53769

Proposed Rules:
26 55429
50 54839

12 CFR

Proposed Rules:
34 54722
164 54722
226 54722
722 54722
1026 .....54722, 54843, 54844, 55272
1222 54722

14 CFR

39 .....54353, 54787, 54791, 54793, 54796, 54798, 54800, 54803, 55411
71 .....54804, 54805
121 55105
129 55105
420 55108

Proposed Rules:
39 .....54846, 54848, 54850, 54854, 54856, 55159, 55163, 55166
71 .....54859, 54860
235 53779

15 CFR

Proposed Rules:
1400 53780

16 CFR

Proposed Rules:
1240 53781

17 CFR

4 54355
232 54806

Proposed Rules:
230 54464
239 54464

19 CFR

4 54808

21 CFR

510 55413
520 55414
522 .....55413, 55414
556 55414

Proposed Rules:
73 54862
172 53801

23 CFR

Proposed Rules:
172 53802

24 CFR

5 55120
200 55120
207 55120
232 55120

26 CFR

1 54808

Proposed Rules:
1 .....54482, 54862

29 CFR

Proposed Rules:
1610 53814

30 CFR

Proposed Rules:
901 54490
904 55430
944 54491

33 CFR

100 55138
117 55416
151 55417
165 .....53769, 54811, 54813, 54815, 55139, 55141, 55143

Proposed Rules:
100 55436
110 54493
161 55439
165 54495

34 CFR

Proposed Rules:
Ch. I 53819

36 CFR

Proposed Rules:
7 53826

37 CFR

1 54360
41 54360

Proposed Rules:
1 55028
41 55028
42 55028
202 53829

38 CFR

1 54367
17 54368

39 CFR

Proposed Rules:
111 53830
966 53830

40 CFR

52 ....53772, 53773, 55417, 55419
70 54382
86 54384
180 54402
228 55144
761 54818
Proposed Rules:
52 ....55168, 55171
122 53834
725 54499
761 54863

42 CFR

412 53968
413 53968
495 53968

43 CFR

3000 55420

44 CFR

64 53775

45 CFR

162 54664
170 54163

46 CFR

162 55417
Proposed Rules:
10 55174

47 CFR

101 54421
Proposed Rules:
101 54511

48 CFR

3052 54835
Proposed Rules:
8 ....54864, 54872
9 54872
12 54864
15 54864
17 54864
42 54864
49 54864
52 54872

49 CFR

571 54836
Proposed Rules:
26 54952
270 55372
573 55606
577 55606
578 55175
579 55606

50 CFR

17 ....54434, 55530
20 54451
622 53776
660 ....55153, 55426
679 ....54837, 54838
Proposed Rules:
17 ....54294, 54332, 54517, 54548
217 55646
622 55448

LIST OF PUBLIC LAWS

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H.R. 1402/P.L. 112–170

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

H.R. 3670/P.L. 112–171

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

H.R. 4240/P.L. 112–172

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

S. 3510/P.L. 112–173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

Last List August 16, 2012

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