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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 14, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0419; Directorate Identifier 2007–NE–52–AD; Amendment 39–15871; AD 2009–07–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines with high-pressure (HP) rotor 4-step air balance piston stationary seals (4-step seals), part numbers (P/Ns) 4923T54G01, 6019T90G03, 6037T99G01, 6037T99G02, and 6037T99G03, installed. This AD requires removing the 4-step seals and incorporating an 8-step seal at the next piece-part exposure. This AD results from the investigation of an airplane accident. Both engines experienced high-altitude flameout. Rotation of the HP rotors was not maintained during descent and the engines could not be restarted. We are issuing this AD to prevent the inability to restart both engines after flameout due to excessive friction of the 4-step seal, which could result in subsequent forced landing of the airplane.

DATES: This AD becomes effective May 7, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kenneth Steeves, Aerospace Engineer, Engine Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *e-mail*: *kenneth.steeves@faa.gov*; *telephone:* (781) 238–7765; *fax*: (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines with HP rotor 4-step air balance piston stationary seals (4-step seals), P/Ns 4923T54G01, 6019T90G03, 6037T99G01, 6037T99G02, and 6037T99G03, installed. We published the proposed AD in the **Federal Register** on July 23, 2008 (73 FR 42725). That action proposed to require removing the 4-step seals and incorporating an 8-step seal at the next piece-part exposure.

Examining the AD Docket

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

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Reword the Reason for Engine Modification

Air Wisconsin Airlines requests that the proposed AD be reworded to indicate that the desired reason for the engine modification is to enhance safety, and not as a result of the accident, as stated. Otherwise, the implication is that the CF34 engine does not meet the certification requirements, which, is inaccurate. The commenter also states that they believe the justification stated in the NPRM is a gross misrepresentation of the situation and events, which led up to the referenced accident. The commenter states that the failure of the engines to restart after the flameout event was a direct result of the flight crew failing to properly follow in-flight engine restart procedures. The commenter states that every engine is tested during the aircraft certification test flight process to ensure it meets the requirements of Federal Aviation Regulation 25.903.

We do not agree. The proposed AD does not state that the 4-step seal was the cause of the accident, but that the proposed AD resulted from the investigation of the accident. The investigation found that under certain high-power, high-altitude engine shutdown events, interference between the rotating and stationary portions of the 4-step air balance piston seal can develop. We did not change the AD.

Request To Clarify ''Piece-Part Exposure'' Definition

Air Wisconsin Airlines states that if the desire is to ensure engine modification at first exposure, then the requirement should indicate to accomplish the GE seal modification service bulletin at ''piece-part-exposure''. Piece-part exposure should be defined as ''removal of the combustion liner'' but no later than the first life-limited part shop visit, since this is when the HP turbine life-limited parts (and typically the combustion liner) are removed. The commenter also states that the proposed AD compliance requirements are not entirely clear. The air balance piston seal is a non-serialized part, which makes it difficult to track and manage the part. The commenter states that they have observed a maintenance and overhaul shop that overlooked a particular requirement to incorporate a modification, because of an interpretation of what ''piece-part exposure'' was.

We partially agree. We agree that the 4-step seal should be removed when the combustion liner is removed at piece-part exposure. We do not agree removal must be tied to the life-limited parts. We changed the piece-part exposure definition in the AD to state ''For the purposes of this AD, piece-part exposure means when the 4-step seal is removed from the engine or when the combustion liner is removed.''

Request To Change Incident Description Statement

GE requests that we change the incident description statement of ''Both engines experienced high-altitude flameouts'' which appears in the proposed AD Summary and Unsafe Condition, to ''As a result of a high-altitude airplane stall and upset, both engines experienced high-power flameouts.'' The commenter states that this change is a more accurate representation of the event.

We do not agree. As we have said previously the proposed AD does not state that the 4-step seal caused the accident. GE found during the course of the investigation that under certain high-power, high-altitude engine shutdown events, interference between the rotating and stationary portions of the 4-step air balance piston seal can develop. We did not change the AD.

Request To Change the FAA's Reason for the AD Action

GE requests that we change the FAA's reason statement for the AD action, from ''We are proposing this AD to prevent the inability to restart both engines after flameout due to excessive friction of the 4-step seal, which could result in subsequent forced landing of the airplane'' to ''We are proposing this AD to enhance the ability to restart an engine after flameout by reducing the friction in the 4-step seal, which could result in subsequent forced landing of the airplane.'' The commenter states that this change would be a more accurate representation and support the assessment that this is a very rare occurrence and the recommended actions are not prevalent as proven by the category level of the relevant service bulletins.

We do not agree. As already noted, the accident was not attributed to the friction of the 4-step seal. We have found an unsafe condition with the product. The proposed wording suggests the modification or replacement may not be adequate to address the inability to restart due to the friction. We did not change the AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 2,722 CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines installed on airplanes of U.S. registry. We estimate that approximately 2,450 engines with 4-step seals will incorporate the 8-step seal configuration at an overhaul shop visit at no additional cost. We estimate that approximately 272 engines with 4-step seals will require additional work to modify the seal insert to the 8-step seal configuration. We estimate that it will take about 5 work-hours per engine to perform the seal modification, and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $108,800.

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

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

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

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

(3) 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–07–12 General Electric Company: Amendment 39–15871. Docket No. FAA–2007–0419; Directorate Identifier 2007–NE–52–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 7, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines, with high-pressure (HP) rotor 4-step air balance piston stationary seals (4-step seals), part numbers (P/Ns) 4923T54G01, 6019T90G03, 6037T99G01, 6037T99G02, and 6037T99G03, installed. These engines are installed on, but not limited to, Bombardier, Inc. airplane models CL–600–2A12, –2B16, and –2B19.

Unsafe Condition

(d) This AD results from the investigation of an airplane accident. Both engines experienced high-power flameout. Rotation of the HP rotors was not maintained during descent and the engines could not be restarted. We are issuing this AD to prevent the inability to restart both engines after flameout due to excessive friction of the 4-step seal, which could result in subsequent forced landing of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next piece-part exposure after the effective date of this AD, unless the actions have already been done.

(f) Remove the 4-step seals, P/Ns 4923T54G01, 6019T90G03, 6037T99G01, 6037T99G02, and 6037T99G03.

(g) Incorporate an 8-step seal, either by modifying the existing 4-step seal to an 8-step seal, or by replacing it with an 8-step seal.

(h) Information on modifying the seal and part number configuration charts, can be found in GE Service Bulletin (SB) No. CF34–AL S/B 72–0238, dated July 27, 2007 (CL–600–2B19), and SB No. CF34–BJ S/B 72–0217, dated July 27, 2007 (CL–600–2A12 and CL–600–2B16).

Definition

(i) For the purposes of this AD, piece-part exposure means when the 4-step seal is removed from the engine or when the combustion liner is removed.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) Contact Kenneth Steeves, Aerospace Engineer, Engine Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *e-mail: keneth.steeves@faa.gov*; telephone: (781) 238–7765, *fax*: (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(l) None.

Issued in Burlington, Massachusetts, on March 26, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–7417 Filed 4–1–09; 8:45 am]

BILLING CODE 4910–13–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 215

RIN 0412–AA61

Privacy Act of 1974, Implementation of Exemptions

AGENCY: United States Agency for International Development.

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date by 30 days for the final rule exempting portions of the Partner Vetting System from one or more provisions of the Privacy Act, as published in the **Federal Register** on January 2, 2009 and delayed on February 2, 2009.

DATES: The effective date for the final rule published on January 2, 2009 (74 FR 9) and delayed on February 2, 2009 (74 FR 5808) is further delayed until May 4, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Jeff Denale, Chief, Counterterrorism and Information Security Division, Office of Security, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523; or by telephone 202 712 1264.

Dated: March 30, 2009.

Randy T. Streufert,

Director, Office of Security.

[FR Doc. E9–7414 Filed 4–1–09; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9394]

RIN 1545–BD80

Special Rules To Reduce Section 1446 Withholding; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9394) that were published in the **Federal Register** on Tuesday, April 29, 2008 (73 FR 23069) regarding when a partnership may consider certain deductions and losses of a foreign partner to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner. The regulations will affect partnerships engaged in a trade or business in the United States that have one or more foreign partners.

DATES: This correction is effective on April 2, 2009, and is applicable on April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 1446, 1464, 6071, 6091, 6151, 6302, and 6414 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9394) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1446–6 is amended as follows:

■ 1. Paragraph (c)(2)(i) is revised.

■ 2. The last sentence of paragraph (d)(3)(ii) is revised and a new sentence is added at the end of the paragraph.

■ 3. Paragraphs (e)(1)(vi) second occurrence, (e)(1)(vii), and (e)(1)(viii) are redesignated as paragraphs (e)(1)(vii), (e)(1)(viii), and (e)(1)(ix), respectively.

■ 4. The first sentence of paragraph (e)(2) *Example 2*.(i) is revised.

■ 5. The third and fourth sentences of paragraph (e)(2) *Example 2*.(ii) are revised.

■ 6. The fourth sentence of paragraph (e)(2) *Example 4*. is revised.

■ 7. Paragraph (e)(2) *Example 6*.(ii) is revised.

The revisions and addition read as follows:

§ 1.1446–6 Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.

* * * * *

(c) * * *

(2) * * *

(i) *Form of certification*. A partner's certification to a partnership under paragraph (c)(1)(i) or (iii) of this section shall be made using Form 8804–C, ''Certificate Of Partner-Level Items to Reduce Section 1446 Withholding'' in accordance with the instructions of the form and the rules of this section.

* * * * *

(d) * * *

(3) * * *

(ii) * * * To permit the partnership to reasonably rely on such certificate, the partnership shall be considered to have satisfied the requirements of paragraph (d)(3)(i) of this section if the partnership demonstrates that such failure was due to reasonable cause and not willful neglect and if once the partnership becomes aware of the failure, the partnership attaches the certificate and computation, as well as a written statement setting forth the reasons for the failure to comply with the requirements of paragraph (d)(3)(i) of this section, to an amended Form 8813 or amended Forms 8804 and 8805

for the relevant period. All such submissions should be sent to the address provided in the instructions to Form 8804–C.

* * * * *

(e) * * *

(2) * * *

Example 2. * * *

(i) Assume the same facts as in Example 1. * * *

(ii) * * * As described in Example 1, NRA's year 4 U.S. income tax return is a qualifying U.S. income tax return because it will report income or gain effectively connected with a U.S. trade or business and is described under paragraph (b)(2)(iii)(C) of this section. Although NRA's year 5 U.S. income tax return reports income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities it is not a qualifying U.S. income tax return under paragraph (b)(2)(iii) of this section. * * *

* * * * *

Example 4. * * * NRA timely-filed (within the meaning of paragraph (b)(2) of this section) U.S. income tax returns for years 1 through 6 reporting its allocable share of ECTI (or loss) from XYZ (and timely paid all tax shown on such returns). * * *

* * * * *

Example 6. * * *

(ii) If PRS had considered only $900 (or a lesser amount) of NRA's certified net operating loss when computing and paying its 1446 tax during year 4 then, under paragraph (d)(2)(iii) of this section, PRS would not be liable for 1446 tax because it did not consider a net operating loss greater than the amount actually available to NRA.

■ **Par. 3.** Section 1.1464–1 is amended by revising paragraph (c) to read as follows:

§ 1.1464–1 Refunds or credits.

* * * * *

(c) *Effective/Applicability date.* The last sentence in paragraph (a) of this section shall apply to partnership taxable years beginning after April 29, 2008.

■ **Par. 4.** Section 1.6151–1 is amended by revising paragraph (e) to read as follows:

§ 1.6151–1 Time and place for paying tax shown on returns.

* * * * *

(e) *Effective/Applicability date.* Paragraph (d)(2) of this section shall apply to publicly traded partnerships described in § 1.1446–4 for partnership taxable years beginning after April 29, 2008.

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E9–7392 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0152]

Drawbridge Operation Regulation; Merrimack River, MA, Maintenance

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 Hines Memorial (Main Street) Bridge across the Merrimack River at mile 5.8, between Amesbury and Newburyport, Massachusetts. Under this temporary deviation the bridge may remain closed for six weeks.

DATES: This deviation is effective from March 17, 2009 through May 15, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0152 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying two locations: 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, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION:

The Hines Memorial (Main Street) Bridge has a vertical clearance in the closed position of 13 feet at mean high water and 20 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

The bridge was damaged by a collision with a tug and barge last November. The bridge was closed to vehicular traffic as a result of that accident.

Massachusetts Highway Department (MHD), the bridge owner, requested a temporary deviation to help facilitate load testing necessary to determine if the bridge will be able to bear the vehicular traffic loads that will be present when the bridge is scheduled to be re-opened to vehicular traffic on May 15, 2009.

The waterway has seasonal recreational vessels of various sizes. There have been few requests to open the bridge during April and May in past years according to the bridge logs.

This temporary deviation is therefore necessary in order to insure that the bridge continues to operate in a safe reliable manner.

Under this temporary deviation, in effect from March 17, 2009 through May 15, 2009, the Hines Memorial (Main Street) Bridge may remain in the closed position.

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: March 17, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9–7400 Filed 4–1–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR PART 20

International Inbound Registered Mail Procedures

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service has adopted different processing procedures for inbound international Registered Mail™; after it is received at an International Service Center.

DATES: *Effective Date:* June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 703–292–3576.

SUPPLEMENTARY INFORMATION: Inbound international Registered Mail entering the United States through the United States Postal Service® International Service Centers is offered in conformity with international agreements of the Universal Postal Union (UPU), U.S. law and the regulations of the United States Postal Service (USPS® or Postal Service). The UPU agreement requires

verification upon receipt, processing through a secure mail system, and signature upon delivery. For these services, in addition to terminal dues, the delivering postal operator is provided a set amount in compensation from the originating postal operator, regardless of the cost of the delivery process. The Postal Service is not authorized to charge a premium for the delivery of these items to the addressee.

Through the December 20, 2006, enactment of the Postal Accountability and Enhancement Act (PAEA), Congress fundamentally changed the Postal Service's business model by converting it from one based on an expectation that it would break-even over time, to a more commercially competitive, profit-making model. This change requires the Postal Service to review all of its services in an effort to better align costs and revenues, while at the same time ensuring the security of the mail.

Domestic Registered Mail is handled in a separate hand-to-hand labor-intensive process from point of acceptance to delivery. The domestic Registered Mail fees are set by the Postal Service and are based on the stated value of the item, for which insurance is provided in the fee, up to $25,000. These fees take into account the labor and processing costs required to accept, process and deliver this mail.

In contrast, inbound international Registered Mail is defined by the UPU's agreement, which limits the compensation the Postal Service receives for providing the service and also limits the indemnity available to customers. The UPU agreement does not require hand-to-hand processing. Inbound international Registered Mail, therefore, will no longer be handled in the domestic Registered Mail system.

International senders of Registered Mail will continue to receive the features that distinguish this service. The Postal Service will verify the receipt of Registered Mail to the originating postal administration. A signature will be obtained at the time of delivery in accordance with domestic regulations governing the delivery of accountable mail. The sender also will have access to the inquiry process and may receive indemnity based on UPU limits for loss, damage or missing contents. Customers will also benefit from the high security of the domestic First-Class Mail® mailstream, which is protected by the United States Postal Inspection Service® and the United States Postal Service Office of Inspector General. The Postal Service anticipates improved service as well as cost savings as a result of this change to its operational handling of inbound international Registered Mail items.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3622, 3632, and 3633.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM) to read as follows:

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

7 Treatment of Inbound Mail

* * * * *

750 Extra Services

* * * * *

752 Registered Mail

752.1 Identification

* * * * *

[Revise 752.13 to read as follows:]

752.13 Treatment of Registered Items

All mail registered by the country of origin must be handled in the domestic First-Class Mail mailstream from the exchange office to the office of delivery. A signed delivery receipt must be obtained at the time of delivery.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–7373 Filed 4–1–09; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.070817467–8554–02]

RIN 0648–XN68

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Delmarva Scallop Access Area to General Category Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Delmarva Scallop Access Area will close to general category scallop vessels for the remainder of the 2009 fishing year. This action is based on the determination that 728 general category scallop trips into the Delmarva Access Area are projected to be taken as of 0001, April 1, 2009. This action is being taken to prevent the allocation of general category trips in the Delmarva Scallop Access Area from being exceeded during the 2009 fishing year, in accordance with the regulations implementing Framework 19 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Effective 0001 hours, April 1, 2009, through February 28, 2010.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9221, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the Sea Scallop Access Areas are found at §§ 648.59 and 648.60. Regulations specifically governing general category scallop vessel operations in the Delmarva Scallop Access Area are specified at § 648.59(e)(4)(ii). These regulations authorize vessels issued a valid general category scallop permit to fish in the Delmarva Scallop Access Area under specific conditions, including a total of 728 trips that may be taken by general category vessels during the 2009 fishing year. The regulations at § 648.59(e)(4)(ii) require the Delmarva Scallop Access Area to be closed to general category scallop vessels once the Northeast Regional Administrator has determined that the

allowed number of trips are projected to be taken.

Based on trip declarations by general category scallop vessels fishing in the Delmarva Scallop Access Area, and analysis of fishing effort, a projection concluded that 728 trips will have been taken on April 1, 2009. Therefore, in accordance with the regulations at § 648.59(e)(4)(ii), the Delmarva Scallop Access Area is closed to all general category scallop vessels as of 0001 hours, April 1, 2009, through February 28, 2010. Any vessel that has declared into the general category Delmarva Access Area scallop fishery, complied with all trip notification and observer requirements, and crossed the VMS demarcation line on the way to the area, may complete the trip. This closure is in effect for the remainder of the 2009 scallop fishing year under current regulations.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action closes the Delmarva Scallop Access Area to all general category scallop vessels for the remainder of the 2009 fishing year. The regulations at § 648.59(e)(4)(ii) allow such action to ensure that general category scallop vessels do not take more than their allocated number of trips in the Delmarva Scallop Access Area. The Delamarva Scallop Access Area opened for the 2009 fishing year at 0001 hours on March 1, 2009. Data indicating the general category scallop fleet has taken all of the Delmarva Scallop Access Area trips have only recently become available. To allow general category scallop vessels to continue to take trips in the Delmarva Scallop Access Area during the period necessary to publish and receive comments on a proposed rule would result in vessels taking much more than the allowed number of trips in the Delmarva Scallop Access Area. Excessive trips and harvest from the Delmarva Scallop Access Area would result in excessive fishing effort in the Delmarva Scallop Access Area, where effort controls are critical, thereby undermining conservation objectives of the FMP. Should excessive effort occur in the Delmarva Scallop Access Area, future management measures would need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rulemaking is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

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

Dated: March 30, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–7460 Filed 3–30–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 62
Thursday, April 2, 2009

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 276

[FNS–2008–0034]

RIN 0584–AD25

Supplemental Nutrition Assistance Program (SNAP): Clarifications and Corrections to Recipient Claim Establishment and Collection Standards

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: Supplemental Nutrition Assistance Program (SNAP) recipient claims are established and collected against households that receive more benefits than they are entitled to receive. This rulemaking corrects and clarifies provisions of the final rule on recipient claims published at 65 FR 41752, July 6, 2000. The purposes of this proposed rulemaking are to remove a definition and several provisions that were made obsolete by the final rule; correct the typographical errors; correct the omission of the requirement that a copy of the claims management plan be submitted to the FNS Regional Office for informational purposes; reinforce current practices and requirements in the areas of fair hearings, fees, due dates, delinquent claims, retention, claim referrals, negligence and fraud; make conforming changes needed as a result of a subsequent rulemaking pertaining to a sponsor's responsibility for overissuances of an alien household; and to remove an overpayment exception that is no longer applicable to the program.

DATES: Comments on this proposed rulemaking must be received by July 1, 2009, to be assured of consideration.

ADDRESSES: The Food and Nutrition Service, Department of Agriculture invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *E-mail:* Send comments to *PADmailbox@fns.usda.gov.*
- *Fax:* Submit comments by facsimile transmission to (703) 305–0928.
- *Mail:* Send comments to Jane Duffield, State Administration Branch, Program Accountability and Administration Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 818, Alexandria, Virginia 22302.
- *Hand Delivery or Courier:* You may also hand-deliver comments to us on the 8th floor at the above address.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Jane Duffield at the above address, by telephone at (703) 605–4385, or via the Internet at *jane.duffield@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information on Comment Filing/Electronic Access

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/snap/.* You may also comment via the Internet at the same address. Please include ''Attention: RIN 0584–AD25'' and your name and return address in your Internet message. If you do not receive confirmation from the system that we have received your message, contact us directly at (703) 605–4385.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposed rule you are addressing. To be assured of consideration, comments must be received on or before the close of the comment period, see **DATES**. We may not consider for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above. We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

II. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5.U.S.C. 601–612). Enrique Gomez, Acting Administrator, Food and Nutrition Service (FNS), has certified that this rule will not have a significant impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, FNS generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $100 million or more in any one year. This rule is therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29,115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered this rule's impact on State and local agencies and has determined that it does not have federalism implications under Executive Order 13132.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. As addressed in the Dates paragraph, with the exception of providing an informational copy of the claims management plan, the provisions are already in force. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of SNAP households and individual participants, FNS has determined that there are no civil rights impacts in this proposed rule. All data available to FNS indicate that protected individuals have the same opportunity to participate in SNAP as non-protected individuals.

FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate against any application or participant in any aspect of Program administration, including, but not limited to, the certification of households, the issuance of benefits, the conduct of fair hearings, or the conduct of any other Program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. SNAP nondiscrimination policy can be found at 7 CFR 272.6(a)). Discrimination in any aspect of Program administration is prohibited by these regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6. Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this proposed rule have been previously approved under OMB Nos. 0584–0069, 0584–0446, and 0584–0492.

FNS–209 Report (OMB No. 0584–0069)

Claims activity is reported by State agencies on the Status of Claims Against Households (FNS–209) report. The OMB approved the information collection requirements for completing and submitting the FNS–209 report under OMB Control Number 0584–0069. This rule does not change this burden.

Federal Collection Methods for Supplemental Nutrition Assistance Program Recipient Claims (0584–0446)

The information collection burden for Federal collections of recipient claims is covered under OMB Control Number 0584–0446. This rule makes some changes to those requirements. This rule does not change this burden.

Repayment Demand and Program Disqualification (0584–0492)

The burden associated with providing notice and demand for payment to households has been approved under OMB Control Number 0584–0492. This rule does not change this burden.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

III. Background

Prior to the July 6, 2000, final rule, the last major revision to the SNAP recipient claim regulations was in 1983. The July 6, 2000, final rule accomplished several specific objectives while updating the SNAP recipient claims regulations. First, it incorporated changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193. Second, it streamlined the presentations of our policies, and in some cases, the policies themselves. Third, it incorporated Federal debt management regulations and statutory revisions into recipient claim management. Finally, that rule provided State agencies with additional tools to facilitate the establishment, collections and disposition of recipient claims.

Purpose of this Rule

This rulemaking is to correct and clarify provisions of the July 6, 2000, final rule on recipient claims published at 65 FR 41,752, July 6, 2000. This rule does not create new standards for establishing and collecting SNAP recipient claims. Rather, this rulemaking clarifies areas of the final rule, as published, to reflect longstanding policy. Additionally, this rule makes minor technical changes and corrects typographical errors. With this proposed rule we continue to improve claims management in the SNAP while affirming our longstanding position that State agencies have a great amount of flexibility in their efforts to increase claim collection.

Areas of Policy Clarification

The following policy areas are being clarified in this rulemaking: Fair hearings, fees, due dates, delinquency date, retention of collections, and claim referral timeframes. All of these policy areas fall within 7 CFR 273.18.

Claims and Fair Hearings

Section 11(e)(10) of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. 2020) specifically provides for a fair hearing when a claim for an overissuance is established against a household. We are concerned that the

omission of the word ''fair'' in paragraphs 7 CFR 273.18(e)(3)(iii) and (iv)(I) could inadvertently deprive a household of its due process rights. Therefore, we are adding the word ''fair'' into the regulatory text. By adding this text, we are affirming the household's right to a fair hearing.

Due Dates

In accordance with 7 CFR 273.18(e)(3)(iv), when a claim is established, the State issues an initial notification letter or demand letter to the household. Among other things, current rules require that the initial notification letter include a due date or time frame to either repay or make arrangements to repay the claim unless the State agency is going to impose allotment reduction. However, we recognize that households that may initially repay their claims through allotment reduction may at some point cease to receive benefits. In order to ensure that all households are treated fairly, we expect that these households will be notified of a due date or time frame to either repay or make arrangements to repay the claim should they cease to receive benefits while they have an outstanding claim. Therefore, we are adding new language at 7 CFR 273.18(e)(3)(iv)(O) that reinforces this expectation that all households be notified of a due date in the initial notification letter.

Delinquency Date

FNS is required by the Debt Collection Improvement Act of 1996, Public Law 104–134, to submit eligible SNAP recipient debts to the Treasury Offset Program (TOP) for collection. One of the requirements is that a SNAP recipient debt must be at least 180 days delinquent in order to be submitted to TOP. We consider the starting point for counting the 180 days to be the delinquency date. We intend that the delinquency date, once established, remain the same throughout the existence of the claim. The change in regulatory text contained in this rulemaking at 7 CFR 273.18(e)(5)(iii) emphasizes that post-delinquency repayment agreements do not alter the delinquency date.

Retention of Claims

Section 16(a) of the Food and Nutrition Act of 2008 permits States to retain 35 percent collected for Intentional Program Violation (IPV) claims and 20 percent for Inadvertent Household Error (IHE) claims. We are adding provisions at 7 CFR 273.18(k)(2) to clarify that there is no retention by the State in situations where payments are not returned to the State because the household is ordered by a court to perform community service in lieu of a claim or in situations where payments made to a court are not forwarded to the State. This was inadvertently not addressed in the July 6, 2000, rulemaking.

Claim Referral and Establishment

Under the Claim Referral Management section at 7 CFR 273.18(d), State agencies have a standard timeframe for establishing claims. These timeframes are intended to be used primarily as a management tool by States to prevent the backlog of claims and to reinforce our expectation that States run an efficient and effective claims management system. States have always had the option to develop and follow their own claims referral management plan. We do not consider recipient claims that have been established outside of these timeframes invalid claims. However, claims that are established timely have a better chance of being collected. Therefore, we are adding a paragraph at 7 CFR 273.18(d)(3) that clarifies FNS's position that States must establish SNAP recipient claims even if they cannot be established within the referral management timeframes outlined in 7 CFR 273.18(d).

Additional Actions of this Regulation

Other proposed actions included in this rule are corrections as a result of typographical errors and changes that were neglected at the time of the July 6, 2000, rulemaking; removal of the definition for ''Claims Collection Point'' from 7 CFR 271.2 because the term is no longer used; addition of the requirement at 7 CFR 272.2(d)(1)(x) for State agencies to submit an informational copy of the claims management plan to the FNS regional office; changes to conform 7 CFR 273.18(a)(4) to subsequent changes made by the November 21, 2000, (65 FR 70,134) final regulation on sponsored aliens, which eliminated the sponsor's liability for overpayments of the alien household's benefits; and removal of the exception to overpayments caused by households transacting Authorization to Participate (ATP) cards, as they are no longer used in the Program.

List of Subjects

7 CFR Part 271

Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 272

Alaska, Civil rights, SNAP, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, SNAP, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs.

Accordingly, 7 CFR Parts 271, 272, 273, and 276 are amended as follows:

1. The authority citation for parts 271, 272, 273 and 276 continues to read:

Authority: 7 U.S.C. 2011 through 2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. In § 271.2, remove the definition for ''Claims Collection Point''.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.2 revise paragraph (d)(1)(x) to read as follows.

§ 272.2 Plan of operation.

* * * * *

(d) * * *

(1) * * *

(x) Claims Management Plan as required by 273.18(a)(3) to be submitted for informational purposes only; not subject to approval as part of the plan submission procedures under paragraph (e) of this section.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.18:

a. Remove paragraph (a)(4)(ii) and redesignate (a)(4)(iii) as (a)(4)(ii);

b. Amend paragraph (b)(3) by removing the last sentence;

c. Amend paragraph (c)(1)(ii)(D) by removing ''(e)(1)(ii)(C)'' and adding in its place ''(c)(1)(ii)(C)'';

d. Add paragraph (d)(3);

e. Amend paragraph (e)(1) by removing ''(g)(2)'' and adding in its place ''(e)(2)'';

f. Remove ''a hearing'' and add in its place ''a fair hearing'' in paragraphs (e)(3)(iii) and (e)(3)(iv)(I);

g. Redesignate paragraph (e)(3)(iv)(O) as (e)(3)(iv)(P) and add a new paragraph (e)(3)(iv)(O);

h. Revise the first sentence of paragraph (e)(5)(iii);

i. Revise paragraph (k)(2).

The additions and revisions read as follows:

§ 273.18 Claims against households.

* * * * *

(d) * * *

(3) States must establish claims even if they cannot be established within the timeframes outlined under paragraph (d) of this section.

(e) * * *

(3) * * *

(iv) * * *

(O) If allotment reduction is to be imposed, a due date or time frame to either repay or make arrangements to repay the claim in the event that the household stops receiving benefits.

* * * * *

(5) * * *

(iii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(B) of this section is the due date of the missed installment payment unless the claim was delinquent prior to entering into a repayment agreement, in which case the due date will be the due date on the initial notification/demand letter. * * *

* * * * *

(k) * * *

(2) These rates do not apply to:

(i) Any reduction in benefits when you disqualify someone for an IPV;

(ii) The value of court-ordered public service performed in lieu of the payment of a claim; or,

(iii) Payments made to a court that are not subsequently forwarded as payment of an established claim.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

§ 276.2 [Amended]

5. In § 276.2, amend paragraph (c) by removing ''273.18(h)'' and adding in its place ''273.18(l)''.

* * * * *

Dated: March 22, 2009.

E. Enrique Gomez,

Acting Administrator, Food and Nutrition Service.

[FR Doc. E9–7151 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0047]

RIN 1625–AA01

Anchorage Regulations; Port of New York and Vicinity

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This document supplements the Coast Guard's May 2008 proposal to amend the existing special anchorage area at Perth Amboy, New Jersey, at the junction of the Raritan River and Arthur Kill. The proposed amendment is necessary to facilitate safe navigation and provide for a safe and secure anchorage for vessels of not more than 65 feet in length. This supplemental notice of proposed rulemaking provides updated coordinates for the proposed amendment and revises the proposed use limitations.

DATES: Comments and related material must be received by the Coast Guard on or before May 4, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–0047 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.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Jeff Yunker, Waterways Management Coordinator, Coast Guard, telephone 718–354–4195, e-mail *Jeff.M.Yunker@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:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0047), 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 you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–0047'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–0047 in the Docket ID box, press

Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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 notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But, 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**.

Background and Purpose

During times of tidal shifts, vessels moored near the edge of this special anchorage area were found swinging out into the Raritan River Cutoff and the Raritan River Federal Channels. Since moored vessels in a special anchorage area are exempt from the Inland Rules of the Road [Rule 30 (33 U.S.C. 2030) and Rule 35 (33 U.S.C. 2035)]; vessels swinging out into these Federal Channels create a high risk of collision with larger commercial vessels that transit past this special anchorage area, especially at night and during times of inclement weather. Also, when larger commercial vessels maneuver to avoid a collision with recreation vessels that swing out into these channels it creates a hazardous, close-quarters passing situation with other larger commercial vessels operating within these Federal Channels.

On May 8, 2008, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Anchorage Regulations; Port of New York and Vicinity'' (Docket number USCG–2008–0047) in the **Federal Register** (73 FR 26054). In that NPRM, the Coast Guard proposed to add a ''note'' to the regulation. The Coast Guard received two letters commenting on the NPRM, and one request for a public meeting.

Discussion of Comments and Changes

The Coast Guard received two letters commenting on the NPRM, and both letters stated that the geographic points appeared to be incorrect. The Coast Guard agrees with these comments. It was determined that, during the Coast Guard's internal review process prior to publication of the NPRM, the incorrect positions from an earlier draft were transposed to the final version of the NPRM that was published in the **Federal Register**. The special anchorage area location was submitted to the National Oceanographic and Atmospheric Administration (NOAA) and they provided the positions so the special anchorage area would be displayed adjacent to the Federal Channel on navigation charts. The positions proposed in this supplemental NPRM were provided by NOAA to correct this issue.

In addition to correction of the coordinates as discussed above, one commenter requested the following three revisions.

First, the commenter requested that the Coast Guard enlarge the special anchorage area one block north to Smith Street as extended to give certain city moorings the benefit of a special anchorage. The current special anchorage area bisects the Municipal Marina, and the commenter's proposed change would cover the waters to the end of the Municipal Marina. The Coast Guard agrees because the extension covers waters under the jurisdiction of the Perth Amboy Municipal Marina, and this supplemental NPRM proposes to extend the northern boundary of the special anchorage area to an extension of Smith Street.

Second, the commenter requested that the Coast Guard require only that vessels in the special anchorage area and their attached moorings do not impinge on the Shipping Channels, and require no additional buffer zone between the recreational vessels and the Federal Channel. The Coast Guard agrees. This comment has been incorporated into the revised positions provided by NOAA to display the special anchorage area adjacent to the Federal Channel, and proposed in this supplemental NPRM.

Third, the commenter requested that the Coast Guard revise the proposed ''note'' to provide that mariners contact the Fleet Captain of the Raritan Yacht Club at 732–297–7727, 732–826–2277 or on VHF Channel 9, and only prohibit the use of mooring piles or stakes seaward of the pier head line in accordance with the Waterfront Management Plan for the Mooring Field at Perth Amboy, NJ as authorized by the New Jersey Department of Environmental Protection. The Coast Guard agrees and has revised the proposed rule to include these changes. The Coast Guard also has removed the designation ''note'' from this proposed text, and replaced it with the new paragraph designation (d)(10)(i).

The commenter who submitted the requests above also requested a public meeting ''in the event'' that the requestor's comments were not incorporated. Because the Coast Guard agrees with the comments above and has incorporated them into this supplemental NPRM for further public comment, the Coast Guard believes a public meeting would not aid this rulemaking.

Finally, this supplemental NPRM reflects technical amendments made between the publication of the May 2008 NPRM and this supplemental NPRM. (See 73 FR 35010.) As a result of these technical amendments, the regulation for this special anchorage area is now codified at 33 CFR 110.60(d)(10), instead of 33 CFR 110.60(aa). Similarly, 33 CFR 110.60 was titled ''Port of New York and vicinity'' when the May 2008 NPRM issued, but now is titled ''Captain of the Port, New York''; to avoid confusion the Coast Guard has not changed the title of this supplemental NPRM.

As discussed above, this supplemental NPRM proposes corrected coordinates for the special anchorage area. Further, this rulemaking is intended to reduce the risk of vessel collisions by adding amplifying information regarding the use of the special anchorage area. This would be accomplished by adding the following: ''This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the Raritan Yacht Club Fleet Captain (telephone 732–297–7727, 732–826–2277, or VHF Channel 9) to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited seaward of the pier head line. Mariners are encouraged to contact the Raritan Yacht Club Fleet Captain for any additional ordinances and to ensure compliance with additional applicable state and local laws.''

This proposed addition will greatly increase navigation safety and is necessary due to the boundary of the special anchorage area being adjacent to the Raritan River Cutoff and Raritan River Federal Channels.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This finding is based on the fact that this rule would require recreational vessels to anchor a greater distance from the Raritan River Cutoff and Raritan River Federal Channels. As displayed on the government navigation charts, the current boundaries of the special anchorage area and adjacent Federal Channels nearly overlap. This proposed rule would greatly reduce the possibility of marine casualties, pollution incidents, or human fatalities that could be caused by these recreational vessels anchoring within, or near, the Federal Channels and causing a collision with any of the approximately 5,000 commercial vessels that transit the Raritan River Cutoff Channel on an annual basis. Vessel transit statistics from the ACOE Navigation Data Center are available online at: *http://www.iwr.usace.army.mil/ndc/wcsc/wcsc.htm.* Additionally, vessels would still be able to anchor in an area approximately 850 to 1,050 yards wide by 480 to 980 yards long off the southern Perth Amboy shoreline.

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 would affect the following entities, some of which might be small entities: The owners or operators of recreational vessels intending to anchor immediately adjacent to Raritan River Cutoff and Raritan River Federal Channels, which could cause a marine casualty, pollution incident, or human fatality, due to a commercial vessel colliding with the anchored or moored recreational vessel(s). It would also affect commercial vessels by reducing the possibility that they will encounter hazardous, close-quarters passing conditions created by recreational vessels within the channels. However, the requirements contained within the proposed rule would not have a significant economic impact on these entities for the following reasons: The revised special anchorage area would require vessels to moor, or anchor, at a greater distance from the Raritan River and Raritan River Cutoff Federal Channels, reducing the threat of collision with vessels transiting the adjacent Federal Channel. This special anchorage area was never designed to authorize vessels to anchor, or moor, in a manner where they would extend into the Federal Channel creating a hazard to navigation. Additionally, vessels would still be able to anchor in an area approximately 850 to 1,050 yards wide by 480 to 980 yards long off the southern Perth Amboy shoreline.

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 (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Jeff Yunker, Waterways Management Coordinator, Coast Guard Sector New York, at 718–354–4195. 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.

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).

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.

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 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.

Taking of Private Property

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

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.

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.

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.

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.

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.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 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 which does 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 **ADDRESSES**. This proposed rule involves changes to the size of a special anchorage area. 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 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.60, by revising paragraph (d)(10) to read as follows:

§ 110.60 Captain of the Port, New York.

* * * * *

(d) * * *

(10) *Perth Amboy, NJ.* All waters bound by the following points: 40°30′26.00″ N, 074°15′42.00″ W; thence to 40°30′24.29″ N, 074°15′35.20″ W; thence to 40°30′02.79″ N, 074°15′44.16″ W; thence to 40°29′35.70″ N, 074°16′08.88″ W; thence to 40°29′31.00″ N, 074°16′20.75″ W; thence to 40°29′47.26″ N, 074°16′49.82″ W; thence to 40°30′02.00″ N, 074°16′41.00″ W, thence along the shoreline to the point of origin.

(i) This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the Raritan Yacht Club Fleet Captain (telephone 732–297–7727, 732–826–2277 or VHF Channel 9) to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited seaward of the pier head line. Mariners are encouraged to contact the Raritan Yacht Club Fleet Captain for any additional ordinances or laws and to ensure compliance with additional applicable state and local laws.

(ii)[Reserved]

* * * * *

Dated: February 27, 2009.

Dale G. Gabel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E9–7357 Filed 4–1–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 59

[EPA–HQ–OAR–2006–0971; FRL–8788–4]

RIN 2060–AP33

National Volatile Organic Compound Emission Standards for Aerosol Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the National Volatile Organic Compound Emission Standards for Aerosol Coatings (aerosol coatings reactivity rule), which establishes national reactivity-based emission standards for the aerosol coatings category (aerosol spray paints) under section 183(e) of the Clean Air Act. This proposed action amends Table 2A of the aerosol coatings reactivity rule by adding compounds and associated reactivity factors based on petitions we received; and by clarifying which volatile organic compounds are to be quantified in compliance determinations. Additionally, we are proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity, and taking comment on whether to change who is liable following such certification. Finally, this action proposes minor revisions and corrections to the aerosol coatings reactivity rule.

DATES: Comments must be received on or before May 4, 2009, unless a public hearing is requested by April 13, 2009. If a hearing is requested on the proposed rule, written comments must be received by May 18, 2009.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing concerning the proposed regulation by April 13, 2009, a public hearing will be held on or about April 17, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0971, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
• *E-mail: a-and-r-docket@epa.gov.*
• *Fax:* (202) 566–1741.
• *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17 St., NW., Washington, DC 20503.
• *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., 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 the applicable docket. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://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 e-mail. 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 e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail 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.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Ms. Joan C. Rogers, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–4487, fax number (919) 541–3470, e-mail address: *rogers.joanc@epa.gov*, no later than April 13, 2009. Persons interested in attending the public hearing must also call Ms. Rogers to verify the time, date and location of the hearing. If no one contacts Ms. Rogers by April 13, 2009 with a request to present oral testimony at the hearing, we will cancel the hearing.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., 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 at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1742, and the telephone number for the Air Docket is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: For information concerning the aerosol coatings reactivity rule, contact Ms. J. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2509, fax number (919) 541–3470, e-mail address: *whitfield.kaye@epa.gov*. For information concerning the Clean Air Act (CAA) section 183(e) consumer and commercial products program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460, fax number (919) 541–3470, e-mail address: *moore.bruce@epa.gov*.

SUPPLEMENTARY INFORMATION: *Entities Potentially Affected by This Action*. The entities potentially affected by this regulation encompass all steps in aerosol coatings operations. This includes manufacturers, processors, wholesale distributors and retailers who fall within the regulatory definition of ''distributor,'' importers of aerosol coatings for sale or distribution in the United States, and manufacturers, processors, wholesale distributors, and importers who supply the entities listed above with aerosol coatings for sale or distribution in interstate commerce in the United States. The entities potentially affected by this action include:

Category	NAICS code [a]	Examples of regulated entities
Paint and Coating Manufacturing	32551	Manufacturing of lacquers, varnishes, enamels, epoxy coatings, oil and alkyd vehicle, plastisols, polyurethane, primers, shellacs, stains, water repellant coatings.
All Other Miscellaneous Chemical Production and Preparation Manufacturing.	325998	Aerosol can filling, aerosol packaging services.

[a] North American Industry Classification System *http://www.census.gov/epcd/www/naics.html*.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether you would be affected by this action, you should examine the applicable industry description in section I.E of the promulgation preamble, published at 73 FR 15604 (March 24, 2008). If you have any questions regarding the applicability of this action to a particular entity, consult

the appropriate EPA contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Preparation of Comments. Do not submit information containing CBI to EPA through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention: Docket ID EPA–HQ–OAR–2006–0971. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

Organization of This Document. The information presented in this action is organized as follows:

I. Background
II. Summary of Proposed Amendments to the National Volatile Organic Compound Emission Standards for Aerosol Coatings
A. Amendments to Tables 2A, 2B, and 2C—Reactivity Factors
B. Clarification to part 59, subpart E
C. The Certification Process for the Assumption of Recordkeeping and Reporting Obligations
D. Comments Sought on Change in Liability following Certification under § 59.511(g)
E. Other Revisions
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low- Income Populations

I. Background

On March 24, 2008, EPA published national emission standards for aerosol spray paints under section 183(e) of the CAA (73 FR 15604, and codified in the Code of Federal Regulations at 40 CFR part 59, subpart E (sections 59.500–59.516)). Section 183(e) of the CAA requires the control of volatile organic compounds (VOC) emissions from certain categories of consumer and commercial products for purposes of reducing VOC emissions contributing to ozone formation and nonattainment of the ozone national ambient air quality standards. States have previously promulgated rules for aerosol spray paints based upon reductions of VOC by mass; however, EPA concluded that a national rule based upon the relative reactivity approach achieves more reduction in ozone formation than may be achieved by a mass-based approach for this specific product category. The regulation revised EPA's regulatory definition of VOC, to include certain compounds that would otherwise be exempt, in order to account for all reactive compounds in aerosol coatings that contribute to ozone formation. Therefore, certain compounds that would not be VOC under the otherwise applicable definition count towards the applicable reactivity limits under the regulation.

Originally, the compliance date for the action, as established in the rule (73 FR 15604), was January 1, 2009. Regulated entities were required to submit initial notification reports 90 days in advance of the compliance date; in this case, initial notification reports were due on October 1, 2008.

Subsequently, on December 24, 2008, EPA published amendments (73 FR 78994) to the rule to move the applicability and initial compliance dates for aerosol coatings from January 1, 2009, to July 1, 2009, and make initial notification reports due on the compliance date, as opposed to 90 days in advance of the compliance date. These changes were necessary to (1) allow EPA time to conduct this rulemaking, and add compounds (and their associated reactivity factors) that are currently used in aerosol coatings, but were not included in Tables 2A, 2B, or 2C; and (2) allow regulated entities sufficient time to develop initial notification reports based on the revised tables. Making initial notification reports due on the compliance date results in the aerosol coatings reactivity rule being more consistent with the requirements of other 40 CFR part 59 rules, thereby increasing clarity and avoiding confusion on the part of regulated entities.

The rule (73 FR 15604) also has a provision in § 59.511(j) that allows regulated entities to petition EPA to add compounds to Tables 2A, 2B, and 2C—Reactivity Factors of subpart E, 40 CFR part 59, which is one of the subjects of this action.

II. Summary of Proposed Amendments to the National Volatile Organic Compound Emission Standards for Aerosol Coatings

EPA is proposing to amend the aerosol coatings reactivity rule (73 FR 15604) by (1) revising Table 2A by adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which VOC are to be quantified in compliance determinations in 40 CFR part 59, subpart E; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; (4) taking comment on whether to change who is liable following such certification; and (5) proposing certain minor revisions and corrections.

A. Amendments to Tables 2A, 2B, and 2C—Reactivity Factors

Section 59.511(j) of the rule (73 FR 15604) allows regulated entities to petition EPA to add compounds to Tables 2A, 2B, and 2C. For each compound, the petition must include the chemical name, Chemical Abstract Service (CAS) number, a statement certifying the intent to use the compound in an aerosol coatings product, and adequate information for EPA to evaluate the reactivity of the compound and assign a reactivity factor consistent with the values for the other compounds currently on the tables. Through this action, we are proposing to add 128 compounds to Table 2A in response to the petitions we received from the regulated entities.

Tables 2A, 2B, and 2C list compounds and associated reactivity factors known

to be used in aerosol coatings, and currently include 45 individual compounds, 20 aliphatic hydrocarbon solvent mixtures, and four aromatic hydrocarbon solvent mixtures. Three regulated entities and one trade association that obtained certifications on behalf of its member regulated entities petitioned EPA requesting an additional 168 compounds or mixtures be added to Table 2A. Of the 168 compounds or mixtures identified by petitioners, we have added reactivity factors for 122 compounds identified by the petitioners and six compounds similar to those identified by the petitioners. Twenty-nine compounds or mixtures identified by the petitioners were already listed or addressed in Table 2A, 2B, or 2C; six were treated as duplicates; and five were rejected because no information was provided to determine a reactivity factor.

Further information is provided in the docket that describes each of the compounds or mixtures that were identified in the petitions and how each compound or mixture is being addressed in this proposal. As indicated previously in section I of this preamble, the applicability, initial compliance date and initial notification for aerosol coatings were moved from January 1, 2009, to July 1, 2009 (73 FR 78994) due to the large number of compounds that we received petitions for and the necessary review.

B. Clarification to Part 59, Subpart E

In the aerosol coatings reactivity rule (73 FR 15604), we amended the regulatory definition of VOC in 40 CFR 51.100(s) for the purposes of determining compliance with the regulation (as described in 40 CFR part 59—National Volatile Organic Compound Emission Standards for Consumer and Commercial Products) so that any organic compound in the volatile portion of an aerosol coating is counted towards the product's reactivity-based limit (i.e., ''Because even less reactive VOC contribute to ozone formation, we are amending the regulatory definition of VOC for purposes of this rule by adding 40 CFR 51.100(s)(7).'') In the text of § 51.100(s)(7) adopted in the March 24, 2008 rule, it was not clear that the compounds listed in both §§ 51.100(s)(1) and 51.100(s)(5) were to be counted as VOC for determining compliance with the aerosol coatings reactivity rule in 40 CFR part 59. In this action, we are proposing changes to the previously amended definition of VOC in part 51 to clarify that compounds that are excluded from the definition of VOC under both 40 CFR 51.100(s)(1) and (s)(5) are to be counted as VOC for the purposes of determining compliance with the aerosol coatings reactivity rule in 40 CFR part 59, subpart E.

C. The Certification Process for the Assumption of Recordkeeping and Reporting Obligations

As provided in §§ 59.501(b)(4), 59.510(b) and 59.511(g), a manufacturer, importer or distributor may choose to certify that it will assume the responsibility of maintaining records and submitting reports required under this subpart for a regulated entity. To assume that responsibility, the entity making the certification submits a document as described in § 59.511(g). In this action, EPA is proposing the following amendments to § 59.511(g):

EPA is proposing to amend § 59.511(g) to call the certification document a ''notice'' rather than a ''report.'' EPA is proposing this change because it believes that the word ''notice'' is a more accurate word to describe the document.

EPA is seeking comment on options for a method to ensure that both the certifying entity and the regulated entity have full knowledge of what responsibilities are being assumed by the certifying entity. This is important because the regulations permit the certifying entity to assume ''any or all'' of the recordkeeping and reporting requirements (see § 59.501(b)(4)) and the § 59.511(g) certifying document must identify the ''specific requirements'' that are being assumed by the certifying entity. One option is to revise 59.511(g)(4) to require that both the regulated entity and the certifying entity sign the document. Currently, the language in § 59.511(g)(4) provides that the document will be signed by ''the company'' without specifying whether this refers to the certifying entity or the regulated entity. Industry representatives have requested that EPA clarify that only the certifying entity must sign the notice before the certifying entity can assume the regulated entity's recordkeeping and reporting responsibilities, explaining that requiring the certifying entity to obtain the signature of the regulated entity would be burdensome. A second option is to require the certifying entity to send the 59.511(g) notice to the regulated entity at the same time as it sends it to EPA. EPA seeks comments on these options in order to determine the appropriate balance between (1) ensuring that both parties have full knowledge of what responsibilities are being assumed by the certifying entity, and (2) ensuring that the certification process is not burdensome.

EPA is proposing to amend § 59.511(g)(3) to provide a more detailed description of what responsibilities are being assumed by the certifying entity and other related information about the division of responsibility between the certifying entity and regulated entity and how the recordkeeping and reporting requirements will be met. EPA seeks comments on what additional details should be provided and what additional burdens this would impose.

EPA is proposing to add a provision to § 59.511(g) (to be numbered (g)(4)) requiring that the certifying document contain a statement that the certifying entity understands that the failure to fulfill the responsibilities that it is assuming may result in an enforcement action against it.

In addition to these proposed amendments to § 59.511(g), EPA is proposing certain amendments to provisions related to the notices in § 59.511(g):

EPA is proposing to add the word ''distributors'' to § 59.501(b)(4) to make clear that distributors as well as manufacturers and importers can be a certifying entity. The language currently in § 59.501(b)(4) only refers to ''manufacturers and importers,'' while the language in § 59.511(g) refers to ''manufacturers, importers and distributors.'' This amendment will make these two provisions consistent and avoid any confusion as to whether distributors may be a certifying entity.

EPA is proposing to amend § 59.510(b) to replace the phrase ''certifying manufacturer'' with ''certifying entity'' in order to make clear that § 59.510(b) applies to all certifying entities and not just those certifying entities who are manufacturers.

EPA is also requesting comment on whether the 59.511(g) notice should be a certain form or contain certain language to fulfill the requirements of this section.

D. Comments Sought on Change in Liability following Certification Under § 59.511(g)

Currently, §§ 59.501(b), 59.510(a), 59.511(a) provide that a regulated entity is responsible for recordkeeping and reporting requirements if no other entity (the ''certifying entity'') has certified that it will assume the responsibility for such requirements under the provisions in § 59.511(g). EPA is seeking comment on whether the regulations should provide that both the certifying entity and the regulated entity are liable for the recordkeeping and reporting requirements covered by a notice submitted under § 59.511(g), such that

both would be liable for the failure to keep records or submit reports and for inaccurate records or reports.

E. Other Revisions

Finally, in this action, we will propose minor revisions and edits to include corrections to EPA regional office addresses, and several minor changes and corrections in Table 2A. Specifically, we deleted the listing for Di (2-ethylhexyl phthalate) (CAS 117–81–7) for which there is no applicable reactivity factor; eliminated a duplicate listing of Butanol (CAS 71–36–3); and corrected the CAS number for Isobutane (CAS 75–28–5) and the reactivity factor for Ethylene Glycol Monobutyl Ether [2-Butoxyethanol] (CAS 111–76–2). Given the multiple ways to name individual organic compounds, we have sorted Table 2A according to CAS number to make it easier for regulated entities to find a specific chemical. Classes of compounds for which there is no specific CAS number are listed at the end of the table.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action,'' as it raises novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden; it only proposes amendments and minor corrections to the aerosol coatings reactivity rule by (1) adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which volatile organic compounds are to be quantified in compliance determinations; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; and by (4) proposing certain minor revisions and corrections.

However, the OMB has previously approved the information collection requirements contained in the existing regulations, i.e., the National Volatile Organic Compound Emission Standards for Aerosol Coatings, 40 CFR part 59, subpart E (73 FR 15604, March 24, 2008) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0617. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. We have determined that small businesses will not incur any adverse impacts because EPA is taking this action to propose minor corrections and amendments to the Aerosol Coatings final rule, and these corrections and amendments do not create any new requirements or burdens. No costs are associated with these amendments.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action only proposes amendments and minor corrections to the aerosol coatings reactivity rule by (1) adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which volatile organic compounds are to be quantified in compliance determinations; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; and (4) proposing certain minor revisions and corrections. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This action only proposes amendments and minor corrections to the aerosol coatings reactivity rule by (1) adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which volatile organic compounds are to be quantified in compliance determinations; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; and (4) proposing certain minor revisions and corrections. Thus, EO 13132 does not apply to this rule.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000.) This action will not impose any new obligations or enforceable duties on tribal governments.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a ''significant energy action'' as defined in EO 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because EPA is taking this action to propose minor corrections and amendments to the Aerosol Coatings final rule, and these corrections and amendments do not create any new requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this proposed rule. The proposed rule only makes amendments and minor corrections to the aerosol coatings reactivity rule by (1) adding compounds and associated reactivity factors based on petitions we received; (2) clarifying which volatile organic compounds are to be quantified in compliance determinations; (3) proposing certain changes related to the notice required for a company to certify that it will assume the responsibility for compliance with record keeping and reporting requirements for a regulated entity; and by (4) proposing certain minor revisions and corrections.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound, Consumer products, Aerosol products, Aerosol coatings, Consumer and commercial products.

40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 25, 2009.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, parts 51 and 59 of title 40, Chapter I of the Code of Federal Regulations are proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C 7401–7671q.

2. Section 51.100(s)(7) is revised to read as follows:

§ 51.100 Definitions.

* * * * *

(s) * * *

(7) For the purposes of determining compliance with EPA's aerosol coatings reactivity based regulation (as described in 40 CFR part 59—National Volatile Organic Compound Emission Standards for Consumer and Commercial Products) any organic compound in the volatile portion of an aerosol coating is counted towards the product's reactivity-based limit, as provided in 40 CFR part 59, subpart E. Therefore, the compounds that are used in aerosol coating products and that are identified in paragraphs (s)(1) or (s)(5) of this section as excluded from EPA's definition of VOC are to be counted towards a product's reactivity limit for the purposes of determining compliance with EPA's aerosol coatings reactivity-based national regulation, as provided in 40 CFR part 59, subpart E.

* * * * *

PART 59—[AMENDED]

3. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C 7414 and 7511b(e).

4. Section 59.501 is amended by revising paragraph (b)(4) to read as follows:

§ 59.501 Am I subject to this subpart?

* * * * *

(b) * * *

(4) If you are a manufacturer, importer, or distributor, you can choose to certify that you will provide any or all of the recordkeeping and reporting requirements of §§ 59.510 and 59.511 by following the procedures of §§ 59.511(g) and 59.511(h).

* * * * *

5. Section 59.510(b) is amended by revising paragraph (b) to read as follows:

§ 59.510 What records am I required to maintain?

* * * * *

(b) By providing the written certification to the Administrator in accordance with § 59.511(g), the certifying entity accepts responsibility

for compliance with the recordkeeping requirements of this section with respect to any products covered by the written certification, as detailed in the written certification. Failure to maintain the required records may result in enforcement action by EPA against the certifying entity in accordance with the enforcement provisions applicable to violation of these provisions by regulated entities. If the certifying entity revokes its certification, as allowed by § 59.511(h), the regulated entity must assume responsibility for maintaining all records required by this section.

6. Section 59.511 is amended by revising paragraphs (g) introductory text, (g)(3), and (g)(4), to read as follows:

§ 59.511 What notifications and reports must I submit?

* * * * *

(g) If you are a manufacturer, importer, or distributor who chooses to certify that you will maintain records for a regulated entity for all or part of the purposes of § 59.510 and this section, you must submit a notice to the appropriate Regional Office listed in § 59.512. This notice must include the information contained in paragraphs (g)(1) through (g)(4) of this section.

* * * * *

(3) Description of specific requirements in § 59.510 and this section for which you are assuming responsibility and explanation of how all required information under this subpart will be maintained and submitted, as required, by you or the regulated entity; including identification of the products covered by the notice and the location or locations where the records will be maintained; and

(4) A statement that the certifying entity understands that the failure to fulfill the responsibilities that it is assuming may result in an enforcement action in accordance with the enforcement provisions applicable to violation of these provisions by regulated entities.

* * * * *

7. Section 59.512 is amended to revise the addresses for Regions I, IV, VII, and VIII to read as follows:

§ 59.512 Addresses of EPA regional offices.

* * * * *

EPA Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Office of Environmental Stewardship, 1 Congress St., Suite 1100, Boston, MA 02114–2023.

* * * * *

EPA Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) Director, Air Pesticides and Toxics, Management Division, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104.

* * * * *

EPA Region VII (Iowa, Kansas, Missouri, Nebraska) Director, Air Toxics Division, 901 North 5th Street, Kansas City, KS 66101.

EPA Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) Director, Air and Toxics Division, 1595 Wynkoop Street, Denver, CO 80202–1129.

* * * * *

8. Table 2A to subpart E of part 59—Reactivity Factors is revised to read as follows:

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS

Compound	CAS No.	Reactivity factor
Formaldehyde	50–00–0	8.97
Glycerol (1,2,3-Propanetriol)	56–81–5	3.27
Propylene Glycol	57–55–6	2.75
Ethanol	64–17–5	1.69
Formic Acid	64–18–6	0.08
Acetic Acid	64–19–7	0.71
Methanol	67–56–1	0.71
Isopropyl Alcohol (2-Propanol)	67–63–0	0.71
Acetone (Propanone)	67–64–1	0.43
n-Propanol (n-Propyl Alcohol)	71–23–8	2.74
n-Butyl Alcohol (Butanol)	71–36–3	3.34
n-Pentanol (Amyl Alcohol)	71–41–0	3.35
Benzene	71–43–2	0.81
1,1,1-Trichloroethane	71–55–6	0.00
Propane	74–98–6	0.56
Vinyl Chloride	75–01–4	2.92
Acetaldehyde	75–07–0	6.84
Methylene Chloride (Dichloromethane)	75–09–2	0.07
Ethylene Oxide	75–21–8	0.05
Isobutane	75–28–5	1.35
HFC-152A (1,1-Difluoroethane)	75–37–6	0.00
Propylene Oxide	75–56–9	0.32
t-Butyl Alcohol	75–65–0	0.45
Methyl t-Butyl Ketone	75–97–8	0.78
Isophorone (3,5,5-Trimethyl-2-Cyclohexenone)	78–59–1	10.58
Isopentane	78–78–4	1.68
Isobutanol	78–83–1	2.24
2-Butanol (s-Butyl Alcohol)	78–92–2	1.60
Methyl Ethyl Ketone (2-Butanone)	78–93–3	1.49
Monoisopropanol Amine (1-Amino-2-Propanol)	78–96–6	13.42
Trichloroethylene	79–01–6	0.60
Propionic Acid	79–09–4	1.16
Acrylic Acid	79–10–7	11.66
Methyl Acetate	79–20–9	0.07
Nitroethane	79–24–3	12.79
Methacrylic Acid	79–41–4	18.78

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—Continued

Compound	CAS No.	Reactivity factor
a-Pinene (Pine Oil)	80–56–8	4.29
Methyl Methacrylate	80–62–6	15.84
Naphthalene	91–20–3	3.26
Xylene, ortho-	95–47–6	7.49
o-Cresol	95–48–7	2.34
1,2,4-Trimethylbenzene	95–63–6	7.18
3-Pentanone	96–22–0	1.45
Methyl Ethyl Ketoxime (Ethyl Methyl Ketone Oxime)	96–29–7	22.04
Gamma-Butyrolactone	96–48–0	1.15
Ethyl Lactate	97–64–3	2.71
Isobutyl Isobutyrate	97–85–8	0.61
Isobutyl Methacrylate	97–86–9	8.99
Butyl Methacrylate	97–88–1	9.09
PCBTF (p-Trifluoromethyl-Cl-Benzene)	98–56–6	0.11
Cumene (Isopropyl Benzene)	98–82–8	2.32
a-Methyl Styrene	98–83–9	1.72
Ethyl Benzene	100–41–4	2.79
Styrene	100–42–5	1.95
Benzaldehyde	100–52–7	0.00
Triethanolamine	102–71–6	2.76
2-Ethyl-Hexyl Acetate	103–09–3	0.79
2-Ethyl-Hexyl Acrylate	103–11–7	2.42
2-Ethyl-1-Hexanol (Ethyl Hexyl Alcohol)	104–76–7	2.20
Ethyl Propionate	105–37–3	0.79
s-Butyl Acetate	105–46–4	1.43
n-Propyl Propionate	106–36–5	0.93
Xylene, para-	106–42–3	4.25
p-Dichlorobenzene	106–46–7	0.20
Dimethyl Succinate	106–65–0	0.23
1,2-Epoxybutane (Ethyl Oxirane)	106–88–7	1.02
n-Propyl Bromide	106–94–5	0.35
Butane	106–97–8	1.33
1,3-Butadiene	106–99–0	13.58
Ethylene Glycol	107–21–1	3.36
2-Methyl-2,4-Pentanediol	107–41–5	1.04
Isohexane Isomers	107–83–5	1.80
Methyl n-Propyl Ketone (2-Pentanone)	107–87–9	3.07
Propylene Glycol Monmethyl Ether (1-Methoxy-2-Propanol)	107–98–2	2.62
n,n-Dimethylethanolamine	108–01–0	4.76
1-Nitropropane	108–03–2	16.16
Vinyl Acetate	108–05–4	3.26
Methyl Isobutyl Ketone	108–10–1	4.31
Isopropyl Acetate	108–21–4	1.12
Propylene Carbonate (4-Methyl-1,3-Dioxolan-2one)	108–32–7	0.25
Xylene, meta-	108–38–3	10.61
Propylene Glycol Monomethyl Ether Acetate (1-Methoxy-2-Propyl Acetate)	108–65–6	1.71
1,3,5-Trimethyl Benzene	108–67–8	11.22
Di-Isobutyl Ketone (2,6-Dimethyl-4-Heptanone)	108–83–8	2.94
Methylcyclohexane	108–87–2	1.99
Toluene	108–88–3	3.97
Monochlorobenzene	108–90–7	0.36
Cyclohexanol	108–93–0	2.25
Cyclohexanone	108–94–1	1.61
n-Butyl Butyrate	109–21–7	1.12
Propyl Acetate	109–60–4	0.87
Pentane	109–66–0	1.54
Ethylene Glycol Monomethyl Ether (2-Methoxyethanol)	109–86–4	2.98
Tetrahydrofuran	109–99–9	4.95
Methyl Isoamyl Ketone (5-Methyl-2-Hexanone)	110–12–3	2.10
Isobutyl Acetate	110–19–0	0.67
Methyl Amyl Ketone	110–43–0	2.80
Hexane	110–54–3	1.45
n-Propyl Formate	110–74–7	0.93
2-Ethoxyethanol	110–80–5	3.78
Cyclohexane	110–82–7	1.46
Morpholine	110–91–8	15.43
Dipropylene Glycol	110–98–5	2.48
Ethylene Glycol Monoethyl Ether Acetate (2-Ethoxyethyl Acetate)	111–15–9	1.90
Diethylenetriamine	111–40–0	13.03
Diethanolamine	111–42–2	4.05
Diethylene Glycol	111–46–6	3.55

TABLE 2A TO SUBPART E OF PART 59—REACTIVITY FACTORS—Continued

Compound	CAS No.	Reactivity factor
n-Octane	111–65–9	1.11
2-Butoxy-1-Ethanol (Ethylene Glycol Monobutyl Ether)	111–76–2	2.90
Diethylene Glycol Methyl Ether (2-(2-Methoxyethoxy) Ethanol)	111–77–3	2.90
n-Nonane	111–84–2	0.95
2-(2-Ethoxyethoxy) Ethanol	111–90–0	3.19
Ethylene Glycol Monobutyl Ether Acetate (2-Butoxyethyl Acetate)	112–07–2	1.67
2-(2-Ethoxyethoxy) Ethyl Acetate	112–15–2	1.50
2-(2-Butoxyethoxy)-Ethanol	112–34–5	2.70
Dimethyl Ether	115–10–6	0.93
Triethylamine	121–44–8	16.60
2-Phenoxyethanol; Ethylene Glycol Phenyl Ether	122–99–6	3.61
Diacetone Alcohol	123–42–2	0.68
2,4-Pentanedione	123–54–6	1.02
Butanal	123–72–8	6.74
Butyl Acetate, n	123–86–4	0.89
2-(2-Butoxyethoxy) Ethyl Acetate	124–17–4	1.38
2-Amino-2-Methyl-1-Propanol	124–68–5	15.08
Perchloroethylene	127–18–4	0.04
Ethanolamine	141–43–5	5.97
Ethyl acetate	141–78–6	0.64
Heptane	142–82–5	1.28
n-Hexyl Acetate (Hexyl Acetate)	142–92–7	0.87
2-Ethyl Hexanoic Acid	149–57–5	4.41
1,2,3-Trimethyl Benzene	526–73–8	11.26
t-Butyl Acetate	540–88–5	0.20
Methyl Isobutyrate	547–63–7	0.70
Methyl Lactate	547–64–8	2.75
Methyl Propionate	554–12–1	0.71
1,2 Butanediol	584–03–2	2.21
n-Butyl Propionate	590–01–2	0.89
Methyl n-Butyl Ketone (2-Hexanone)	591–78–6	3.55
Ethyl Isopropyl Ether	625–54–7	3.86
Dimethyl Adipate	627–93–0	1.95
Methy n-Butyl Ether	628–28–4	3.66
Amyl Acetate (Pentyl Ethanoate, Pentyl Acetate)	628–63–7	0.96
Ethyl n-Butyl Ether	628–81–9	3.86
Ethyl t-Butyl Ether	637–92–3	2.11
1,3-Dioxolane	646–06–0	5.47
Ethyl-3-Ethoxypropionate	763–69–9	3.61
Methyl Pyrrolidone (n-Methyl-2-Pyrrolidone)	872–50–4	2.56
Dimethyl Gluterate	1119–40–0	0.51
Ethylene Glycol 2-Ethylhexyl Ether [2-(2-Ethylhexyloxy) Ethanol]	1559–35–9	1.71
Propylene Glycol Monopropyl Ether (1-Propoxy-2-Propanol)	1569–01–3	2.86
Propylene Glycol Monoethyl Ether (1-Ethoxy-2-Propanol)	1569–02–4	3.25
2-Methoxy-1-Propanol	1589–47–5	3.01
Methyl t-Butyl Ether	1634–04–4	0.78
Ethylcyclohexane	1678–91–7	1.75
Isoamyl Isobutyrate	2050–01–3	0.89
2-Propoxyethanol (Ethylene Glycol Monopropyl Ether)	2807–30–9	3.52
n-Butoxy-2-Propanol	5131–66–8	2.70
d-Limonene (Dipentene or Orange Terpene)	5989–27–5	3.99
Dipropylene Glycol Methyl Ether Isomer (2-[2-Methoxypropoxy]-1-Propanol)	13588–28–8	3.02
Texanol (1,3 Pentanediol, 2,2,4-Trimethyl, 1-Isobutyrate)	25265–77–4	0.89
Isodecyl Alcohol (8-Methyl-1-Nonanol)	25339–17–7	1.23
Tripropylene Glycol Monomethyl Ether	25498–49–1	1.90
Glycol Ether DPNB (1-(2-Butoxy-1-Methylethoxy) 2-Propanol)	29911–28–2	1.96
Propylene Glycol t-Butyl Ether (1-tert-Butoxy-2-Propanol)	57018–52–7	1.71
2-Methoxy-1-Propyl Acetate	70657–70–4	1.12
Oxo-Heptyl Acetate	90438–79–2	0.97
2-tert-Butoxy-1-Propanol	94023–15–1	1.81
Oxo-Octyl Acetate	108419–32–5	0.96
C8 Disubstituted Benzenes	na	7.48
C9 Styrenes	na	1.72

[FR Doc. E9–7300 Filed 4–1–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–AR06

Fisheries of the Exclusive Economic Zone Off Alaska; Catcher Vessel Operational Area and Inshore/Offshore Provisions for the Bering Sea and Aleutian Islands and the Gulf of Alaska Groundfish Fisheries; Amendments 62/62

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

ACTION: Announcement of availability of fishery management plan amendments; request for comments.

SUMMARY: The North Pacific Fishery Management Council has submitted Amendment 62 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 62 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). If approved, Amendments 62/62 would revise the BSAI FMP description of the Catcher Vessel Operational Area (CVOA) and remove the obsolete sunset date for inshore/offshore sector allocations of pollock and Pacific cod in the GOA FMP. This action is necessary to amend outdated FMP text so that both FMPs are consistent with the American Fisheries Act (AFA) and other applicable law. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: Comments on Amendments 62/62 must be received on or before June 1, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AR06'' by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- Fax: 907–586–7557.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, Alaska.

All comments received are a part of the public record and will be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may 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 must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats to be accepted.

Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action are available from the NMFS Alaska Region website at *http://www.alaskafisheries.noaa.gov* or from the mailing and street addresses listed above.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP amendment is available for public review and comment. This requirement is satisfied by this notice of availability (NOA) for Amendments 62/62.

In June 2002, the North Pacific Fishery Management Council (Council) adopted Amendments 62/62 to revise obsolete or inconsistent inshore/offshore language in the BSAI and GOA FMPs to make them consistent with the AFA. A combination of circumstances has since resulted in the delay of submitting these amendments for Secretarial review. Additionally, other amendments incorporated two of the four Council-approved FMP changes regarding inshore/offshore language. In April 2008, the Council reviewed Amendments 62/62 and affirmed its 2002 decisions concerning the remaining FMP amendments.

Inshore/Offshore Language

The purpose of the revisions recommended by the Council concerning BSAI inshore/offshore language in the FMPs was to make the FMPs consistent with the AFA, passed in 1998. Most of the inshore/offshore language made obsolete by the AFA was removed from federal regulations under a final rule that implemented the AFA provisions under Amendments 61/61 to the BSAI and GOA FMPs (67 FR 79692, December 30, 2002). To revise additional inshore/offshore language in the FMPs overlooked in Amendments 61/61, the following four actions were adopted by the Council under Amendments 62/62:

- Remove obsolete inshore/offshore language from the BSAI FMP.
- Revise the BSAI FMP description of the CVOA.
- Remove references to BSAI inshore/offshore allocations from the GOA FMP.
- Remove the December 31, 2004, sunset date for inshore/offshore sector allocations of pollock and Pacific cod from the GOA FMP.

Since the Council adopted Amendments 62/62, other FMP amendments incorporated two of the four Council-recommended FMP changes regarding inshore/offshore language. The recommended removals from the FMPs of obsolete inshore/offshore language and references were made under Amendments 83/75 (70 FR 35395, June 20, 2005), as part of comprehensive housekeeping amendments. Amendments 83/75 revised the respective FMPs by updating harvest, ecosystem, and socioeconomic information; consolidating text; and organizing the information to improve the readability of the documents. Amendments 83/75 were approved by the Secretary on June 14, 2005.

In April 2008, the Council reviewed its remaining two recommendations under Amendments 62/62 and affirmed its 2002 adoption of these actions. Amendment 62 to the BSAI FMP would revise the CVOA descriptions to make the FMP consistent with current federal regulations at § 679.22(a)(5). The CVOA is an area in which AFA catcher/processors are prohibited from directed fishing for pollock during the non-roe, or B, season unless they are participating in the Community Development Quota fishery. The current description at Section 3.5.2.1.6 of the BSAI FMP would be changed to use the more comprehensive term ''non-roe season'' instead of the term ''pollock B season,'' and the coordinates that define the CVOA would be added to the description.

Also, the description of the CVOA in Appendix B would be revised. Obsolete references to pollock ''B'' season dates, to the closing of the ''inshore component'' of the BSAI pollock fishery, and to the ''offshore component'' of the BSAI would be removed or modified. Currently, the description states that the ''B'' season for pollock begins on September 1. This season start date has been changed due to Steller sea lion protection measures and because the AFA has allowed for the lengthening of the pollock season. The current FMP description states that the ''inshore component'' in the BSAI may be closed to directed fishing for pollock. Under the AFA, NMFS no longer closes the ''inshore component'' to directed fishing for pollock, because each individual shoreside cooperative operates under its own pollock allocation. Therefore, this reference would be removed. Finally, the outdated reference to ''offshore component'' would be replaced by the AFA category ''AFA catcher/processor.''

The proposed new BSAI FMP text for Section 3.5.2.1.6 and Appendix B would be as follows: ''The CVOA is defined as the area of the BSAI east of 167°30′ W. longitude, west of 163° W. longitude, south of 56° N. latitude, and north of the Aleutian Islands. AFA catcher/processors are prohibited from engaging in directed fishing for pollock in the CVOA during the non-roe season unless they are participating in the CDQ fishery.'' This prohibition currently exists in the regulations at § 679.22(a)(5).

Amendment 62 to the GOA FMP would formally remove the sunset date for GOA inshore/offshore pollock and Pacific cod allocations. As adopted by the Council and submitted to the Secretary in November 2001, Amendment 61 to the GOA FMP incorporated the AFA into the FMP, and extended GOA inshore/offshore allocations to December 31, 2004. Section 213 of the AFA as passed by Congress contained a December 31, 2004, sunset date. The Council decided to apply this sunset date to GOA inshore/offshore allocations under Amendment 61 so that BSAI and GOA allocation issues could be addressed concurrently when the AFA pollock allocations were scheduled to expire. However, after Amendment 61 was submitted for Secretarial review, Congress enacted legislation to remove the December 31, 2004, sunset date from the AFA (Section 211 of title II, Department of Commerce and Related Agencies Appropriations Act, 2002, Public Law 107–77, November 28, 2001). To reconcile the sunset dates contained in the FMP amendment with the newly-amended AFA, NMFS partially approved Amendments 61/61/13/8 to the FMPs for groundfish, crab, and scallop on February 27, 2002. NMFS disapproved the December 31, 2004, sunset dates in the amendments because the primary reason articulated by the Council for reviewing GOA inshore/offshore allocations in 2004 no longer existed. However, not all references to the sunset date were removed from the GOA FMP, necessitating Amendment 62 to the GOA FMP. As noted above, changes were made to the GOA FMP under Amendment 75. The removal of the sunset date from the FMP by Amendment 75 was premature because its removal was not specified as one of the changes made by Amendment 75. Approval of Amendment 62 to the GOA FMP would officially remove the sunset date from the FMP.

Public comments are being solicited on the amendments through the end of the comment period stated in this NOA. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

Dated: March 27, 2009.

Kristen C. Koch,

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

[FR Doc. E9–7449 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 62

Thursday, April 2, 2009

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

Forest Service

Lake County Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on May 14, 2009, from 3 p.m. to 5 p.m.

ADDRESSES: The meeting will beheld at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport or Conference Room C.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361. E-mail *dmcintosh@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Review Minutes from the March 19, 2009 Meeting; (3) Project up-dates from Project Supporters; (4) Project Review and Discussion; (5) Recommend Projects/Vote; (6) Discuss Project Cost Accounting USFS/County of Lake; (7) Set Next Meeting Date; (8) Public Comment Period. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time; (9) Adjourn.

Dated: March 25, 2009.

Lee D. Johnson,

Designated Federal Officer.

[FR Doc. E9–7374 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Cincinnati, Ohio, May 6–7, 2009. The purpose of the meeting is to discuss emerging issues in urban and community forestry and hear public input related to urban and community forestry.

DATES: The meeting will be held on May 6–7, 2009, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency, Cincinnati, 151 W. 5th Street, Cincinnati, Ohio 45202, phone: 513–354–4206. Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us*, or via facsimile to 202–690–5792.

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 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Visitors are encouraged to call ahead to 202–205–1054 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff or Pamela Williams, Staff Assistant to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

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 meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff (201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, e-mail: *nstremple@fs.fed.us*) before or after the meeting. Public input sessions will be provided at the meeting. Public comments will be compiled and provided to the Secretary of Agriculture along with the Council's recommendations.

Dated: March 25, 2009.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E9–7375 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Wednesday, April 22, 2009, in Lewiston, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on April 22nd will be held at the Jack O'Connor Center at Hell's Gate State Park (5100 Hells Gate Road) in Lewiston, Idaho, beginning at 10 a.m. (PST). Agenda topic will primarily be discussion of potential projects. A public forum will begin at 3:15 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Laura A. Smith, Public Affairs Officer and Designated Federal Officer, at (208) 983–5143.

Dated: March 26, 2009.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. E9–7381 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability (NOA) Record of Decision (ROD) for the Designation of Energy Corridors on Federal Land in the 11 Western States, Including Proposed Amendments to Selected Land Management Plans

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published a Notice of Availability Record of Decision in the **Federal Register** of March 24, 2009. The document contained an incorrect Internet address.

FOR FURTHER INFORMATION CONTACT: Glen Parker, Realty Specialist, Lands, 202–205–1196 or Ron Pugh, Planning Specialist, Ecosystem Management Coordination, 202–205–0992. USDA Forest Service, L; (Glen Parker); 1400 Independence Ave., SW., Mailstop Code: 1124; Washington, DC 20050–1124.

Correction

In the **Federal Register** of March 24, 2009, (73 FR 12306), on page 12307, in the **ADDRESSES** section, correct the Internet address to read:

ADDRESSES: The ROD is available on the Internet at *http://www.corridoreis.anl.gov*. Printed copies will be available at one of the involved National Forest supervisor or district ranger offices in the 10 Western States.

Dated: *March 26, 2009.*

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E9–7376 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Colorado Recreation Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of request for nominations for the Colorado Recreation Resource Advisory Committee.

SUMMARY: Nominations are being sought for certain positions to serve on the Recreation Resource Advisory Committee (Recreation RAC) operating in the state of Colorado for the Forest Service and Bureau of Land Management. New members will be appointed by the Secretary of Agriculture (Secretary) and serve three year terms. Appointments will begin in July 2009 when current member appointments expire.

One member is being sought to represent each of the following interests: (1) Winter non motorized; (2) Hunting/Fishing; (3) Motorized Outfitter/Guide; and (4) Affected Local Governments.

The public is invited to submit nominations for membership on the Recreation RAC. Current members who have only served one term may also apply.

Application packets for Recreation RACs can be obtained on the Web at *http://www.fs.fed.us/passespermits/rrac-application.shtml* or by e-mailing *pdevore@fs.fed.us*. Interested parties may also contact Pam DeVore, U.S. Forest Service, 740 Simms Street, Golden, CO 80401 or call 303–275–5043.

All nominations must consist of a completed application packet that includes background information and other information that addresses a nominee's qualifications.

DATES: All applications must be received by the appropriate office listed below on or before May 15, 2009. This timeframe may be extended if officials do not receive applications for needed positions.

ADDRESSES: Interested persons may submit nominations to the Colorado RRAC by U.S. Mail or Express Delivery: Pam DeVore, Rocky Mountain Regional Office, 740 Simms, Golden, CO 80401, nominations may also be sent by e-mail to *pdevore@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Anyone wanting further information regarding this request for nominations may contact the designated federal official: Steve Sherwood, Recreation RAC DFO, 740 Simms Street, Golden, CO 80401 or 303–275–5135.

SUPPLEMENTARY INFORMATION: *Background:* The Federal Lands Recreation Enhancement Act (REA), signed December 2004, requires that the Forest Service and the Bureau of Land Management (BLM) provide Recreation RACs with an opportunity to make recommendations to the two agencies on certain types of proposed recreation fee changes. REA allows the agencies to use existing advisory councils, such as BLM Resource Advisory Councils (RACs), or to establish new committees as appropriate. The Forest Service and BLM elected to jointly use existing BLM RACs in the states of Arizona, Idaho, the Dakotas, Montana, Nevada, New Mexico, and Utah. In 2006, the Forest Service chartered new Recreation RACs for the states of California and Colorado, and for the Forest Service Pacific Northwest, Eastern and Southern Regions. The Forest Service is using an existing advisory board for the Black Hills National Forest in South Dakota. In addition, the Governors of three states—Alaska, Nebraska and Wyoming—requested that their State be exempt from the REA–R/RAC requirement, and the two Departments concurred with the exemptions.

Members were appointed to the Colorado Recreation RAC in July 2007 for either two-year or three-year terms. The terms for the two-year members will expire July 2009. The Recreation RACs provide recreation fee recommendations to both the Forest Service and the Bureau of Land Management (BLM). These committees make recreation fee program recommendations on implementing or eliminating standard amenity fees; expanded amenity fees; and noncommercial, individual special recreation permit fees; expanding or limiting the recreation fee program; and fee-level changes.

Recreation RAC Composition: Each Recreation RAC consists of 11 members appointed by the Secretary. REA provided flexibility to modify the specified membership of the RAC ''as appropriate'' to ensure a fair and balanced representation of recreation interests.

(1) Five persons who represent recreation users and that include, as appropriate, persons representing—

(a) Winter motorized recreation such as snowmobiling;

(b) Winter nonmotorized recreation such as snowshoeing, cross-country and downhill skiing, and snowboarding;

(c) Summer motorized recreation such as motorcycling, boating, and off-highway vehicle driving;

(d) Summer nonmotorized recreation such as backpacking, horseback riding, mountain biking, canoeing, and rafting; and

(e) Hunting and fishing.

(2) Three persons who represent interest groups that include, as appropriate, the following:

(a) Non-motorized outfitters and guides

(b) Non-motorized outfitters and guides and

(c) Local environmental groups.

(3) Three persons, as follows:

(a) State tourism official to represent the state;

(b) A person who represents affected Indian tribes; and

(c) A person who represents affected local government interests.

Nomination Information

Any individual or organization may nominate one or more qualified persons

to represent the interests listed above to serve on the Recreation RAC. To be considered for membership, nominees must:

- Identify what interest group they would represent and how they are qualified to represent that group;
- State why they want to serve on the committee and what they can contribute;
- Show their past experience in working successfully as part of a collaborative group; and complete Form AD–755, Advisory Committee or Research and Promotion Background Information.

Letters of recommendation are welcome, but not required. Individuals may also nominate themselves. Nominees do not need to live in a state within a particular Recreation RAC's area of jurisdiction nor live in a state in which Forest Service managed lands are located.

Application packets, including evaluation criteria and the AD–755 form, are available at *http://www.fs.fed.us/passespermits/rracapplication.shtml* or by contacting the Rocky Mountain Region as identified in this notice. Nominees must submit all documents to the appropriate regional contact. Additional information about recreation fees and REA is available at *http://www.fs.fed.us/passespermits/about-rec-fees.shtml*.

The Forest Service will also work with Governors and county officials to identify potential nominees. The Forest Service and BLM will review the applications and prepare a list of qualified applicants from which the Secretary shall appoint both members and alternates. An alternate will become a participating member of the Recreation RACs only if the member for whom the alternate is appointed to replace leaves the committee permanently.

Recreation RAC members serve without pay but are reimbursed for travel and per diem expenses for regularly scheduled committee meetings.

All Recreation RAC meetings are open to the public and an open public forum is part of each meeting. Meeting dates and times will be determined by agency officials in consultation with the Recreation RAC members.

Dated: March 12, 2009.

Maribeth Gustafson,

Deputy Regional Forester, Operations.

[FR Doc. E9–7288 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which it intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–0784.

Title: Distance Learning and Telemedicine Loan and Grant Program.

OMB Control Number: 0572–0096.

Type of Request: Revision of a currently approved information collection package.

Abstract: The Rural Utilities Service's (RUS) Distance Learning and Telemedicine (DLT) Loan and Grant program provides loans and grants for advanced telecommunications services to improve rural areas' access to educational and medical services. The various forms and narrative statements required are collected from the applicants (rural community facilities, such as schools, libraries, hospitals, and medical facilities, for example). The purpose of collecting the information is to determine such factors as eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and, compliance with applicable laws and regulations. In addition, for grants funded pursuant to the competitive evaluation process, information collected facilitates RUS' selection of those applications most consistent with DLT goals and objectives in accordance with the authorizing legislation and implementing regulation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.47 hours per response.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal Government.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 22.00.

Estimated Total Annual Burden on Respondents: 16,316 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–7853.

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.

Dated: March 27, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–7362 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (Agency) invites comments on this information collection for which it intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Type of Request: Extension of a currently approved information collection.

Abstract: This information collection requirement stems from passage of the Rural Electrification Loan Restructuring Act (RELRA, Pub. L. 103–129) on November 1, 1993, which amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA requires that a State Telecommunications Modernization Plan (Modernization Plan), covering at a minimum the Rural Utilities Service (RUS) borrowers in the state, be established in a state or RUS cannot make hardship or concurrent cost-of-money and Rural Telephone Bank (RTB) loans for construction in that state. It is the policy of RUS that every State has a Modernization Plan which provides for the improvement of the State's telecommunications network. A proposed Modernization plan must be submitted to RUS for approval. RUS will approve a proposed Modernization Plan if it conforms to the provisions of 7 CFR part 1751, subpart B.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 350 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120.

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.

Dated: March 27, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–7363 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for reinstatement.

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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: RUS Specification for Quality Control and Inspection of Timber Products.

OMB Control Number: 0572–0076.

Type of Request: Extension of a currently approved collection.

Abstract: 7 CFR 1728.202 and RUS Bulletin 1728H–702 describe the responsibilities and procedures pertaining to the quality control by

producers and pertaining to inspection of timber products produced in accordance with RUS specifications. In order to ensure the security of loan funds, adequate quality control of timber products is vital to loan security on electric power systems where hundreds of thousands of wood poles and cross-arms are used. Since RUS and its borrowers do not have the expertise or manpower to quickly determine imperfections in the wood products or their preservatives treatments, they must obtain service of an inspection agency to ensure that the specifications for week poles and cross-arms are being met.

Estimate of Burden: This collection of information is estimated to average 1 hour per response.

Respondents: Not-for-profit institutions; Business or other for profit.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: 58.

Estimated Total Annual Burden on Respondents: 40.763 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. FAX: (202) 720–8435. 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.

Dated: March 27, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–7364 Filed 4–1–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Implementation of Vessel Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales.

OMB Approval Number: 0648–0580.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 254.

Number of Respondents: 3,047.

Average Hours per Response: 5 minutes.

Needs and Uses: Under the authority of the Marine Mammal Protection Act and the Endangered Species Act, National Marine Fisheries Service (NMFS) established vessel speed restrictions to reduce the threat of collisions with highly endangered North Atlantic right whales. The restrictions apply at specific times and in specific locations along the U.S. eastern seaboard. NMFS is proposing to renew an exception to the restrictions in poor weather or sea conditions. Ships' captains are required to make an entry into the ship's Official Logbook when an exception is necessary.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 30, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7396 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–22–P

U.S. DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 12–2009]

Foreign–Trade Zone 29 – Louisville, KY

Application for Subzone Status

Reynolds Packaging LLC

(Aluminum Foil Liner Stock)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, requesting special–purpose subzone status for the aluminum foil liner stock manufacturing plant and warehouse of Reynolds Packaging LLC (Reynolds), located in Louisville, Kentucky. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 25, 2009.

The proposed subzone would include Reynolds' facilities (637 employees) at two sites in the city of Louisville: *Site 1* (manufacturing plant/3.63 acres/165,758 sq.ft.) – 1225 West Burnett Avenue; and, *Site 2* (warehouse distribution/9.51 acres/614,215 sq.ft.) – 2827 Hale Avenue, located one mile south of Site 1. The manufacturing plant is used to produce aluminum foil liner stock (up to 70 million pounds annually) used in flexible packaging applications for the U.S. market and export. The manufacturing process involves laminating, oven curing, slitting, and packaging. The foreign–origin input used in the activity is aluminum converter foil (7607.11.3000, duty rate: 5.8%), which represents about 25 percent of the value of the finished aluminum foil liner stock. The application indicates that Reynolds would also admit foreign–origin bulk aluminum foil to the proposed subzone to be repackaged and distributed for consumer retail sale in the U.S. market.

FTZ procedures could exempt Reynolds from customs duty payments on the foreign aluminum converter foil used in export production (about 15% of annual shipments). On domestic shipments, the company would be able to elect the duty rate that applies to finished aluminum foil liner stock (duty free) for the foreign aluminum converter foil. Reynolds would also be exempt from duty payments on any aluminum foil for consumer use that becomes scrap or waste during the repackaging activity. The application indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. The closing period for receipt of comments is June 1, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period to [insert 75 days from date of publication].

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above and in the ''Reading Room'' section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Pierre Duy at: pierre__duy@ita.doc.gov, or (202) 482–1378.

Dated: March 25, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–7441 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod From Mexico

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

SUMMARY: On November 12, 2008, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of a changed circumstances review of the antidumping duty order of carbon and certain alloy steel wire rod (wire rod) from Mexico in order to determine whether Ternium Mexico, S.A. de C.V. (Ternium) is the successor-in-interest to Hylsa S.A. de C.V. (Hylsa) for purposes of determining antidumping duty liability. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Mexico,* (73 FR 66839) November 12, 2008 (*Notice of Initiation*). We have preliminarily determined that Ternium is the successor-in-interest to Hylsa, for purposes of determining antidumping duty liability in this proceeding. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date*: April 2, 2009.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, Office of AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8362.

Background

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Mexico. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002) (*Wire Rod Order*). On September 3, 2008, Ternium requested that the Department conduct a changed circumstances review of the antidumping duty order on wire rod from Mexico claiming that it is the successor-in-interest to Hylsa, in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216. In its request, Ternium indicated that effective April 1, 2008, the production and sales operations of Hylsa were transferred to Ternium.[1] In response to this request the Department initiated a changed circumstances review of the antidumping duty order on wire rod from Mexico. *See Notice of Initiation*. On November 18, 2008, the Department issued a questionnaire to Ternium requesting additional information regarding its successor-in-interest changed circumstances review request. On December 10, 2008, Ternium submitted its response to the Department's questionnaire (Questionnaire Response). In our *Notice of Initiation* we invited interested parties to comment. We did not receive any comments.

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; (e) concrete reinforcing bars and rods; and (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length

[1] Prior to the reorganization effective April 1, 2008, Ternium was a holding company and did not have any production or sales operations.

(measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3092, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, 7227.90.6010, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Preliminary Results

In making a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (Jan. 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999); *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In accordance with 19 CFR 351.221(c)(3)(i), we preliminarily determine that Ternium is the successor-in-interest to Hylsa. In its September 3, 2008, and December 10, 2008, submissions Ternium provided evidence supporting its claim to be the successor-in-interest to Hylsa.[2] Documentation attached to Ternium's September 3, 2008, and December 10, 2008, submissions shows that the transfer of production and sales operations from Hylsa to Ternium resulted in little or no change in management, production facilities, supplier relationships, or customer base. This documentation consists of: (1) A copy of documentation of merger of Hylsamex[3] into Ternium; (2) diagram depicting the organizational structure of Hylsa and Ternium; (3) tables depicting the management structure of Hylsa as of November 30, 2007, and the current management structure of Ternium as of July 2008; (4) listings of Hylsa's suppliers of major inputs for production of subject merchandise in 2007 and of Ternium's suppliers of inputs for production of subject merchandise in the second quarter of 2008 (after the transfer took effect); (5) a list of Hylsa's and Ternium's facilities at which subject merchandise is produced; (6) listings of Hylsa's wire rod customers in the home and U.S. markets in 2007 and of Ternium's wire rod customers in the home and U.S. markets in the second quarter of 2008 (after the transfer took effect). The documentation described above demonstrates that there was little to no change in management structure, supplier relationships, production facilities, or customer base. For these reasons, we preliminarily find that Ternium is the successor-in-interest to Hylsa and, thus, should receive the same antidumping duty treatment with respect to steel wire rod from Mexico as Hylsa.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 37 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, deposit requirements for the subject merchandise exported and manufactured by Ternium will continue to be the all others rate established in the investigation. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945, 65947 (October 29, 2002). The cash deposit rate will be altered, if warranted, pursuant only to the final results of this review.

We are issuing and publishing these preliminary results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216.

[2] In our *Notice of Initiation*, we referred to Ternium's request as a name change, however, as explained above it is related to the transfer of production and sales functions from Hylsa to Ternium. Effective April 1, 2008, Hylsa exists solely as a service company which employs workers at the former Hylsa facilities and provides its services to Ternium on a contract basis.

[3] Hylsamex is the former parent company of Hylsa. On February 12, 2008, Ternium merged with Hylsamex into Ternium Grupo IMSA SAB de C.V. (GISA).

Dated: March 26, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7437 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–811]

Purified Carboxymethylcellulose From the Netherlands; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) finds that it is not practicable to complete the preliminary results of this review within the original time frame due to the need to complete a scheduled cost verification, report the procedures and results of the Department's sales verifications, and possibly request additional information from CP Kelco B.V. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review by 46 days, to May 18, 2009.

EFFECTIVE DATE: April 2, 2009.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, Brian Davis, or Angelica Mendoza, 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) 482–8029, (202) 482–7924, or (202) 482–3019, respectively.

Background

The Department published an antidumping duty order on purified carboxymethylcellulose (CMC) from the Netherlands on July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). On July 11, 2008, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period July 1, 2007, through June 30, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 39948 (July 11, 2008). Also on July 11, 2008, CP Kelco B.V. and its U.S. affiliates (CP Kelco U.S., Inc. and J.M. Huber Corporation) timely requested that the Department initiate and conduct an administrative review for the period of review. On July 14, 2008, Aqualon Company, a division of Hercules Incorporated (petitioner), timely requested that the Department conduct an administrative review of sales of subject merchandise by Akzo Nobel Functional Chemicals B.V. (Akzo Nobel) and CP Kelco B.V. covered by the order. On July 31, 2008, Akzo Nobel timely requested that the Department conduct an administrative review of its sales of merchandise covered by the order.

In response to all three requests, the Department initiated an administrative review of the antidumping duty order on purified CMC from the Netherlands on August 26, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008).[1] The current deadline for the preliminary results of this review is April 2, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department finds that it is not practicable to complete the preliminary results of this review within the original time frame due to the need to complete a scheduled cost verification, report the procedures and results of the Department's sales verifications, and possibly request additional information from CP Kelco B.V. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review by 46 days to May 18, 2009. We intend to issue the final results no later than 120 days after publication of the preliminary results.

[1] On October 9, and October 10, 2008, respectively, Akzo Nobel and petitioner withdrew their requests for review of Akzo Nobel's sales of merchandise covered by the order. Therefore, the Department rescinded the review with respect to Akzo Nobel. *See Purified Carboxymethylcellulose from the Netherlands: Partial Recession of Antidumping Duty Administrative Review*, 73 FR 66841.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–7451 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Welded ASTM A–312 Stainless Steel Pipe From South Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* April 2, 2009.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Douglas Kirby, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5255 and (202) 482–3782, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2008, the Department of Commerce (the Department) issued the preliminary results of the administrative review of the antidumping duty order on ASTM A–312 stainless steel pipe from South Korea. *See Certain Welded Stainless Steel Pipes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 79050 (December 24, 2008). The period of review is December 1, 2006 through November 30, 2007. The final results for this administrative review are currently due no later than April 23, 2009.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested, and issue the final results within 120 days after the date on which the preliminary results are published. However, if the Department finds it is

not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department needs additional time due to conduct the constructed export price verification and to analyze cost of production issues. Therefore, the Department finds that it is not practicable to complete the final results of the review within the original time limit and is extending the deadline for the completion of the final results for the antidumping duty order on welded ASTM A–312 stainless steel pipe from South Korea from 120 to 180 days from the date of publication of the preliminary results. Accordingly, the final results will now be due no later than June 22, 2009.

This notice is issued and published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–7446 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate (PET) Film, Sheet, and Strip From India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

Effective Date: April 2, 2009.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0197 and (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2008, in response to a timely request from Jindal Poly Films, Limited of India (Jindal), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on polyethylene terephthalate (PET) film, sheet, and strip from India. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008). This administrative review covers the period January 1, 2007, through December 31, 2007. The preliminary results of this administrative review are currently due no later than April 2, 2009.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue preliminary results in an administrative review of a countervailing duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department needs additional time to analyze the supplemental questionnaire responses, which were recently submitted, and to determine whether any additional information is required. In accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 365 days; the preliminary results will now be due no later than July 31, 2009. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1) of the Department's regulations.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–7438 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands: Notice of Court Decision Not in Harmony With Final Results of Administrative Review

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

DATES: *Effective Date*: April 2, 2009

FOR FURTHER INFORMATION CONTACT: David Cordell 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) 482–0408 or (202) 482–0649, respectively.

SUMMARY: On March 24, 2009, the United States Court of International Trade (the Court) sustained the remand redetermination issued by the Department of Commerce (the Department) pursuant to the Court's remand order in the final results of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands. *See Corus Staal* v. *US*, Court No. 07–221, Slip Op 09–21 CIT (March 24, 2009) (*Corus Staal Judgment*).

This case arises out of the Department's *Final Results* and *Amended Final Results* for the period of review (POR) period November 1, 2004, through October 31, 2005. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 72 FR 28676 (May 22, 2007), and Accompanying Issues and Decision Memorandum at Comment 6 (*Final Results*); *see also Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Amended Final Results of the Antidumping Duty Administrative Review*, 72 FR 34441 (June 22, 2007) (*Amended Results*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that *Corus Staal Judgment* is not in harmony with the Department's *Final Results* and the *Amended Final Results*.

SUPPLEMENTARY INFORMATION: Pursuant to the remand order of the Court in *Corus Staal BV* v. *United States*, Slip Op. 08–144 (CIT, December 29, 2008) (*Corus Staal*), the Department released the Draft Results of Redetermination

Pursuant to Court Remand to interested parties on January 16, 2009. Corus and ArcelorMittal USA. Inc. (ArcelorMittal), domestic interested party, submitted comments on January 23, 2009. Corus and domestic producer U.S. Steel Corporation (U.S. Steel) submitted rebuttal comments on January 28, 2009.

On February 20, 2009, the Department filed its final results of redetermination pursuant to *Corus Staal* with the CIT. *See* Final Results of Redetermination Pursuant to Court Remand, *Corus Staal BV* v. *United States Court* No. 07–00221, Slip Op. 08–144 (CIT December 29, 2008) (Final Redetermination). In the Final Redetermination, the Department amended the final results of the 2004–2005 administrative review to rescind our duty absorption finding with respect to Corus Staal BV (Corus), ''consistent with the Federal Circuit's interpretation of 19 U.S.C. 1675(a)(4) in *Agro Dutch Indus. Ltd.* v. *United States*, 508 F.3d 1024, 1028 (Fed. Cir. 2007) (*Agro Dutch*).'' *See Corus Staal* at 26. Specifically, we no longer found that Corus absorbed antidumping duties during the period of review since Corus was, itself, the importer of record. This redetermination did not affect either the weighted-average margin or assessment rate calculated for Corus for the relevant period of review.

On March 24, 2009, the Court sustained all aspects of the remand redetermination. The Court reaffirmed the Department's calculation of Corus Staal's dumping margin during the administrative review and affirmed the Department's reversal of its duty absorption finding. Further, the Court also affirmed the Department's authority to issue instructions to U.S. Customs and Border Protection (CBP) to levy antidumping duties on entries.

In *Timken*, 893 F.2d at 341, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is ''not in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's decision in *Corus Staal Judgment* on March 24, 2009, constitutes a final decision of the court that is not in harmony with the Department's *Final Results* and *Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the Federal Circuit the Department will instruct CBP to assess antidumping duties on entries of the subject merchandise during the POR based on the *Amended Final Results*.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: March 27, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7445 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Limits on Applications of Take Prohibitions

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 1, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Stone at (503) 231–2317, or *steve.stone@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it ''deems necessary and advisable to provide for the conservation of'' threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits ''take'' of any endangered species (''take'' includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of the section 9 take prohibitions. There are now 22 separate Distinct Population Segments (DPS) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations. NMFS makes section 9 prohibitions generally applicable to many of those threatened DPS, but also seeks to respond to requests from States and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted (See 70 FR 37160, June 28, 2005; 71 FR 834, January 5, 2006; and 73 FR 55451, September 25, 2008). The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that limits impacts on, listed salmonids. Because we have determined that such programs/circumstances adequately protect listed salmonids, the regulations do not apply the ''take'' prohibitions to them. Some of these limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

II. Method of Collection

Submissions may be in paper or electronic format.

III. Data

OMB Control Number: 0648–0399.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 301.

Estimated Time per Response: 20 hours for a road maintenance agreement; 5 hours for a diversion screening limit project; 30 hours for an urban development package; 10 hours for an urban development report; 20 hours for a tribal plan; and 5 hours for a report of aided, salvaged, or disposed of salmonids.

Estimated Total Annual Burden Hours: 1,705.

Estimated Total Annual Cost to Public: $1,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 30, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7389 Filed 4–1–09; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday April 17, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E9–7531 Filed 3–31–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday April 10, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E9–7534 Filed 3–31–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday April 3, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

FOR FURTHER INFORMATION CONTACT: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E9–7537 Filed 3–31–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, April 24, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E9–7540 Filed 3–31–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Wednesday April 15, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E9–7541 Filed 3–31–09; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–OS–0110]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 4, 2009.

Title and OMB Number: Request for approval for Procurement Technical Assistance Center Cooperative Agreement Performance Report; DLA Form 1806; OMB Control Number 0704–0320.

Type of Request: Extension.

Number of Respondents: 95.

Responses Per Respondent: 4.

Annual Responses: 380.

Average Burden per Response: 7 hours.

Annual Burden Hours: 2,660.

Needs and Uses: The Defense Logistics Agency uses the report as the principal instrument for measuring the performance of Cooperative Agreement awards made under 10 U.S.C. Chapter 142.

Affected Public: Not-for-profit institutions; state, local or tribal governments.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: March 27, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7395 Filed 4–1–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Task Force on Sexual Assault in the Military Services

AGENCY: Office of the Assistant Secretary of Defense (Personnel and Readiness); DoD.

ACTION: Notice of committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in Government Act of 1976 (5 U.S.C. 522b, as amended), 41 CFR 102–3.140, 41 CFR 102–3.150, and 41 CFR 102–3.160 announcement is made of the following Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force) committee meeting:

DATES: April 24, 2009.

Open Meeting: 8 a.m. to 11:30 a.m. Eastern Daylight Time (hereafter referred to as EDT).

Administrative and/or Preparatory Work Activities Meeting: 12:30 p.m. to 5 p.m. EDT.

ADDRESSES: Hilton Norfolk Airport in Norfolk, Virginia 23502.

FOR FURTHER INFORMATION CONTACT: Colonel Cora Jackson-Chandler, U.S. Air Force, Designated Federal Officer, Defense Task Force on Sexual Assault in the Military Services, 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia 22314; Telephone: (703) 325–6640; Fax: 703–325–6710/6711; DSN number 221–6640; *cora.chandler@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the open meeting is to obtain and discuss information on the Task Force's congressionally mandated task to examine matters related to sexual assault in the military services through briefings from, and discussion with, task force staff, subject matter experts, victim testimonials, and comments from the general populace including Service Members.

The purpose of the Administrative and/or Preparatory Work Activities Meeting:

a. *Administrative Work Activities:* To discuss administrative matters or to receive administrative information from a Federal officer or agency; and

b. *Preparatory Work Activities:* To gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee.

Pursuant to 41 CFR 102–3.160, meetings convened solely for Administrative and or Preparatory work activities meetings are exempt from open meeting requirements and are not required to be open to the public.

Agenda Summary

8 a.m.–11:30 a.m. Open Meeting.

8 a.m.–8:05 a.m. Welcome, Administrative Remarks.

8:05 a.m.–8:10 a.m. Opening Remarks.

8:10 a.m.–9:10 a.m. Article 120, UCMJ Brief and Discussion.

9:10 a.m.–9:20 a.m. Break.

9:20 a.m.–10:20 a.m. Drill Sergeant and Instructor Brief and Discussion.

10:20 a.m.–10:30 a.m. Break.

10:30 a.m.–11:30 a.m. Public Comment Period.

11:30 a.m.–12:30 p.m. Noon Meal.

12:30 p.m.–5 p.m. Administrative and Preparatory Work Activities Meeting.

The Task Force's Open Meeting will be held at the Hilton Norfolk Airport in Norfolk, Virginia 23502, from 8 a.m. to 11:30 a.m. EDT, Friday, April 24, 2009, followed by an Administrative and/or Preparatory Work Activities Meeting from 12:30 p.m. to 5 p.m.

The Open Meeting is open to the public pursuant to section 10(a)(3) of the Federal Advisory Committee Act (5 U.S.C, Appendix, as amended); 5 U.S.C. 552b, as amended; 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space. The Administrative and/or Preparatory Work Activities Meeting, however, is not open to the public and is exempt from open meeting requirements pursuant to 41 CFR 102–3.160. Pursuant to section 10(a)(3) of the Federal Advisory Committee Act (5 U.S.C, Appendix, as amended); 41 CFR 102–3.105(j), 102–3.140(c); and subject to the procedures outlined in this notice, any member of the public or interested organization may submit a written statement to the Defense Task Force on Sexual Assault in the Military Services membership about the stated agency and/or to give input as to the mission and function of the task force. Though written statements may be submitted at any time for consideration or in response to a stated agenda to a planned meeting, statements must be received in a timely fashion for consideration at a specific meeting.

All written statements intended to be considered for the Open Meeting that is subject to this notice shall be submitted to the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services no later than 5 p.m. Eastern Daylight Time (hereafter referred to as EDT), Monday, April 13, 2009. This individual will review all timely submitted written statements and will provide those statements to the task force membership for consideration.

Persons desiring to make an oral presentation to the committee must notify the Designated Federal Officer no later than 5 p.m. EDT, Monday, April 13, 2009. Oral presentations by members of the public will be permitted only on April 24, 2009, from 10:30 a.m. to 11:30 a.m. before the task force. Presentations will be limited to ten (10) minutes each. The number of oral presentations to be made will depend on the number of requests received from members of the public and the time allotted. Each person that desires to make an oral presentation must provide the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services with one (1) written copy of the presentation by 5 p.m. EDT, Monday, April 13, 2009, and bring 15 written copies of any material that is intended for distribution at the meeting. Contact information for the

Designated Federal Officer is provided in this notice or can be obtained from the GSA's FACA Database: *https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Task Force on Sexual Assault in the Military Services. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements and/or live testimony that are in response to the stated agenda for the planned meeting in question.

Dated: March 27, 2009.

Patrica Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7295 Filed 4–1–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0022]

Proposed Collection; Comment Request

AGENCY: Headquarters Air Force Recruiting Service.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Air Force Recruiting Service announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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 or information technology.

DATES: Consideration will be given to all comments received June 1, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Headquarters Air Force Recruiting Service, AFRS/RSIS, 550 D Street West Suite 1, Randolph AFB, TX 78150–4526, or call Headquarters Air Force Recruiting Service Information System Division Systems Support Branch at 210–565–0447.

Title and OMB Number: Air Force Recruiting Information Support System (AFRISS); OMB control number 0701–0150.

Needs and Uses: Air Force Recruiting Service requires the collection of specific information on prospective Air Force enlistees (prospective Air Force enlistees include Active, Guard, and Reserve) entering the Air Force. The information is used to create the initial personnel record, prescreen and qualify enlistees fit for service and ultimately induction. The information is also collected to process security clearances and to record metrics to be used for demographics/market research and system performance.

Affected Public: Individuals 16 years and older interested in pursuing a career in the Air Force be it Active, Guard, and Reserve in the U.S. and abroad.

Annual Burden Hours: 1,386,413 hours.

Number of Respondents: 1,300,000.

Responses per Respondent: 1.

Average Burden per Response: Approximately 64 minutes.

Frequency: As needed. Contact is based on prospective interest in becoming an Air Force member.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

To furnish Active, Guard, and Reserve field recruiters an automated tool to create prospective Air Force enlistee application files for all recruiting accessions in officer, enlisted, and health professions. AFRISS provides comprehensive integration, interface, and standardization of all programs that manage personnel resources in support of Air Force recruiting. The system extends automated capabilities out to the individual recruiter, flight, squadron, and groups. It provides an automated interface to the Military Entrance Processing Center Station (MEPS) where applicants undergo physical, testing, verification interviews, and tentative job reservation. It will provide an automated interface to the Modernized Military Personnel System (MilMod) where only pertinent and required applicant information is placed in a permanent military system of record. It also provides reporting capabilities at all levels of Air Force Recruiting management to make informed decisions on recruiting business rules and practices to increase the number of accessions.

March 27, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7388 Filed 4–1–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2008–0021]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 4, 2009.

Title, Form, And Omb Number: Community College of the Air Force Alumni Survey, OMB Control Number 0701–0136.

Type of Request: Extension.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 167.

Needs and Uses: The information collection requirement is necessary to determine how effectively the institution is meeting its mission and also identify areas needing improvement. Survey results will provide data on the usefulness and acceptance of the Community College of the Air Force degree in the civilian sector. Documenting the institution's

effectiveness is also required to maintain the Community College of the Air Force's regional accreditation.

Frequency: Biennial.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated; March 27, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7390 Filed 4–1–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Final Supplemental Environmental Impact Statement for the Nourishment of 25,000 Feet of Beach in Topsail Beach, Pender County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, from the Town of Topsail Beach to conduct a one-time interim beach fill project to protect oceanfront development and infrastructure until such time that a Federally authorized shore protection project can be implemented. The Corps has prepared a Final Supplemental Environmental Impact Statement (FSEIS) in accordance with the National Environmental Policy Act (NEPA). This FSEIS was developed as a supplement to the West Onslow Beach and New River Inlet (Topsail Beach), NC, General Reevaluation Report (GRR) and Environmental Impact Statement (EIS) (USACE, 2008) prepared by the Wilmington District Corps of Engineers (USACE or the Corps) to evaluate resources and environmental considerations involved with the proposed Federal Beach nourishment project. The purpose of this supplement is to fully evaluate the potential impacts of the private action proposed as an addition to the Federal Project and to evaluate alternatives to the proposed action. The private action is proposed to respond to current, substantial erosion occurring along the oceanfront shoreline of the Town of Topsail Beach, NC. While Federal budget priorities have made it difficult to obtain funds for civil works projects in general and beach protection projects in particular, the projected earliest construction date for the Federal project is 2012. State and agency review and comment on Final GRR and EIS were completed in summer 2008. The Recommended Plan outlined in the Final GRR and EIS includes use of all the identified borrow sites over the next 50 years pending further investigations during the development of detailed plans and specifications. Given the current status of the GRR–EIS and the need for Congressional authorization, funding, preparation of plans and specifications, and right-of-way acquisition, the Federal project may not be implemented until Fiscal Year 2012, or possibly later. Accordingly, the Town of Topsail Beach would like to construct an interim beach fill project to protect its development and infrastructure during the period between now and the time the Federal project is constructed. In order to account for any possible delays in the construction of the Federal project, a construction date of 2016 was used in the development of the alternatives and economic analysis for the interim project. This would maintain the baseline conditions described in the Final GRR and FSEIS.

ADDRESSES: Copies of comments and questions regarding the FSEIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number SAW–2006–40848–071, Post Office Box 1890, Wilmington, NC 28402–1890.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and FSEIS can be directed to Mr. Dave Timpy, Wilmington Regulatory Field Office, telephone: (910) 251–4634.

SUPPLEMENTARY INFORMATION: 1. Project Description. The proposed project would be constructed as a one-time nourishment event that would protect oceanfront homes and the Town's infrastructures until the Federal project (West Onslow Beach and New River Inlet [Topsail Beach]) is constructed. The Applicant's Preferred Alternative is to place fill material within the oceanfront section of the Town located between Godwin Avenue on the south to a point 610 m (2,000 ft) northeast of Topsail Beach/Surf City town limits, southeast along a total ocean shoreline length of approximately 7.6 km (~ 4.7 mi). The proposed fill design consists of three sections: A 305 m (1,000 ft) transition on the south starting at a point opposite Godwin Avenue; a 6,700 m (22,000 ft) main fill section that extends to the Topsail Beach/Surf City town limits; and a 610 m (2,000 ft) northern transitional taper to the point of intersection with the existing beach. The main fill would consist of a horizontal berm constructed to an elevation of +1.8 m (6 ft) NAVD (+2.1m [7 ft] NGVD). The in-place volume of the beach fill could range from 800,000 cy to 975,000 cy. The applicant's preferred borrow area, Borrow Area X, is located offshore of New Topsail Inlet, an area which is not available for the construction of the Federal project due to its location within an area designated by the Coastal Barrier Resources Act (CBRA), more commonly known as a CBRA zone. Borrow Area X is also located landward of the 3-mile State territorial limit and would not require permits from the U.S. Minerals Management Service (MMS).

The proposed construction for the one-time beach fill is scheduled to occur within the environmental dredging window of November 16, 2009 through March 31, 2010.

Borrow Area X has been modified throughout the Project Delivery Team (PDT) process in an effort to avoid and minimize potential impacts to Essential Fish Habitat (EFH) (Figure 1). The original footprint of Borrow Area X including all five cuts was 151 acres. In

response to concerns of the resource agencies the applicant modified Borrow Area X to relocate the landward edge of the borrow area further seaward to minimize any potential modification to the ebb tidal delta of New Topsail Inlet and the adjacent oceanfront and estuarine shorelines. The modified impact area within Borrow Area X was reduced to 127 acres, and minimized the proposed EFH impacts by 24 acres.

A summary of the modifications to Borrow Area X include: (1) The landward cuts (cuts one (1) and two (2)) have been eliminated, (2) the landward edge of cut three (3) has been moved 100 feet seaward in order to further avoid and minimize potential impacts to the ebb-tidal delta, and (3) cut six (6) has been added seaward of cut three (3) to account for the loss of volume. Cut six contains 126,950 cy of beach compatible sand which would result in a net loss of 42,566 cy from Borrow Area X. The total volume of material in Borrow Area X once modifications are taken into account totals 1,583,236 cy. However, the volume needed to maintain the design beach fill totals 1,286,000 cy.

Geotechnical Investigations. The offshore sand search investigations included bathymetric surveys, sidescan sonar surveys, seismic surveys, cultural resource surveys, vibracore collection and analysis, and ground-truth diver surveys to verify existence or non-existence of hard bottoms. The results of the offshore investigations coupled with the compatibility of the sand resource area, native beach sand, and Essential Fish Habitat (EFH) were used to define the selected borrow area. The applicants preferred borrow area, Borrow Area X, was further modified to reflect resource agency comments. All sediment compatibility assessments were based on State of North Carolina sediment compatibility standards that went into effect in February 2007.

Beach Fill Surveys & Design. Typical cross-sections of the beach along the Topsail Beach project area was surveyed. Nearshore profiles will extend seaward to at least the 30-foot NAVD depth contour. The total volume of beach fill to be placed in front of the existing development and infrastructure will be based on an evaluation of erosion of the project area from 2002 through the expected construction date of the Federal project. Additional offshore and inshore data for Lea/Hutaff Island were also obtained along the northern 5,000 feet of the island. This data was used in the evaluation of possible impacts associated with the removal of sediment from the selected offshore borrow area and for future impact evaluations following project implementation through the use of numerical modeling.

ENVIRONMENTAL RESOURCE COORDINATION & PERMITTING. The USACE prepared a General Reevaluation Report—Environmental Impact Statement (GRR–EIS) for the larger Federal shore protection project (June 2006). The Final GRR and EIS were released for public and agency review and comment in the summer of 2008. The interim beach fill project will be subject to Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act and the North Carolina's State Environmental Policy Act (SEPA).

Preliminary coordination with the USACE—Wilmington District resulted in a determination that a Department of the Army Individual Permit will be needed for project compliance with Sections 10 and 404. Similarly, coordination with the North Carolina Division of Coastal Management (NCDCM) determined that the project would require evaluation through SEPA. A Major Permit under the Coastal Area Management Act was issued by the North Carolina Division of Coastal Management on February 27, 2009.

2. Issues of particular concern. There are several potential environmental issues that are addressed in the FSEIS. Additional issues may be identified during the public review process. Issues initially identified as potentially significant include:

a. Potential impact to marine biological resources (benthic organisms, passageway for fish and other marine life) and Essential Fish Habitat (EFH), particularly hardbottoms.

b. Potential impact to Federally threatened and endangered marine mammals, birds, fish, and plants.

c. Potential impacts to water quality.

d. Potential increase in erosion rates to adjacent beaches.

e. Potential impacts to navigation, commercial and recreational.

f. Potential impacts to private and public property.

g. Potential impacts on public health and safety.

h. Potential impacts to recreational and commercial fishing.

i. The compatibility of the material for nourishment.

j. Potential economic impacts.

4. Alternatives. Several alternatives were considered for the proposed project. These alternatives were further formulated and developed during the scoping process and an appropriate range of alternatives, including the No Action and Non Structural alternative, are considered in the Final Supplemental EIS.

5. Scoping Process. Project Delivery Team meetings were held to receive comments and assess concerns regarding the appropriate scope and preparation of the FSEIS. Federal, State, and local agencies and other interested organizations and persons participated in these Project Delivery Team meetings.

The COE also consulted with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act and Endangered Species Act. The FSEIS has been revised in accordance with the comments submitted by these agencies. Additionally, the FSEIS has assessed the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and is being coordinated with NCDCM to determine the projects consistency with the Coastal Zone Management Act.

6. Availability of the Final Supplemental EIS (FSEIS). The FSEIS has been published and circulated, and is available for review at the office of U.S. Army Corps of Engineers, Wilmington District, Regulatory Division Office located at 69 Darlington Avenue, Wilmington, North Carolina.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–7380 Filed 4–1–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Cancellation of Partially Closed Meeting of the Secretary of the Navy Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Secretary of the Navy Advisory Panel hereby cancels its notice to receive ethics training and discuss top areas of concern that the Secretary of the Navy should address, as published in the **Federal Register**, March 18, 2009 (74 FR number 50), page 11358.

FOR FURTHER INFORMATION CONTACT: Colonel Caroline Simkins-Mullins, SECNAV Advisory Panel, Office of Program and Process Assessment, 1000 Navy Pentagon, Washington, DC 20350, telephone: 703–697–9154.

Dated: March 27, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–7368 Filed 4–1–09; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Proposal To Amend Fees for the Review of Projects in Accordance With Section 3.8 and Article 10 of the Delaware River Basin Compact

AGENCY: Delaware River Basin Commission (DRBC).

ACTION: Notice of public hearing.

SUMMARY: The DRBC will hold a public hearing during its regularly scheduled business meeting to hear comment on a proposal to amend the Commission's fees for the review of projects in accordance with Section 3.8 and Article 10 of the Delaware River Basin Compact. Existing project review fees are proposed to be increased, effective July 1, 2009, for the first time since June of 2003. The increases are needed in order to partly close a significant gap between annual project review fee revenue and the cost of the Commission's project review function.

DATES: All comments must be received on or before the close of the public hearing on May 6, 2009. The hearing will commence at 1:30 p.m. and is expected to end by 2:30 p.m., but will continue until all those who wish to comment have had an opportunity to do so. The Commission would appreciate receiving written comments in advance of the hearing date in order to have an opportunity to review them prior to the hearing.

ADDRESSES: The public hearing will be held in the Goddard Room of the Commission's office building at 25 State Police Drive in West Trenton, New Jersey. Mail written comments to Ms. Paula Schmitt, Delaware River Basin Commission, P.O. Box 7360, 25 State Police Drive, West Trenton, NJ 08628–0360; fax to Attn: Paula Schmitt, Delaware River Basin Commission, 609–883–9500 ext. 224; or send electronic submissions to *paula.schmitt@drbc.state.nj.us.* See **SUPPLEMENTARY INFORMATION** for proper labeling of submissions.

SUPPLEMENTARY INFORMATION:

Current Fee Schedule. The Commission's current fee schedule for the review of projects in accordance with Section 3.8 and Article 10 of the Delaware River Basin Compact is set forth in Resolution No. 2005–1 as amended (also, ''schedule'' or ''current fee schedule''), which is posted on the Commission's Web site at *http://www.state.nj.us/drbc/Res2005–1rev.pdf.* Numbered paragraph 3 of the schedule (''paragraph 3'') contains a matrix that establishes review fees based on total project cost. Fees set forth in the matrix range from $250 for publicly sponsored projects costing $250,000 or less to a maximum of $50,000 for a public or private project costing over $10,000,000. Project review fees calculated in accordance with the matrix are doubled for projects resulting in out-of-basin diversions. In addition to the fees calculated in accordance with the matrix in paragraph 3, the current fee schedule provides in relevant part for the following: (a) Fees of $250 and $500 respectively for the review of project renewals involving no substantial revisions or modifications (par. 4); (b) a fee of $500 for the transfer of a docket upon a change of ownership (par. 6); (c) and an incremental charge of $1,000 for the review of any renewal application submitted less than 120 calendar days in advance of the docket expiration date (or after such other date specified in the docket or permit for filing a renewal application) (par. 12).

Proposed Fee Schedule. The matrix in paragraph 3 of the current schedule is proposed to be revised as follows: For projects costing $250,000 or less, the proposed fee is $500 for publicly sponsored projects (increased from $250) and $1,000 for privately sponsored projects (increased from $500). For all projects costing between $250,001 and $10,000,000, the proposed fee is 0.4 percent (increased from 0.2 percent) of project cost. The review of projects costing over $10,000,000 is proposed to carry a revised fee of 0.4 percent of project cost (increased from 0.2 percent) up to the first $10,000,000 plus 0.12 percent of project cost (increased from 0.06 percent) above $10,000,000, not to exceed $75,000 (increased from $50,000). Fees calculated in accordance with the revised matrix will continue to be doubled for projects resulting in out-of-basin diversions. In addition to the fees calculated in accordance with the matrix in paragraph 3 as revised, the proposed revised fee schedule includes: (a) Fees of $500 and $1,000 respectively for the review of public and private project renewals involving no substantial revisions or modifications (increased from $250 and $500 respectively) (par. 4); (b) a fee of $1,000 for the transfer of a docket upon a change of ownership (increased from $500) (par. 6); and (c) an incremental charge of $2,000 for the review of any renewal application submitted less than 120 calendar days in advance of the docket expiration date (or after such other date specified in the docket or permit for filing a renewal application) (increased from $1,000) (par. 12).

Other Aspects Unchanged. With minor exceptions, including the deletion of paragraphs for which the applicable dates have passed, other aspects of the Commission's current project review fee schedule will remain unchanged, including but not limited to provisions of current paragraph 4 allowing the Executive Director to determine the fee for review of a project revision not involving an increase in costs; and paragraph 8, authorizing the Executive Director to impose, in addition to the initial project review fee, a fee in an amount equal to up to 100 percent of project review costs deemed by the Executive Director to be exceptional.

Basis for Proposed Increases. The proposed fee increases are needed to address significant revenue shortfalls and maintain adequate levels of service in reviewing projects in accordance with Section 3.8 and Article 10 of the Delaware River Basin Compact. The annual average sum of project review fees collected by the DRBC in Fiscal Years 2005 through 2008 was approximately half the annual cost of the project review function to the agency.

Copy of Proposed Revised Fee Schedule. A copy of this notice, along with the proposed revised fee schedule with changes noted, can be viewed on the Commission's Web site, *drbc.net.*

Effective Date. The revised fee schedule is proposed to become effective on July 1, 2009, the first day of the Commission's 2010 fiscal year.

Labeling of Written Submissions. Please use ''Project Review Fee Changes'' in the subject line for all written submissions.

FOR FURTHER INFORMATION CONTACT: Pamela M. Bush, Commission Secretary and Assistant General Counsel, DRBC, 609–883–9500 ext. 203, *pamela.bush@drbc.state.nj.us*, or Chad Pindar, Project Review Supervisor, 609–883–9500 ext. 204, *chad.pindar@drbc.state.nj.us.*

Dated: March 27, 2009.

Pamela M. Bush,

Commission Secretary & Assistant General Counsel.

[FR Doc. E9–7447 Filed 4–1–09; 8:45 am]

BILLING CODE 6360–01–P

DENALI COMMISSION

Fiscal Year 2009 Revised Draft Work Plan

AGENCY: Denali Commission.

ACTION: Denali Commission fiscal year 2009 revised draft Work Plan request for comments.

SUMMARY: The Denali Commission (Commission) is an independent Federal agency based on an innovative Federal-State partnership designed to provide critical utilities, infrastructure and support for economic development and in training in Alaska by delivering Federal services in the most cost-effective manner possible. The Commission was created in 1998 with passage of the October 21, 1998 Denali Commission Act (Act) (Title III of Pub. L. 105–277, 42 U.S.C. 3121). The Denali Commission Act requires that the Commission develop proposed work plans for future spending and that the annual Work Plan be published in the **Federal Register**, providing an opportunity for a 30-day period of public review and written comment.

This **Federal Register** notice serves to announce the 30-day opportunity for public comment on the Denali Commission revised draft Work Plan for Federal fiscal year 2009.

DATES: Comments and related material must be received by May 3, 2009.

ADDRESSES: Submit comments to the Denali Commission, Attention: Adison Smith, 510 L Street, Suite 410, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Adison Smith, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. Telephone: (907) 271–1414. E-mail: *asmith@denali.gov*.

Introduction: Rural Alaska is an American treasure. Scattered across vast tundra, tucked away along rugged coastlines and forests and deep within Alaska's Interior, people living in over 300 communities raise families, educate their children, and work to provide opportunities for all. Alaska Native people rely heavily on subsistence hunting, fishing and gathering as a central part of both culture and economic sustenance. Values of sharing, love of family and country and traditional cultures run deep.

Rural Alaska still resembles the United States at the time of Lewis & Clark. Major rivers are undammed, unbridged and lack even basic navigational aids. Many health and social indicators still resemble those in developing countries.

No where else in our country can people live amidst wilderness, largely disconnected from highway and road connections and from regional power grids. Here, resilience and innovation are required both to survive and thrive. Reliance on air and river transportation is essential for everyday living. And where else in the country would women, in their third trimester of pregnancy, be required to fly into a regional center and wait to have their babies safely delivered, given the lack of local medical facilities?

The Denali Commission has now invested over a billion dollars in ten years on basic infrastructure projects at the local level. We know lives have been improved through greater access to primary health care, through safe and reliable energy projects, through job training programs, sanitation and landfill improvements and basic surface and water transportation improvements. We know the taxpayer benefits from an emphasis on coordinating the planning, construction and delivery of capital projects and through a focus on sustainability.

However, for the first time in nearly ten years the Commission's annual appropriations have been significantly reduced. As a result the Commission will be able to fund fewer critical infrastructure projects in the most remote communities, have limited resources to fund economic and workforce development initiatives, and be forced to make challenging program and policy decisions regarding the prioritization of projects that are critical foundations of community viability and sustainability.

At the same time we see innovation everywhere. The regional corporations formed by the Alaska Native Claims Settlement Act, for example, are becoming economic powerhouses in their own rights. Major investments in private-sector anchors in each region complement the Commission's work in basic community infrastructure. Many regional non-profit corporations provide an array of effective health and social services. The Alaska Marketplace competition, now in its fourth round, proves again that local people have great ideas and with a small infusion of capital and technical assistance, have real potential for making positive and lasting change. The Community Development Quota program, for example, offers opportunities for residents in over 60 coastal communities to benefit directly from offshore fishing revenues.

We are buoyed by the sense of progress over the last ten years, at the resurgence of traditional culture, by the progress in celebrating diversity at all levels and by the awareness among leaders to reduce dependency on government and eliminate social ills that seem to come with long winters and isolation found in northern countries. We take delight in working with many progressive and innovative partners, grant recipients and local champions whose leadership and inspiration is critical for village survivability.

We are alarmed, however, at the recent convergence of several issues which threaten the survival of many Alaskan communities and provide urgent impetus for the Commission to improve our investment strategies. These issues include the impacts of climate change, unpredictable and unaffordable energy costs at the village level, the expectation of declining Federal revenues to support rural investment in Alaska, evidence of out-migration from many small communities into larger regional centers and Anchorage, and the urgent need to find regional and systemic solutions to bolster long-term community viability. The global financial crisis will also strain an already thin social service delivery system and bring other consequences yet unseen.

The following are some of the pressing issues which frame the debate over the Denali Commission's FY09 Work Plan:

Climate Change

Evidence is now overwhelming that climate change is impacting Alaska and the north faster than elsewhere in the nation. Temperatures have been rising, plant and animal species have been moving north, and permafrost is melting, resulting in major challenges for all infrastructure programs. Denali Commission funded wind turbines, for example, are major engineering challenges for successfully placing a vertical wind tower in a permafrost setting. The Denali Commission is committed to participating fully with the State of Alaska, the Corps of Engineers and other partners in a coordinated approach to policy formulation and the execution of adaptation measures for climate change.

The most immediate challenge is the urgent need to protect and relocate many coastal communities impacted by the lack of sea ice, the repetition of major storm events, flooding and erosion of coastlines. While Congress provides no funds to the Commission to support relocation efforts, we coordinate closely with other agencies and Tribes. Our interagency Planning Work Group, for example, oversees relocation efforts in several communities, and the Commission funded a relocation community plan last year.

Unaffordable Energy at the Local Level

We recognize the urgent need to find breakthrough solutions to the widespread unaffordable energy costs in Alaska's rural communities. One study reveals that rural residents earning the lowest 20% of income spend almost half that income on home heating and electricity!

While the Commission's energy strategy remains a combination of completing bulk fuel and power system upgrades, an emphasis on conservation and energy efficiency projects and renewable energy, we continue to look for breakthrough solutions that can be replicated. We'll also focus on pursuing regional grids that can reduce the need for stand-alone generation in Alaska's small villages. We remain a strong partner as the State of Alaska prepares an overall Energy Plan for submission to the Alaska State Legislature this session.

Green Building Design and Construction Cost Containment

High construction costs in rural Alaska result from a combination of vast distances, harsh climates and the rising cost of construction materials. We are committed to carrying out innovative, cost-effective and creative design and construction solutions. This year we anticipate engaging in more diverse and experimental partnerships, and we'll be seeking more innovative design, construction and program and project management practices. We may alter or enhance our normal project scopes to allow for greater energy efficiencies. We anticipate undertaking several pilot projects focusing on green design, cost containment and the combined use of facility activities.

A Focus on Community, Regional Planning and Government Coordination

The Commission is committed to a greater emphasis on community and regional planning to ensure long-term viability of our infrastructure investments. Last year, we worked with the State of Alaska, for example, to help reopen a Tribal clinic that had closed its doors for lack of capacity. This may be the first instance of a Denali Commission project which had suspended service. Through our efforts in government coordination, we work to ensure our projects fit within a framework of a local and regional plan, and are designed, sized and placed in the most optimum locations and setting for long-term success.

Background: The Commission's mission is to partner with Tribal, Federal, State, and local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to develop a well-trained labor force employed in a diversified and sustainable economy, and to build and ensure the operation and maintenance of Alaska's basic infrastructure.

By creating the Commission, Congress mandated that all parties involved partner together to find new and innovative solutions to the unique infrastructure and economic development challenges in America's most remote communities.

Pursuant to the Denali Commission Act, as amended, the Commission determines its own basic operating principles and funding criteria on an annual Federal fiscal year (October 1 to September 30) basis. The Commission outlines these priorities and funding recommendations in an annual Work Plan.

The Work Plan is adopted on an annual basis in the following manner, which occurs sequentially as listed:

- Commissioners first provide a draft version of the Work Plan to the Federal Co-Chair.
- The Federal Co-Chair approves the draft Work Plan for publication in the **Federal Register** providing an opportunity for a 30-day period of public review and written comment. During this time the draft Work Plan is also disseminated widely to Commission program partners including, but not limited to the Bureau of Indian Affairs (BIA), the Economic Development Administration (EDA), and the United States Department of Agriculture—Rural Development (USDA–RD).
- Public comment concludes and Commission staff provides the Federal Co-Chair with a summary of public comment and recommendations, if any, associated with the draft Work Plan.
- If no revisions are made to the draft the Federal Co-Chair provides notice of approval of the Work Plan to the Commissioners, and forwards the Work Plan to the Secretary of Commerce for approval; or, if there are revisions the Federal Co-Chair provides notices of modifications to the Commissioners for their consideration and approval, and upon receipt of approval from Commissioners, forwards the Work Plan to the Secretary of Commerce for approval.
- The Secretary of Commerce approves the Work Plan.

The Work Plan authorizes the Federal Co-Chair to enter into grant agreements, award grants and contracts and obligate the Federal funds identified by appropriation below.

Written public comments regarding the FY09 Revised Draft Work Plan may be submitted via e-mail, fax or hard copy to the following by Close of Business (COB) May 3, 2009: Ms. Adison Smith, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. *asmith@denali.gov*. *Phone*: 907.271.1640. *Fax*: 907.271.1415.

FY 09 Appropriations Summary

The Omnibus Bill was approved by Congress on March 10, 2009, and was signed by President Obama on March 11, 2009. The Omnibus Bill provides significantly different appropriations to the Commission then the FY09 Continuing Resolution, which the first draft of the FY09 Work Plan was based on.

The Denali Commission has historically received several Federal funding sources. These fund sources are governed by the following general principles:

- In FY 2009 no project specific earmarks were defined.
- Energy and Water Appropriations (commonly referred to as Commission ''Base'' funding) are eligible for use in all programs, but have historically been used substantively to fund the Energy Program.
- The Energy Policy Act of 2005 established new authorities for the Commission's Energy Program, with an emphasis on renewable and alternative energy projects. No new funding accompanied the Energy Policy Act, and prior fiscal year Congressional direction has indicated that the Commission should fund renewable and alternative Energy Program activities from the available ''Base'' appropriation.
- All other funds outlined below may be used only for the specific program area and may not be used across programs. For instance, Health Resources and Services Administration (HRSA) funding, which is appropriated for the Health Facilities Program, may not be moved to the Economic Development Program.

Final transportation funds received may be reduced due to agency modifications, reductions and fees determined by the U.S. Department of Transportation. Final program available figures will not be provided until later this spring.

Final USDA–Rural Utility Services (RUS) funds received may be reduced based on the amount made available to the Commission. Historically, the Commission has received ~50% of the total RUS funds available nationally. This year RUS is receiving $17.5 MM for the national program, and the Commission is using historic funding

percentages to provide the appropriations and program available estimate for RUS in the FY09 Work Plan and funding chart below. Final RUS figures will not be provided until later this spring.

All Energy and Water Appropriation (Base) funds, including operational funds, designated as ''up to'' may be reassigned to the Legacy Energy program (Bulk Fuel and Rural Power System Upgrades (RPSU)) if they are not fully expended in a program component area.

All U.S. Department of Health and Human Services—Health Resources and Services Administration (HRSA) funds designated as ''up to'' may be reassigned to the primary care clinic program if they are not fully expended in a program component area.

The figures appearing in the table below include an administrative deduction of 5%, which constitutes the Commission's 5% overhead. In instances where the overhead differs from the 5% it is due to the requirements related to that appropriation. For example, USDA—Rural Utilities Services (RUS) funding is limited to 4% overhead.

The table below provides the following information, by fund source:

• *Total FY 09 Budgetary Resources provided in the Omnibus Bill:*

These are the figures that appear in the rows entitled ''FY 09 Appropriation'' and are the original appropriation amounts which do not include Commission overhead deductions. These funds are identified by their source name (*i.e.*, ''Energy and Water Appropriation; USDA, Rural Utilities Service, etc.). The grand total, for all appropriations appears at the end of the chart.

• *Total FY 09 Program Available Funding*

These are the figures that appear in the rows entitled ''FY 09 Appropriations—Program Available'' and are the amounts of funding available for program(s) activities after Commission overhead has been deducted. Traditionally, the Commission's overhead rate has been limited to 5%, except in the case of RUS funds, where it is limited to 4%. The following appropriations language for the Base funds in FY09 allows the Commission to retain more than 5% of the Base for operational activities as it deems appropriate and prudent: ''* * * not withstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998.'' The grand total, for all program available funds appears at the end of the chart.

• *Program Funding*

These are the figures that appear in the rows entitled with the specific Program and Sub-Program area, and are the amounts of funding the Revised Draft FY09 Work Plan recommends, within each program fund source for program components.

• *Subtotal of Program Funding*

These are the figures that appear in the rows entitled ''subtotal'' and are the subtotals of all program funding within a given fund source. The subtotal must always equal the Total FY 09 Program Available Funding.

Denali Commission FY09 Funding Table	Totals
FY 09 Energy & Water Appropriation	$11,800,000
For expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary and other expenses, $11,800,000, to remain available until expended, notwithstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998.	
FY 09 Energy & Water Appropriations (''Base'')—Program Available (less Commission overhead—not limited to 5% in FY09 and designated as ''up to'')	8,800,000
Energy Program: bulk fuel, RPSU, etc.	5,800,000
Energy Program: alternative & renewable energy	850,000 (up to)
Pre-Development Program	150,000
Teacher Housing & Health Professional Housing Program: design & construction	1,500,000
Economic Development Program: various	250,000 (up to)
Healthcare Infrastructure Initiatives	250,000 (up to)
sub-total $	8,800,000
FY 09 USDA, Rural Utilities Service (RUS)—Estimate	8,925,000
FY 09 USDA—Rural Utilities Service (RUS)—Program Available (less 4% overhead)—Estimate	8,568,000
Energy Program: high cost energy communities	8,568,000
sub-total $	8,568,000
FY 09 Trans Alaska Pipeline Liability (TAPL) Trust	5,830,940
FY 09 Trans Alaska Pipeline Liability (TAPL)—Program Available (less 5% overhead) ESTIMATE	5,539,393
Energy Program: bulk fuel	5,539,393
sub-total $	5,539,393
FY 09 DHHS—Health Resources & Services Administration (HRSA)	19,642,000
Provided further, that of the funds provided, $19,642,000 shall be provided to the Denali Commission as a direct lump payment pursuant to Public Law 106–113.	
FY 09 DHHS—Health Resources & Services Administration (HRSA)—Program Available (less 5% Commission overhead)	18,659,900
Health Program: Primary Care Clinics—Design, Planning, and Construction	14,758,102
Health Program: Behavioral Health	1,017,831 (up to)
Health Program: Primary Care in Hospitals	1,526,746 (up to)
Health Program: Elder Housing/Assisted Living Facilities—Construction	1,357,221 (up to)
sub-total $	18,659,900
FY 09 US Department of Labor (DOL)	3,378,000
There is authorized to be appropriated such sums as may be necessary to the Denali Commission through the Department of Labor to conduct job training of the local workforce where Denali Commission projects will be constructed. $3,378,000 for the Denali Commission, which shall be available for the period July 1, 2009 through June 30, 2010.	
FY 09 US Department of Labor (DOL)—Program Available (less 5% Commission overhead)	3,209,100

Denali Commission FY09 Funding Table	Totals
Training Program: Various	3,209,100
sub-total $	3,209,100
FY 09 Federal Transit Administration (FTA)—Estimate	$5,000,000
$5,000,000 from section 3011 (FTA) for docks and harbors;	
FY 09 Federal Highway Administration (FHWA)—Estimate	21,900,000
For necessary, expenses for the Denali Access System Program as authorized under Section 1960 of Public Law 109–59, $5,700,000, to remain available until expended and $4,800,000 from section 1934 (FHWA) for docks and harbors; and $11,400,000 from section 1960 (FHWA) for Denali Access System Program.	
FY 09 Transportation—Program Available (less 5% Commission overhead)—Estimate	25,555,000
Transportation Program: Docks & Harbors	5,000,000
Transportation Program: Roads	20,555,000
sub-total $	25,555,000
FY 09 USDA, Solid Waste	434,000
There is hereby appropriated $434,000 to remain available until expended for the Denali Commission to address deficiencies in solid waste disposal sites which threaten to contaminate rural drinking water supplies.	
FY 09 USDA—Solid Waste—Program Available (less 5% Commission overhead)	412,300
Solid Waste Program: planning, design and construction	412,300
sub-total $	412,300
TOTAL FY 09 Appropriations—Estimate	76,909,940
TOTAL FY 09 Program Available—Estimate	70,743,693

FY 09 Program Details & General Information

The following section provides narrative discussion, by each of the Commission Programs identified for FY09 funding in the table above, in the following categories:

- Program History and Approach.
- Applicant/Grant Process.
- Program Project Selection Process.
- Program Policy Issues (as Applicable).

In addition to the FY 09 funded program activities; the last section of the narrative provides an update on the Commission's Government Coordination Program. The Program is not funded by Commission appropriations, but is an integral component of the Commission's mission, the success of other programs, and the legacy of the Commission's work in Alaska.

The final section also includes a general summary of other program and policy issues facing the Commission, statements of support by the Commission for the funding requests and activities of other program partners which the Commission works in partnership with, and detail regarding the Commission's evaluation and reporting efforts.

Government Coordination

The Commission is charged with the special role of increasing the effectiveness of government programs by acting as a catalyst to coordinate the many Federal and State programs that serve Alaska. In FY09 the Commission will continue its role of coordinating State and Federal agencies and other partner organizations to accomplish its overall mission of developing Alaska's communities. Particular focus will be given to the collaborative efforts of the Commission's Federal and State Memorandum of Understanding (MOU) and the various workgroups and planning sessions and forums that occur as a result of the MOU meetings. The Commission intends to engage, along with MOU members, in regional forums in FY09. These sessions will be regionally focused, and will provide regional partners and community members with an opportunity to discuss projects successes, failures and opportunities, and provide direct feedback to the Commission and other funding organizations regarding their policies and funding processes.

Energy Program

The Energy Program is the Commission's oldest program and is often identified, along with the Health Program, as a ''legacy'' program. The Program focuses on bulk fuel facilities (BFU) and rural power system upgrades/power generation (RPSU) across Alaska. The purpose of this program is to provide code-compliant bulk fuel storage and reliable and efficient electrification throughout rural Alaska, especially for communities ''off the grid'' and not accessible by road or rail.

The needs in the bulk fuel and power generation projects are presently estimated at $250 million and $135 million, respectively. The Commission has also funded a very successful program of competitively selected energy cost reduction and alternative energy projects. In three completed rounds of funding, approximately $6 million in grant funds have leveraged $8.1 million in participant funding, with estimated life-cycle cost savings (generally diesel fuel avoided over the life of the project) of $29 million.

The Energy Policy Act of 2005 established new authorities for the Commissions Energy Program, with an emphasis on alternative and renewable energy projects, energy transmission, including interties, and fuel transportation systems. Although the 2005 Energy Policy Act did not include specific appropriations, the Commission is expected to carry out the intent of the Act through a portion of its ''Base'' funding. To date, the Commission has co-funded a number of renewable projects, including hydroelectric facilities, a geothermal power plant, a biomass boiler, and a number of diesel-wind power generation systems. The FY09 Work Plan outlines a strategy to balance the Energy Program in both legacy and renewable systems, providing up to $850,000 for alternative and renewable projects. About 94% of electricity in rural communities which receive Power Cost Equalization (PCE) payments is produced by diesel and about half the fuel storage in most villages is used for the power plants. Any alternative means of generating power can reduce the capacity needed for fuel storage. This reduces capital costs and operations and maintenance (O&M) and repair and renovation (R&R) costs for fuel storage facilities and may

reduce the cost of power to the community.

The Energy Program has historically used a ''universe of need'' model to determine project and program funding. Specifically, the Program is focused on using the existing statewide deficiency lists of bulk fuel facilities and power generation/distribution systems to prioritize project funding decisions. A program partnership model is utilized for project management and partners are actively involved in the design and construction of projects. Partners coordinate project funding requests with the Commission to balance the relative priority or urgency of bulk fuel and power generation needs against available funding, readiness of individual communities and project participants for the project(s), and capacity of the partners to carry out the work. Communities are identified by partners and through the deficiency list process. Legacy program (RPSU, bulk fuel) projects are selected and reviewed by Commission staff and program partners. Thus, a renewable project sometimes is proposed in conjunction with a deficiency list project to reduce the dependence on diesel fuel, and the concomitant fuel storage requirements. So too, an intertie, can remove the need for a new power plant, and reduce fuel storage requirements in the intertied communities. Therefore, the legacy program may also include these types of energy infrastructure. Each community and project must be evaluated holistically. Program partners also perform initial due diligence and Investment Policy screenings, as well as assisting in development of the business plans for the participants as the designs are underway. The Program is dynamic: Priorities fluctuate throughout the year based on design decisions, due diligence and investment policy considerations, site availability, the timing of funding decisions, etc.

The Energy Program anticipates the revised Commission policy document, which was adopted in November of 2008, will impact the current project prioritization and development process. Specifically the Investment Guidance section that promotes regional planning and prioritizes regional or multi-community connectivity versus stand alone projects, evaluates similar infrastructure projects in communities with populations less than 100 residents, and prioritization of projects that include a cost share match. The policies will change the development and design of several communities on the Bulk Fuel Upgrade and Rural Power System Upgrade needs lists which meet the definition of having ''stand alone facilities'' and/or ''under 100 residents''. Projects that meet these definitions will require communities and partner organizations to develop multi-community solutions (*i.e.* Interties, cooperative management or regional management) before construction can proceed. This may lead to delays in projects on the needs list or projects not being constructed in several communities. Historically, the Bulk Fuel and Rural Power System Upgrade programs have had no cost share match requirements, under the new policy projects with cost share will be prioritized over projects without.

In 2008 the Commission completed a study on intertie/transmission lines between communities, regions and statewide. The study summarized the vast amount of research, planning and studies that have occurred to date and identified the policy and economic considerations for investment in intertie infrastructure. The program will continue to support projects where connections via intertie are feasible. The program will also be further defining the role of the Denali Commission in intertie planning, development and execution statewide as recommended in the study.

Health Facilities Program

The Denali Commission Act was amended in 1999 to provide for the ''planning, constructing and equipping of health facilities.'' Since 1999, the Health Facilities Program has been methodically investing in the planning, design and construction of primary care clinics across Alaska.

Primary care clinics have remained the ''legacy'' priority for the Program. However, in 2003 the ''Other Than'' primary care component of the Program was adopted in response to Congressional direction to fund a mix of other health and social service related facility needs. Over time, the Program has developed Program sub-areas such as Behavioral Health Facilities, Domestic Violence Facilities, Elder Housing, Primary Care in Hospitals, Emergency Medical Services Equipment and Hospital Designs. The FY09 Draft Work Plan emphasizes the priority of the Primary Care Clinic Program as the legacy program area, with the majority of funding dedicated to clinics.

The Program utilizes a ''universe of need'' model for primary care and a competitive selection process for other sub-program areas. In 1999 the Program created a deficiency list for primary care clinics, which totaled 288 communities statewide in need of clinic replacement, expansion and/or renovation. Currently, 110 clinics have been completed or are in construction and approximately 40 are in design.

The Program is guided by the Health Steering Committee, an advisory body comprised of the following membership organizations: the State of Alaska, Alaska Primary Care Association, the Alaska Native Tribal Health Consortium, the Alaska Mental Health Trust Authority, the Alaska Native Health Board, the Indian Health Service, the Alaska State Hospital and Nursing Home Association, the Rasmuson Foundation and the University of Alaska.

Projects are recommended for funding by Commission staff if they demonstrate project readiness, which includes the completion of all due diligence requirements. This includes an approved business plan, community plan, site plan checklist, completed 100% design, documentation of cost share match, and realistic ability to move the project forward in a given construction season.

The Health Facilities Program anticipates the Commission policy document, which was adopted in November 2008, will impact the clinic prioritization process, specifically for those communities located on the road system, and within proximity to one another, and for communities with populations less than 100. In 2008 the program identified small communities as an area for improvement in terms of cost containment and sustainability.

Consequently, for communities with populations of less than 100, only projects already in the pipeline have been proceeding while the Commission has funded pilot projects to design a more cost effective, potentially re-locatable clinic prototype to serve small communities. Finally, an emphasis on renovation over new construction has emerged as a means for overcoming high construction costs.

In addition to construction challenges, the health program has indicated that a major sustainability risk to health projects is workforce recruitment and retention. Recommendations on this challenge are made in the ''Other Issues'' section of the FY09 Work Plan.

Training Program

In a majority of rural communities unemployment rates exceed 50% and personal capita income rates are over 50% below the national average. When job opportunities in rural Alaska do become available, rural residents often lack the skills, licensing and certifications necessary to compete and often lose those jobs to people from outside the community, region or even

State. With the limited number of jobs available, the Commission believes it is imperative to ensure that local residents have the skills and essential certifications necessary to work on the construction of projects funded by the Denali Commission. Through the Training Program, the Commission builds sustainability into their investments by providing training for the long term management, operations and maintenance of these facilities and thus increasing local capacity and employment.

The Training Program's mission is to build a communities capacity through training and increase the employment and wages of unemployed or underemployed Alaskans. The Training Program's primary purpose is to support the Commission's investment by providing training for the careers related to the Commission infrastructure programs (such as Energy and Health Facilities).

The Training Program is also guided by the following principles:

- Priority on training for Denali Commission infrastructure, projects and priorities.
- Training will be tied to a job.
- Training for construction, operations and maintenance for other public infrastructure.
- Training will encourage careers not short term employment.

Each year, the Commission dedicates training funds to careers associated with infrastructure development and long-term sustainability in rural Alaska. The Commission has funded construction, operations and maintenance training in communities statewide with large success.

The Commission anticipates that the general priority areas of construction, operations and maintenance of Commission Projects; management training for Commission Projects; youth initiatives that support employability skills; and construction, operations and maintenance training of ''other public infrastructure'' will continue to be funded in FY09.

These projects are selected through a competitive Request for Grant Application (RGA) process with partners, and at the recommendation of Commission staff, and policy guidance and priority areas for funding are set by the Training Advisory Committee.

Transportation

Section 309 of the Denali Commission Act 1998 (amended), created the Commission's Transportation Program, including the Transportation Advisory Committee. The advisory committee is composed of nine members appointed by the Governor of the State of Alaska including the Chairman of the Denali Commission; four members who represent existing regional native corporations, native nonprofit entities, or Tribal governments, including one member who is a civil engineer; and four members who represent rural Alaska regions or villages, including one member who is a civil engineer.

The Transportation Program addresses two areas of rural Alaska transportation infrastructure, roads and waterfront development. There is a solid base of 114 projects underway, with the FY09 project nomination and selection process likely to add another 15 to 20 projects. Up to 10 projects currently in the design phase in the Commission program will also move to construction in FY09.

There is a consensus amongst agencies and communities that the Transportation Program is successfully addressing improvements to local and regional transportation systems. This is largely a function of the Transportation Advisory Committee's success at project selection and monitoring, and the success of the program's project development agencies.

The Transportation Program anticipates the adopted Commission policy document will impact the project selection process, specifically for those communities located within proximity to one another, and for communities with populations less than 100.

The program is generally a competitively-bid contractor or materials-based system grounded in Title 23 CFR. These strict project development and construction rules have presented some challenges to the Denali Commission's ability to respond quickly to targets of opportunity, but they have also had the positive effect of ensuring project design and construction is executed at a professional level. The program operates under a reimbursable payment system that requires local and State sponsors pay close attention to accounting procedures prior to their payments to contractors and vendors. This system helps ensure project payments are eligible when submitted to the Commission.

Four important trends are emerging as the program enters its fourth year of operations:

- Fewer project partners, with fully developed project development capabilities.
- Narrowing focus on core project types.
- Commission's use of State of Alaska General Funds to match Title 23 CFR funds.
- Preparation for Federal highway reauthorization legislation.

Project Partners

As the transportation program began its work in FY 2006, the Commission, responding to local and regional interests sought to encourage local sponsor project development through Tribal governments and regional non-profits, cities and boroughs, as well as traditional State and Federal transportation agencies.

Through experience, the level of project management oversight needed for small cities and Tribes to succeed in the Title 23 CFR environment is not sustainable under the limited personnel resources available to the Commission. Therefore, partnerships with State and Federal transportation agencies will increasingly become the Commission's primary project development partners; they have the level of expertise and resources needed to successfully execute project development.

The program will specifically increase its focus on barge landings at rural communities. These projects range from a couple of mooring piling to secure a barge, to small dock structures, depending on community size and barge operation characteristics. The value of these structures lies in improved fuel/freight transfer operations and improved worker and environmental safety. The Commission and U.S. Army Corp of Engineers have prepared a barge landing analysis that is under review at this time, with the final report due in December 2008. This work has turned out to be an excellent analysis of barge operation needs and it is forming the basis of a design and construction program. The universe of need for the first generation of projects is in the range of $40,000,000.

Solid Waste

The goal of the solid waste program at the Denali Commission is to provide funding to address deficiencies in solid waste disposal sites which threaten to contaminate rural drinking water supplies. Solid waste handling and disposal is one of the most underserved arenas in the context of rural Alaska's environmental and public health.

The program employs a competitive RFP process to select and identify projects, and has utilized a multidisciplinary review panel to ensure that projects meet all Denali Commission due diligence and policy requirements. The Commission intends to utilize this same process for selection of FY09 projects.

The Rural Alaska Community Action Program is a program partner with the

Denali Commission Solid Waste Program. The program also coordinates with USDA Rural Development's Water and Environmental Program and the U.S. Environmental Protection Agency.

Teacher Housing

Teaching in rural Alaska can be one of the most rewarding and challenging professions. A critical issue for rural teachers is finding safe, affordable housing during the school year. Housing availability varies by community from newer adequate homes, to old housing units with multiple safety and structural problems, to a lack of enough available housing, requiring teachers to double-up or even live in the school.

Teacher turnover rates are high in rural Alaska, with many teachers citing unavailable or inadequate housing as a factor in their decision to move. The quality of education received by students is impacted by teacher retention. By improving the availability and quality of housing for teachers, the Commission strives to also increase the quality of education received by the next generation of Alaskans.

In FY04, Congress directed the Commission to address the teacher housing needs in rural Alaska. The Commission launched a statewide survey of 51 school districts and rural education attendance areas to identify and prioritize the teacher housing needs throughout the State. Urban districts in Anchorage, Fairbanks, Mat-Su and Juneau were not included in the survey.

The Commission utilizes a program partnership model to implement the teacher housing program. An annual RFP process identifies eligible projects and other funding sources, such as debt service, available to fill the gap between the project's capacity to carry debt and the total development cost of the project. Acquisition, rehabilitation, new construction, and multi-site rehabilitation are eligible development activities under this program.

In FY09 the Commission will expand its teacher housing program to include housing for health care professionals. This change will be administered through the Commission's program partner, the Alaska Housing Finance Corporation (AHFC), and the Greater Opportunity for Affordable Living (GOAL) process. This expansion shall include the following provider types: Mid-level providers, nurses, mental and dental health specialists and health aides.

Other Program and Policy Issues

At this time the Commission is not undertaking a stand-alone program for multi-use facilities. However, as opportunities arise in FY09 for the Commission to leverage Federal funds for combined use facilities or to take advantage of placing community infrastructure, such as clinical facilities, within the confines of existing community buildings the Commission may utilize program funds for such efforts. Projects will be selected based on the opportunity for cost savings, construction readiness and correlation to existing Commission program activities. Funds will not be used to identify stand-alone multi use projects.

Pre-Development

The Commission intends to continue to engage in the Pre-Development program in FY09. Pre-Development is a joint collaboration between the Alaska Mental Health Trust Authority, the Denali Commission, The Foraker Group, and the Rasmuson Foundation to assist organizations with development of plans for successful capital projects.

The funding agencies are concerned that inadequate planning during the initial project development phase can result in projects that are not sustainable in the long term. The Pre-Development Program was created to provide guidance and technical assistance to ensure that proposed projects: Meet documented need, are consistent with strategic and community plans, consider opportunities for collaboration, have appropriate facility and site plans and realistic project budgets, are financially sustainable and will not negatively impact the sustainability of the proposing organization. Through this partnership an agency's capital project is better equipped to proceed.

Pre-Development has historically been funded out of the Commission's operational budget; however, given its direct correlation and benefit to program functions, it has been moved to the program funding section of the Work Plan. The amount of $150,000 will provide funding for the pre-development program for the last quarter of FY09, and FY10.

Strategic Planning & Agency Evaluation

In FY09 the Commission will be creating an on-going, agency-wide evaluation system to measure the outcomes of Commission programs. It is anticipated that this work will begin January of 2009, and would be designed to provide by empirical and qualitative data regarding Commission programs, projects and overall goal accomplishments in a broad set of evaluation criteria. It is the Commission's intent to maintain high-level measures that are correlated to the Commission's goals related to improving access, reducing cost and improving the quality of services and facilities across Alaska. Program Advisory Committees, staff and Commissioners will play a critical role in shaping this evaluation methodology.

Specific evaluation and strategic planning undertakings include the following:

- Adoption and implementation of program missions and 2–3 key output and outcome measures for each program.
- Development, draft, and application of FY 2009–2015 strategic plan in accordance with GPRA provisions and Denali Commission needs.
- Production of annual performance plan per OMB requirements.
- Establishment of processes to support performance measurement improvements.

Such processes include:

- Compilation and maintenance of projects by community,
- Mechanism to obtain feedback about impact of projects,
- Semi-annual assessment by key staff and management of long and short term performance by program, and
- In-depth and comprehensive evaluation of dedicated program annually.

Healthcare Infrastructure Initiatives

Recognizing the significant need for electronic health records (EHRs) and health technology infrastructure in Alaska, and the funding that has been made available for this initiative nationally through the American Recovery and Reinvestment Act (ARRA) and the Obama administration the Commission will provide up to $250,000 to the Alaska Health Information Network (AHIN). These funds shall be used in conjunction with program funds already secured by AHIN to carry out EHR and health information technology activities in Alaska. Additionally, the funds provided by the Commission shall be used to support operational and administrative activities undertaken by AHIN in coordinating, implementing and developing a state-wide EHR and technology infrastructure system for Alaska.

Dated: March 27, 2009.

George J. Cannelos,

Federal Co-Chair.

[FR Doc. E9–7382 Filed 4–1–09; 8:45 am]

BILLING CODE 3300–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2618–020]

Domtar Maine Corporation; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedual Schedule for Licensing and Deadline for Submission of Final Amendments

March 26, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2618–020.

c. *Date Filed:* March 19, 2009.

d. *Applicant:* Domtar Maine Corporation.

e. *Name of Project:* West Branch Project.

f. *Location:* On Grand Lake Stream, a tributary of the St. Croix River in Penobscot, Washington and Hancock Counties, Maine. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Scott Beal, Domtar Maine Corporation, 144 Main Street, Baileyville, Maine 04694 (207) 427–4004.

i. *FERC Contact:* John Costello, (202) 502–6119 or *john.costello@ferc.gov*.

j. *Cooperating Agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for Filing Additional Study Requests and Requests for Cooperating Agency Status:* May 18, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

m. This application is not ready for environmental analysis at this time.

n. The existing West Branch Project includes two developments (Sysladobsis and West Grand) comprising two dams and a dike. The 23,500 acre impounded waters are comprised of West Grand, Junior, Pocumcus, Pug, Bottle, Norway, and Scraggly lakes.

The Sysladobsis development includes the 250-foot-long by 9-foot-high Sysladobsis Dam (the furthest upstream), an earth embankment structure with a timber gate and fish facility. The dam impounds the 5,400-acres Sysladobsis Lake and discharges directly into the West Grand development.

The approximately 487-foot-long West Grand Dam comprises a 105.9-foot-long gate structure with five gates. A vertical slot design upstream fish passage facility is located adjacent to the dam's waste gate No.1.

The approximately 535-foot-long by 15-foot-high Farm Cove Dike is located approximately 3.5 miles west of the main outlet dam to West Grand Lake. The dike comprises a 10-foot-wide by 30-foot-long fishway. The dike has no gates or other flow controls; the only flow passing capability is through the fishway.

No new construction is planned.

o. 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 at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register Online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Maine State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural Schedule and Final Amendments*: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. The assessment for Domtar's application for new license for the Forest City Project, P–2660–024, may be included with the West Branch EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance letter/Additional Information Requests—May 2009. Issue Scoping Document—June 2009. Additional Information Response due—September 2009. Notice of application is ready for environmental analysis—October 2009. Comments, recommendations, prescriptions due—December 2009. Notice of availability of the EA—June 2010.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7345 Filed 4–1–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2660–024]

Domtar Maine Corporation; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedual Schedule for Licensing and Deadline for Submission of Final Amendments

March 26, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2660–024.

c. *Date Filed:* March 19, 2009.

d. *Applicant:* Domtar Maine Corporation.

e. *Name of Project:* Forest City Project.

f. *Location:* On Forest City Stream, a portion of the St. Croix River in Washington and Aroostock Counties, Maine and Canada. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Scott Beal, Domtar Maine Corporation, 144 Main Street, Baileyville, Maine 04694 (207) 427–4004.

i. *FERC Contact:* John Costello, (202) 502–6119 or *john.costello@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* May 18, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

m. This application is not ready for environmental analysis at this time.

n. The existing Forest City Project comprise an earth embankment dam containing a gated timber spillway and two impoundments (East Grand and North lakes). There are no generating facilities located at the project. Approximately one-quarter of the 544-foot-long dam (*i.e.,* approximately 147 feet) is within the United States. The United States (western) section of the dam is an earth embankment measuring approximately 110 feet long with a maximum height of 12 feet.

The center section of the dam (*i.e.*, that portion located in the river channel) contains a 55-foot-wide gated timber crib spillway structure with three wooden gates (gates 1 and 2 are located within the United States). The spillway is approximately 33 feet wide with an elevation of 426.61 feet. A 5-foot-wide vertical slot design fishway is located in Canada. The eastern (Canadian) embankment is an earth structure approximately 397 feet long, 30 feet long with a crest elevation of 437.27 feet msl.

No new construction is planned.

o. 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 at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Maine State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at section 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. The assessment for Domtar's application for new license for the West Branch Project, P–2618–020, may be included with the Forest City EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance letter/Additional Information Requests.	May 2009.
Issue Scoping Document	June 2009.
Additional Information Response due.	September 2009.
Notice of application is ready for environmental analysis.	October 2009.
Comments, recommendations, prescriptions due.	December 2009.
Notice of availability of the EA.	June 2010.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7346 Filed 4–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2677–019]

City of Kaukauna, Wisconsin; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 26, 2009.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2677–019.

c. *Date filed:* August 29, 2007.

d. *Applicant:* City of Kaukauna, Wisconsin.

e. *Name of Project:* Badger-Rapide Croche Hydroelectric Project.

f. *Location:* On the Fox River in the City of Kaukauna, in Outagamie County, Wisconsin. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mike Pedersen, Kaukauna Utilities, 777 Island Street, P.O. Box 1777, Kaukauna, WI 54130–7077, (920) 462–0220, or Arie DeWaal, Mead & Hunt, Inc., 6501 Watts Road, Madison, WI 53719, (608) 273–6380.

i. *FERC Contact:* John Smith (202) 502–8972 or *john.smith@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: 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.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing project consists of the Badger and Rapide Croche developments.

As licensed, the existing Badger Development utilizes the head created by the 22-foot-high Army Corps of Engineers (Corps) Kaukauna dam and consists of: (1) A 2,100-foot-long, 100-foot-wide power canal that bifurcates into a 260-foot-long, 200-foot-wide canal and a 250-foot-long, 80-foot-wide canal leading to; (2) the Old Badger powerhouse containing two 1,000-kilowatt (kW) generating units for a total installed capacity of 2,000 kW; and (3) the New Badger powerhouse containing two 1,800-kW generating units for a total installed capacity of 3,600 kW; and (4) appurtenant facilities.

As licensed, the existing Rapide Croche Development utilizes the head created by the 20-foot-high Corps Rapide Croche dam, located approximately 4.5 miles downstream from the Badger Development and consists of: (1) A powerhouse, located on the south end of the dam, containing four 600-kW generating units for a total installed capacity of 2,400 kW; (2) the 5-mile-long, 12-kilovolt (kV) transmission line (serving both developments); and (3) appurtenant facilities.

The license application also indicates that flashboards are used at the Kaukauna and Rapide Croche dams to provide additional head for project generation. The flashboards used at the Kaukauna dam are 6 inches high. The flashboards used at the Rapide Croche dam are 30 inches high.

The proposed project would include decommissioning the Old Badger and New Badger developments and constructing a new 7-megawatt (MW) powerhouse about 150 feet upstream from the existing New Badger plant site. Proposed project works would consist of: (1) A modified power canal leading to; (2) a new powerhouse with integral intake; and (3) two identical 3.5- to 3.6–MW horizontal Kaplan ''S'' type turbines. The Old Badger development would be converted to an alternative use. The New Badger development would be decommissioned, demolished, and removed. The existing service road would be demolished and removed. The tailrace area associated with the existing Old Badger development would be filled with soil. A new service road would be constructed over the filled area. No significant changes are proposed for the Rapide Croche development.

The existing Badger and Rapide Croche developments currently operate in a run-of-river mode. As proposed, the new project would continue to operate in a run-of-river mode.

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 at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) Bear in all capital letters the title ''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 submitting the filing; 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. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

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.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7347 Filed 4–1–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 26, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1178–003; EL08–88–004.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits Attachment A- Exceptional Dispatch Amendment Compliance Filing.
Filed Date: 03/23/2009.
Accession Number: 20090324–0295.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: ER09–380–001.
Applicants: PacifiCorp
Description: PacifiCorp submits its Transmission Interconnection Agreement.
Filed Date: 03/05/2009.
Accession Number: 20090305–0175.
Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: ER09–583–001.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits the cover sheet to the Agreement redesignated as required under the Midwest ISO's Fourth Revised Volume.
Filed Date: 03/25/2009.
Accession Number: 20090326–0027.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 15, 2009.

Docket Numbers: ER09–850–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits Amended and Restated Power Supply Agreement with Holy Cross Electric Association, Inc dated 2/18/09.
Filed Date: 03/16/2009.
Accession Number 20090317–0259.
Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: ER09–851–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, LLC submits a notice of cancellation of a wholesale market participation agreement with Granger Energy of Honeybrook, LLC.
Filed Date: 03/16/2009.
Accession Number: 20090317–0260.
Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: ER09–852–000.
Applicants: PJM Interconnection L.L.C.
Description: PJM Interconnection, LLC submits notice of cancellation of an interim interconnection service agreement with Connectiv Bethlehem, LLC, etc.
Filed Date: 03/16/2009.
Accession Number: 20090317–0261.
Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: ER09–884–000.
Applicants: TransAlta Energy Marketing Corporation.
Description: Petition of Transalta Energy Marketing Corporation for authority to sell energy, capacity, and ancillary services at market-based rates, acceptance of initial rate schedule, waivers, and blanket authority.
Filed Date: 03/25/2009.
Accession Number: 20090326–0076.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 15, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA09–23–000.
Applicants: Southwest Power Pool, Inc.
Description: Request for Waiver of Southwest Power Pool, Inc.
Filed Date: 03/26/2009.
Accession Number: 20090326–5041.
Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Any person desiring to intervene or to protest in any of the above proceedings 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) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,
Secretary.
[FR Doc. E9–7348 Filed 4–1–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–169]

Appalachian Power Company, Virginia; Notice of Availability of the Draft Environmental Impact Statement for the Smith Mountain Pumped Storage Project and Announcing Intention To Hold Public Meeting

March 27, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Smith Mountain Pumped Storage Project (FERC No. 2210), located on the headwaters of the Roanoke River in Bedford, Campbell, Franklin, and Pittsylvania counties in the Commonwealth of Virginia. Commission staff has prepared a draft Environmental Impact Statement (EIS) for the project.

The draft EIS contains staff's evaluation of the applicant's proposal and the alternatives for relicensing the Smith Mountain Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the draft EIS is available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The draft EIS also may be viewed on the Commission's web site at *http://www.ferc.gov*, under the eLibrary link. Enter the docket number excluding the last three digits in the docket

number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/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.

Comments should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426. All comments must be filed by May 11, 2009, and should reference Project No. 2210–169. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

In addition to, or in lieu of, sending written comments, you are invited to attend a public meeting that will be held to receive comments on the draft EIS. The time and location of the meeting will be announced in a subsequent notice.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments, as well as recommendations, regarding the draft EIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For further information, contact Allan Creamer at (202) 502–8365, or via e-mail at *allan.creamer@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7443 Filed 4–1–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–36–000]

Chestnut Ridge, LLC; Notice of Availability of the Environmental Assessment for the Proposed JCT Storage Project

March 27, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Chestnut Ridge LLC in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of Chestnut Ridge LLC's proposed JCT Storage Project. Chestnut Ridge proposes to convert an existing, diminished natural gas production field—the West Summit Field, which extends from Fayette County, Pennsylvania into Preston and Monongalia Counties, West Virginia—into a gas storage facility with up to 25 billion cubic feet of working gas capacity and up to 500,000 dekatherms per day of injection and withdrawal capacity. Proposed construction would include:

- Recompletion/drilling of up to 25 injection/withdrawal or observation wells, 14 of which would be new wells and 11 existing wells;
- Construction of approximately 14 miles of gathering laterals from individual wells to a new compressor station;
- Construction of an approximate 25,000 horsepower compressor station;
- Construction of a 1,900 foot 24-inch diameter pipeline header connecting to a Columbia Gas pipeline;
- Construction of a 21.5-mile 24-inch diameter pipeline header connecting to the Dominion Transmission, Inc./Texas Eastern interstate pipeline;
- Construction of a 1.5 mile, 138-kilovolt radial transmission line to connect to the Junction Compressor Station with a switchyard and a switching and metering station; and,
- Construction of appurtenant facilities consisting of tap valves, pig launchers and receivers, meter and regulator stations, separation and control systems, and access roads.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local agencies; public interest groups; interested individuals; newspapers and libraries in the project area; Native America groups; and parties to this proceeding. Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

You can make a difference by providing us with your specific comments or concerns about the JCT Storage Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before April 26, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP08–36–000 with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an

account by clicking ''*Sign up*'' or ''*eRegister*.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, DC 20426;

Label one copy of the comments for the attention of the Gas Branch 3, PJ–11.3.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site (*http://www.ferc.gov/esubscribenow.htm)*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7444 Filed 4–1–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–21–000]

Enbridge Pipelines (Louisiana Intrastate) LLC; Notice of Compliance Filing

March 26, 2009.

Take notice that on March 16, 2009, Enbridge Pipelines (Louisiana Intrastate) LLC filed its annual revision of the fuel percentage on its system pursuant to section 3.2 of its Statement of Operating Conditions. Louisiana Intrastate proposes to charge 0.79 percent for fuel and requests an effective date of April 1, 2009.

Any person desiring to participate in this rate proceeding 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 14 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time Wednesday, April 8, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7343 Filed 4–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–884–000]

TransAlta Energy Marketing Corporation; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 27, 2009.

This is a supplemental notice in the above-referenced proceeding of TransAlta Energy Marketing Corporation's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is April 16, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7442 Filed 4–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–615–000; ER07–1257–000; ER08–1113–000; ER08–1178–000; OA08–62–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

March 27, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com.*

April 1, 2009—Congestion Revenue Rights Settlements and Market Clearing User Group.

April 8, 2009—Congestion Revenue Rights Settlements and Market Clearing User Group. Demand Response Barriers Study.

April 14, 2009 2010—Local Capacity Technical Study Meeting.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov*; (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov*, (916) 294–0275.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7440 Filed 4–1–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

March 27, 2009.

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.

Exempt:

Docket No.	File date	Presenter or requester
1. CP07–444–000.	3–23–09	Todd Tamura[1]
2. Project No. 2677–019.	3–25–09	Marty Sneen[2]

[1] Record of email correspondence and attachments.

[2] Email exchange.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7439 Filed 4–1–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–84–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

March 26, 2009.

Take notice that on March 24, 2009, ANR Pipeline Company (ANR), having its principal office at 717 Texas Street, Houston, Texas 77002, filed a prior notice request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct, own and operate an interconnection with Rockies Express Pipeline, LLC (REX) and related facilities in Shelby County, Indiana, under ANR's blanket certificate issued in Docket No. CP82–480–000. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call

toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, ANR requests authorization to construct and own the ''ANR–REX East-Shelby Interconnection Project'' facilities to receive up to 560 MMcf/d from REX in Shelby County, Indiana, in connection with the REX-East Project certificated by the Commission in Docket No. CP07–208–000 on May 20, 2008. To establish the project, ANR will install a meter station and approximately 324 feet of 20-inch diameter interconnecting pipe between the proposed meter station and its 30-inch pipelines designated as lines Nos. 501 and 1–501 at the approximate Mile Post 735.78. ANR will install and own two 20-inch hot taps, one each on Lines 501 and 1–501, along with other appurtenant facilities.

Any questions regarding the application should be directed to M. Catharine Davis, Associate General Counsel, ANR Pipeline Company, 717 Texas Street, Houston, TX 77002, phone: (832) 320–5509, fax: (832) 320–6509, e-mail: *catharine_davis@transcanada.com*, or Robert D. Jackson, Director, Rates and Regulatory Affairs, ANR Pipeline Company, 717 Houston Street, Houston, TX 77002, phone: (832) 320–5487, fax: (832) 320–6487, e-mail: *robert_jackson@transcanada.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7344 Filed 4–1–09; 8:45 am]

BILLING CODE

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8789–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the Western District of Wisconsin: *Sierra Club* v. *Jackson,* No. 08–cv–664 (W.D. Wis). Plaintiff filed a deadline suit to compel the Administrator to respond to an administrative petition seeking EPA's objection to a CAA Title V operating permit issued by the Wisconsin Department of Natural Resources to the Wisconsin Electric Power Company's Oak Creek Power Plant, in Oak Creek, Wisconsin. Under the terms of the proposed consent decree, EPA has agreed to respond to the petition by May 29, 2009.

DATES: Written comments on the proposed consent decree must be received by *May 4, 2009*.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0228, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Amy Huang Branning, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1744; fax number (202) 564–5603; e-mail address: *branning.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking a response to an administrative petition to object to a CAA Title V permit issued by the Wisconsin Department of Natural Resources to the Wisconsin Electric Power Company's Oak Creek Power Plant, in Oak Creek, Wisconsin. Under the proposed consent decree, EPA has agreed to respond to the petition by May 29, 2009. The proposed consent decree further states that, within fifteen (15) business days following signature, EPA shall deliver notice of such action on the Oak Creek permit to the Office of the Federal Register for prompt publication and, if EPA's response contains an objection in whole or in part, transmit the signed response to the Wisconsin Department of Natural Resources. The proposed consent decree sets the attorneys' fees at $2,787.06. The proposed consent decree states that, after EPA fulfills its obligations under the decree, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC– 2009–0228) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744,

and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov*. You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: March 26, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–7430 Filed 4–1–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8789–2]

EPA Science Advisory Board Staff Office; Request for Nominations of Candidates for the EPA Advisory Council on Clean Air Compliance Analysis, EPA Clean Air Scientific Advisory Committee and EPA Science Advisory Board

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) Staff Office is soliciting nominations for consideration of membership on EPA's Advisory Council on Clean Air Compliance Analysis (Council), EPA's Clean Air Scientific Advisory Committee (CASAC), and EPA's Science Advisory Board (SAB) and SAB subcommittees.

DATES: Nominations should be submitted in time to arrive no later than May 4, 2009.

FOR FURTHER INFORMATION: Nominators unable to submit nominations electronically as described below, may submit a paper copy by contacting Ms. Wanda Bright, U.S. EPA SAB Staff Office (Mail Code 1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx/Courier address: US EPA SAB, Suite 3600, 1025 F Street, NW., Washington DC 20004), (202) 343–9986 (telephone), (202) 233–0643 (fax), or via e-mail at *bright.wanda@epa.gov*. General inquiries regarding the work of the Council, CASAC and SAB may be directed to Dr. Anthony F. Maciorowski, Deputy Director, US EPA SAB Staff Office, (202) 343–9983 (telephone), or via e-mail at *maciorowski.anthony@epa.gov*.

Background: Established by statute, the Council (42 U.S.C 7612), the CASAC (42 U.S.C. 7409) and SAB (42 U.S.C. 4365) are EPA's chartered Federal Advisory Committees that provide independent scientific and technical peer review, consultation, advice and recommendations directly to the EPA Administrator on a wide variety of EPA science activities. As Federal Advisory Committees, the Council, CASAC, and SAB conduct business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. C) and related regulations. Generally, Council, CASAC and SAB meetings are announced in the **Federal Register**, conducted in public view, and provide opportunities for public input during deliberations. Additional information about these Federal Advisory Committees may be found at *http://www.epa.gov/advisorycouncilcaa*, *http://www.epa.gov/casac* and *http://www.epa.gov/sab*.

Members of the Council, CASAC, the SAB, and subcommittees constitute a distinguished body of non-EPA scientists, engineers, economists, and social scientists that are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator for a period of three years, with the possibility of re-appointment to a second three year term. This notice specifically requests nominations for the chartered Council, the chartered CASAC, the chartered SAB and SAB subcommittees.

Expertise Sought: The Council was established in 1990 pursuant to the Clean Air Act (CAA) Amendments of 1990 to provide advice and recommendations to the EPA Administrator on technical and economic aspects of the impacts of the Clean Air Act (CAA) on the public health, economy, and environment of the United States. The SAB Staff office is seeking nominations for individuals to serve on the Council with demonstrated expertise in air pollution issues. A nominee's expertise may include the following disciplines: *environmental economics; economic modeling; air quality modeling;*

atmospheric science and engineering; ecology and ecological risk assessment; epidemiology; environmental health sciences; statistics; and human health risk assessment.

Established in 1977 under the Clean Air Act (CAA) Amendments, the chartered CASAC reviews and offers scientific advice to the EPA Administrator on technical aspects of national ambient air quality standards for criteria pollutants. As required under the CAA section 109(d), CASAC will be composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies. The SAB Staff Office is seeking nominations of experts to serve on the CASAC with demonstrated experience in the evaluation of effects of air pollution on human health and ecosystems. A nominee's expertise may include the following disciplines: *public health; environmental medicine; environmental health sciences; ecological sciences, and risk assessment.*

The chartered SAB was established in 1978 by the Environmental Research, Development and Demonstration Act to provide independent advice to the Administrator on general scientific and technical matters underlying the Agency' policies and actions. All the work of the SAB is under the direction of the Board. The chartered Board provides strategic advice to the EPA Administrator on a variety of EPA science and research programs and reviews and approves all SAB subcommittee and panel reports. The chartered SAB consists of about thirty members. The SAB Staff Office is seeking nominations of experts to serve on the chartered SAB in the following disciplines: *behavioral and decision sciences; ecological sciences and risk assessment; environmental modeling; industrial ecology; environmental engineering specializing in agricultural systems; environmental medicine; pediatrics; public health; and human health risk assessment.*

The SAB Drinking Water Committee (DWC) provides advice on the technical aspects of EPA's national drinking water standards program. The SAB Staff Office is seeking nominations of experts to serve on the DWC in the following disciplines: *water chemistry; microbiology; toxicology; epidemiology; environmental health sciences; and environmental engineering.*

The SAB Environmental Economics Advisory Committee (EEAC) provides advice on methods and analyses related to economics, costs, and benefits of EPA environmental programs. The SAB Staff office is seeking nominations of experts to serve on EEAC in the following disciplines: *environmental economics; cost-benefit analysis; uncertainty analysis; climate change mitigation; agricultural economics; marine resource economics; emissions trading; and market mechanisms and incentives.*

The SAB Exposure and Human Health Committee (EHHC) provides advice on the development and use of guidelines for human health effects, exposure assessment, and human health risk assessment of chemical contaminants. The SAB Staff Office is seeking nominations of experts to serve on the EHHC in the following disciplines: *environmental exposure and modeling; industrial hygiene; dosimetry and biological modeling; public health; pediatrics; epidemiology; toxicology; biostatistics; and risk assessment.*

The SAB Environmental Engineering Committee (EEC) provides advice on risk management technologies to control and prevent pollution. The SAB Staff Office is seeking nominations of experts to serve on EEC with demonstrated expertise in the following areas: *agricultural engineering; environmental nanotechnology; environmental system modeling; water infrastructure systems; watershed management; environmental remediation and technology; and industrial ecology.*

The SAB Ecological Processes and Effects Committee (EPEC) provides advice on technical issues related to the science and research to protect and restore the health of ecosystems. The SAB Staff Office is seeking nominations of experts to serve on EPEC with demonstrated expertise in the following disciplines: *marine and estuarine ecology; aquatic ecology; forest ecology; systems ecology; and ecological risk assessment.*

The Radiation Advisory Committee (RAC) provides advice on radiation protection, radiation science, and radiation risk assessment. The SAB Staff Office is seeking nominations of experts to serve on RAC with demonstrated expertise in the following disciplines: *radiation biology; radiation biophysics; radiation dosimetry; and cancer epidemiology.*

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to these chartered advisory committees and SAB subcommittees. Individuals may self-nominate. Qualified nominees will demonstrate appropriate scientific education, training, and experience to evaluate basic and applied science issues addressed by these advisory committees. Successful nominees will have distinguished themselves professionally and be available to invest the time and effort in providing advice and recommendations on the development and application of science at EPA. Nominations should be submitted in electronic format (preferred) following the instructions for ''Nominating Experts to a Chartered Advisory Committee or Standing Committee'' provided on the SAB Web site. The form can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab*. To be considered, all nominations should include the information requested.

Nominators are asked to identify the specific committee(s) for which nominees would like to be considered. The nominating form requests contact information about: the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; and a biographical sketch of the nominee indicating current position, educational background; research activities; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Ms. Wanda Bright as indicated above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic form. The SAB Staff Office will acknowledge receipt of nominations.

Candidates invited to serve will be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab*. This form should not be submitted as part of a nomination.

The SAB Staff Office seeks candidates who possess the necessary domains of knowledge, and relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation) to adequately

address scientific issues facing the Agency. The primary criteria to be used in evaluating potential nominees will be scientific and/or technical expertise, knowledge, and experience. Additional criteria that will be used to evaluate technically qualified nominees will include: the absence of financial conflicts of interest; scientific credibility and impartiality; availability and willingness to serve; and the ability to work constructively and effectively on committees. The selection of new members will also include consideration of the collective breadth and depth of scientific perspectives; a balance of scientific perspectives; continuity of knowledge and understanding of EPA missions and environmental programs; and diversity factors (*e.g.* geographical areas and professional affiliations) for each of the chartered committees and subcommittees.

Dated: March 27, 2009.

Vanessa T. Vu,

Director, Science Advisory Board Staff Office.

[FR Doc. E9–7432 Filed 4–1–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On December 23, 2008, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of which are currently approved collections of information. The one comment received on this proposal supported the proposed revision, which the FFIEC and the agencies will implement as proposed.

In addition, on September 23, 2008, the OCC, the Board, and the FDIC requested public comment for 60 days on proposed revisions to the Call Report. On October 1, 2008, the OTS requested public comment for 60 days on proposed revisions to the TFR. In response to these requests, the agencies received certain comments recommending the collection of additional deposit data related to deposit insurance assessments. After considering these comments and the outcome of an FDIC rulemaking on assessments, the FFIEC and the agencies will add an item to the Call Report and TFR schedules used to collect data used for assessment purposes effective June 30, 2009.

DATES: Comments must be submitted on or before May 4, 2009.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income (FFIEC 031 and 041)'' or ''Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S),'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include reporting form number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.,) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Herbert J. Messite, (202) 898–6834, Counsel, *Attn:* Comments, Room F–1052, 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 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–0023 (TFR: Schedule DI Revisions),'' by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail address: infocollection.comments@ots.treas.gov.* Please include ''1550–0023 (TFR: Schedule DI Revisions)'' in the subject line of the message and include your name and telephone number in the message.

• *Fax:* (202) 906–6518.

• *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, *Attention:* ''1550–0023 (TFR: Schedule DI Revisions).''

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, *Attention:* ''1550–0023 (TFR: Schedule DI Revisions).''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002, and FFIEC 002S forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Herbert J. Messite, Counsel, (202) 898–6834, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, the TFR, the FFIEC 002, and the FFIEC 002S, which are currently approved collections of information.

1. *Report Title:* Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,620 national banks.

Estimated Time per Response: 46.83 burden hours.

Estimated Total Annual Burden: 303,454 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 877 state member banks.

Estimated Time per Response: 53.38 burden hours.

Estimated Total Annual Burden: 187,257 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,110 insured state nonmember banks.

Estimated Time per Response: 37.43 burden hours.

Estimated Total Annual Burden: 765,069 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 650 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title:* Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly; Annually.

Affected Public: Business or other for-profit.

OTS

OMB Number: 1550–0023.

Estimated Number of Respondents: 774 savings associations.

Estimated Time per Response: 37 burden hours.

Estimated Total Annual Burden: 186,085 burden hours.

3. *Report Titles:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

Board

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: FFIEC 002–264; FFIEC 002S–65.

Estimated Time per Response: FFIEC 002—25.02 hours; FFIEC 002S—6 hours.

Estimated Total Annual Burden: FFIEC 002—26,421 hours; FFIEC 002S—1,560 hours.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). The Call Report and, except for selected data items, the TFR and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment. [5 U.S.C. § 552(b)(4)].

Abstracts

Call Report and TFR: Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data are also used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

FFIEC 002 and FFIEC 002S: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

Current Actions

Section 141 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law No. 102–242 (Dec. 19, 1991), added Section 13(c)(4)(G) to the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). That section authorizes action by the federal government in circumstances involving a systemic risk to the nation's financial system. On October 13, 2008, in response to the unprecedented disruption in credit markets and the resultant effects on the abilities of banks to fund themselves and to intermediate credit, the Secretary of the Treasury (after consultation with the President) made a determination of systemic risk following receipt of the written recommendation of the FDIC Board, along with the written recommendation of the Federal Reserve Board, in accordance with Section 13(c)(4)(G). The systemic risk determination allows the FDIC to take certain actions to avoid or mitigate serious adverse effects on economic conditions or financial stability. Pursuant to the systemic risk determination, the FDIC Board established the Temporary Liquidity Guarantee (TLG) Program.

To facilitate the FDIC's administration of the TLG Program, the FDIC Board approved an interim rule on October 23, 2008,[1] and (after a 15-day comment period that ended on November 13, 2008) a final rule on November 21, 2008.[2] The TLG Program comprises (1) a Debt Guarantee Program under which, in general, the FDIC will guarantee certain newly-issued senior unsecured debt issued by participating entities on or after October 14, 2008, through and including June 30, 2009, up to a specified limit; and (2) a Transaction Account Guarantee Program under which the FDIC will provide a 100 percent guarantee of certain noninterest-bearing transaction accounts held by participating insured depository institutions through December 31, 2009. The TLG Program includes a system of fees to be paid by participating entities for such guarantees beginning November 13, 2008.

In order for the FDIC to calculate the fees to be assessed under the Transaction Account Guarantee Program, the FDIC needs to collect information from participating insured depository institutions on the amount and number of noninterest-bearing transaction accounts, as defined in the final rule, of more than $250,000. Given the nature of these data items, the best method for obtaining this information from participating institutions is through the Call Report, the TFR, and the FFIEC 002. Accordingly, the agencies submitted an emergency clearance request to OMB seeking approval to begin collecting these two data items in these reports as of December 31, 2008. OMB approved this emergency clearance request on November 26, 2008. OMB's approval of the agencies' emergency clearance request expires on May 31, 2009. On December 23, 2008, the agencies requested comment under OMB's normal clearance procedures on the proposed collection of these two items each quarter from institutions participating in the Transaction Account Guarantee Program until the program ends (73 FR 78794). These new items have been added to the Call Report as Memorandum items 4.a and 4.b of Schedule RC–O, to the TFR as items DI570 and DI575 of Schedule DI, and to the FFIEC 002 as Memorandum items 6.a and 6.b of Schedule O.[3]

The agencies received one comment letter on the proposed new items pertaining to the Transaction Account Guarantee Program. This commenter, a bankers' organization, supported the addition of these new items to the Call Report, the TFR, and the FFIEC 002. The

[1] 73 FR 64179, October 29, 2008. The FDIC amended the interim rule effective November 4, 2008. 73 FR 66160, November 7, 2008.

[2] 73 FR 72244, November 26, 2008.

[3] Effective March 31, 2009, these two FFIEC 002 items will be renumbered as Memorandum items 4.a and 4.b of Schedule O.

agencies will continue to collect these items, for which they received emergency approval from OMB, until the Transaction Account Guarantee Program ends.

In addition, on September 23, 2008, the OCC, the Board, and the FDIC requested public comment for 60 days on proposed revisions to the Call Report for implementation on a phased-in basis during 2009 (73 FR 54807). On October 1, 2008, the OTS requested public comment for 60 days on proposed revisions to the TFR that would also take effect on a phased-in basis during 2009 (73 FR 57205). In response to these requests, the agencies received certain comments recommending the collection of additional deposit data related to deposit insurance assessments even though the agencies had not proposed to collect these additional data in their proposals. More specifically, one bankers' organization recommended that the Call Report and the TFR be revised to require ''reciprocal deposits'' [4] to be reported separately from brokered deposits. This bankers' organization also commented on the reporting of certain sweep accounts from other institutions, including affiliated institutions, in the Call Report and the TFR.

The impetus for the bankers' organization's comments about the reporting of these two types of deposits was a Notice of Proposed Rulemaking (NPR) on which the FDIC was simultaneously requesting comment concerning amendments to its deposit insurance assessment regulations (12 CFR part 327).[5] In the NPR, the FDIC proposed to alter the way in which it differentiates for risk in the risk-based assessment system; revise deposit insurance assessment rates, including base assessment rates; and make technical and other changes to the rules governing the risk-based assessment system. In its comment letters to the agencies on the proposed Call Report and TFR revisions, the bankers' organization observed that the Call Report and the TFR may need to be revised depending on the FDIC's decisions on the treatment of these accounts for deposit insurance assessment purposes.

The FFIEC and the agencies have monitored the outcome of the FDIC's rulemaking for assessments and the need for new Call Report data items for reciprocal deposits and certain sweep accounts to support any modifications that the FDIC makes in its risk-based assessment system in a final rule. In this regard, on February 27, 2009, the FDIC Board of Directors adopted a final rule that revised the FDIC's assessment regulations effective April 1, 2009. For institutions in Risk Category I of the risk-based assessment system, the final rule introduces a new financial ratio into the financial ratios method. This method determines the assessment rates for most institutions in Risk Category I using a combination of weighted Uniform Financial Institutions Rating System component ratings and certain financial ratios. The new ratio will capture brokered deposits (in excess of 10 percent of domestic deposits) that are used to fund rapid asset growth, but it will exclude brokered deposits that an institution receives through a deposit placement network on a reciprocal basis (reciprocal deposits).

To enable the FDIC to adjust banks' and savings associations' brokered deposits, which are already reported in the Call Report and the TFR, for any reciprocal deposits included therein, the agencies will add an item to the schedules in these two reports in which data are reported for assessment purposes (Schedules RC–O and DI, respectively). The definition of reciprocal deposits in the FDIC's final rule [6] would be used for this new item, which would be collected in the Call Report and the TFR beginning June 30, 2009. The addition of this reciprocal deposits item to the Call Report and the TFR is responsive to the previously mentioned comments received from a bankers' organization when the agencies requested comments on proposed revisions to the Call Report and the TFR for implementation in 2009.

In its final rule on assessments, the FDIC decided not to adjust brokered deposits for balances swept into an insured institution by a nondepository institution. Accordingly, the FFIEC and the agencies are not revising the Call Report and the TFR to collect data on such sweep accounts.

[4] The organization also recommended that ''reciprocal deposit'' be defined as a deposit ''obtained when an insured depository institution exchanges funds, dollar-for-dollar, with members of a network of other insured depository institutions, where each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members, and all funds placed through the network are fully insured by the FDIC.''

[5] 73 FR 61560, October 16, 2008.

[6] The final rule defines ''reciprocal deposits'' as ''[d]eposits that an insured depository institution receives through a deposit placement network on a reciprocal basis, such that: (1) For any deposit received, the institution (as agent for depositors) places the same amount with other insured depository institutions through the network; and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.''

Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: March 20, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, March 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated at Washington, DC, this 25th day of March, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: March 24, 2009.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

[FR Doc. E9–7361 Filed 4–1–09; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 1, 2009.

ADDRESSES: You may submit comments, identified by FR 4022 by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-Mail: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report Title: Recordkeeping Requirements Associated with the Interagency Statement on Complex Structured Finance Activities.

Agency Form Number: FR 4022.

OMB Control Number: 7100–0311.

Frequency: Annual.

Reporters: State member banks, bank holding companies, and U.S. branches and agencies of foreign banks supervised by the Federal Reserve.

Estimated Annual Reporting Hours: 230 hours.

Estimated Average Hours per Response: New respondents, 25 hours; existing respondents, 10 hours.

Estimated Number of Respondents: New respondents, 2; existing respondents, 18.

General Description of Report: This information collection is authorized pursuant to 12 U.S.C. 248(a), 248(i), 483, and 602, 12 U.S.C. 1844, and 12 U.S.C. 3108(a). Respondent participation in the statement is voluntary. However, the Federal Reserve expects to use the statement in reviewing the internal controls and risk management systems of those financial institutions engaged in complex structured finance transactions (CSFTs) as part of the Federal Reserve's supervisory process. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, in the event records generated under the statement are obtained by the Board during an examination of a state member bank or U.S. branch or agency of a foreign bank, or during an inspection of a bank holding company, confidential treatment may be afforded to the records under exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8). FOIA exemption 8 exempts from disclosure matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

Abstract: The Interagency Statement on Complex Structured Finance Activities provides that state member banks, bank holding companies, and U.S. branches and agencies of foreign banks supervised by the Federal Reserve should establish and maintain policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with certain CSFTs.

A financial institution engaged in CSFTs should maintain a set of formal,

firm-wide policies and procedures that are designed to allow the institution to identify, evaluate, assess, document, and control the full range of credit, market, operational, legal, and reputational risks associated with these transactions. These policies may be developed specifically for CSFTs, or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations and standards of those jurisdictions.

A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. A financial institution should define what constitutes a new complex structured finance product and establish a control process for the approval of such new products. An institution's policies also should provide for new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the product is offered to customers.

Board of Governors of the Federal Reserve System, March 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–7339 Filed 4–1–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 2009.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Community Exchange Bancshares Inc., Hindman, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Hindman Bancshares Inc., and its subsidiary Bank of Hindman Inc., both of Hindman, Kentucky.

Board of Governors of the Federal Reserve System, March 30, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–7406 Filed 4–01–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Robert B. Fogel, M.D., Harvard Medical School and Brigham and Women's Hospital: Based on information that the Respondent volunteered to his former mentor on November 7, 2006, and detailed in a written admission on September 19, 2007, and ORI's review of Joint Inquiry and Investigation reports by Harvard Medical School (HMS) and the Brigham and Women's Hospital (BWH), the U.S. Public Health Service (PHS) found that Dr. Robert B. Fogel, former Assistant Professor of Medicine and Associate Physician at HMS, and former Co-Director of the Fellowship in Sleep Medicine at BWH, engaged in scientific misconduct in research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), awards P50 HL60292, R01 HL48531, K23 HL04400, and F32 HL10246, and National Center for Research Resources (NCRR), NIH, award M01 RR02635.

PHS found that Respondent engaged in scientific misconduct by falsifying and fabricating baseline data from a study of sleep apnea in severely obese patients published in the following paper: Fogel, R.B., Malhotra, A., Dalagiorgou, G., Robinson, M.K., Jakab, M., Kikinis, R., Pittman, S.D., and White, D.P. ''Anatomic and physiologic predictors of apnea severity in morbidly obese subjects.'' *Sleep* 2:150–155, 2003 (hereafter referred to as the ''*Sleep* paper''); and in a preliminary abstract reporting on this work.

Specifically, PHS found that for the data reported in the *Sleep* paper, the Respondent:

- Changed/falsified roughly half of the physiologic data
- Fabricated roughly 20% of the anatomic data that were supposedly obtained from Computed Tomography (CT) images
- Changed/falsified 50 to 80 percent of the other anatomic data
- Changed/falsified roughly 40 to 50 percent of the sleep data so that those data would better conform to his hypothesis.

Respondent also published some of the falsified and fabricated data in an abstract in *Sleep* 24, Abstract Supplement A7, 2001.

Dr. Fogel has entered into a Voluntary Settlement Agreement in which he has voluntarily agreed, for a period of three (3) years, beginning on March 16, 2009:

(1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant;

(2) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or that uses the Respondent in any capacity on PHS supported research, or that submits a report of PHS-funded research in which the Respondent is involved, must concurrently submit a plan for supervision of the Respondent's duties to the funding agency for approval; the supervisory plan must be designed to ensure the scientific integrity of the Respondent's research contribution; a copy of the supervisory plan must also be submitted to ORI by

the institution; the Respondent agrees that he will not participate in any PHS-supported research until such a supervisory plan is submitted to ORI; and

(3) To ensure that any institution employing him submits, in conjunction with each application for PHS funds or report, manuscript, or abstract of PHS-funded research in which the Respondent is involved, a certification that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application or report. The Respondent must ensure that the institution sends the certification to ORI.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. E9–7411 Filed 4–1–09; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09–08BI]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the National Youth Violence Prevention Resource Center (NYVPRC)—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The origin of the National Youth Violence Prevention Resource Center (NYVPRC) is woven into the federal response to the Columbine High School shootings in 1999. As the Nation took a broad look at the issue of violence occurring in school settings, it became clear that violence among adolescents stretched far beyond the walls of educational institutions and presented a complex threatening public health concern requiring a comprehensive response. To that end, the White House established the Council on Youth Violence in October 1999 to coordinate youth violence prevention activities of all federal agencies. The Council, in collaboration with CDC and other federal agencies, directed the development of NYVPRC to serve as a user-friendly, single point of entry to potentially life-saving information about youth violence prevention.

Since 1999, a substantial body of evidence has evolved to support the belief that youth violence can be prevented through the comprehensive, systematic application of effective approaches. A better understanding of the key influencers on the prevention of youth violence has emerged. Armed with this greater understanding, the NYVPRC's role has been refocused to better position it to respond to emerging needs.

This project will evaluate a pilot implementation of the revised NYVPRC Web site. The revised Web site will target local government and community leaders with youth violence-related online training, information resources and community workspace to build and sustain comprehensive, community-wide prevention efforts. The objectives of the NYVPRC pilot project are to determine (1) The usefulness and favorability of the online training, information resources and community workspaces, (2) the reach of targeted promotional efforts, and (3) progress made on short term outcomes. Four data collection tools will be used to measure these objectives: (1) user feedback surveys, (2) training surveys, (3) implementation interviews and (4) coalition capacity surveys.

The user feedback surveys will elicit feedback from users at various points on the NYVPRC Web site. The training surveys will be conducted during the online training available through the Web site. The implementation interviews and coalition capacity surveys will be conducted at the beginning of the pilot period as a baseline measure and again at the end of the 12-month pilot period. The baseline information will assist CDC in tailoring technical assistance that might be required by the pilot communities. The evaluation will then utilize these baseline measures along with the information collected following the pilot to assess the Web site's success at supporting the development of community-wide youth violence prevention coalitions and subsequent strategic planning.

The pre-post research design of the evaluation will aid CDC in assessing the changes in knowledge, attitudes, and resource capacity associated with the NYVPRC Web site and will inform revision of the Web site materials for a future nationwide launch. There is no cost to respondents for participation.

The total estimated annualized burden hours are 353.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
General Public, coalition members, coalition leaders	Online Training Survey	400	1	15/60
General Public, coalition members, coalition leaders	User Feedback Survey	1000	1	5/60
Coalition Members	Coalition Member Survey	120	2	30/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Coalition Leaders	Coalition Leader Interviews	50	2	30/60

Dated: March 27, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–7413 Filed 4–1–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0132]

Draft Guidance for Industry: Somatic Cell Therapy for Cardiac Disease; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Somatic Cell Therapy for Cardiac Disease'' dated March 2009. The draft guidance document provides sponsors of cellular therapies for the treatment of cardiac disease with recommendations on the design of preclinical and clinical studies, and information that should be submitted about the product delivery system. This guidance also provides recommendations on the chemistry, manufacturing and controls information to include in an investigational new drug application (IND) for cardiac cellular therapy.

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 guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by July 1, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448; or the Division of Small Manufacturers, International, and Consumer Assistance (DSMICA), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210; or

Sabina Reilly, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4095.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Somatic Cell Therapy for Cardiac Disease'' dated March 2009. This guidance provides to sponsors developing cellular therapies for the treatment of cardiac disease with recommendations including, but not limited to, the following: (1) Design of preclinical and clinical studies; (2) information to submit on the product delivery system; and (3) the chemistry, manufacturing and controls information to include in an IND for cardiac cellular therapy. This guidance also includes regulatory considerations for the use of intravascular catheter delivery systems.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA'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 requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the IND regulations (21 CFR part 312) have been approved under OMB control number 0910–0014, and the Good Laboratory Practice regulations (21 CFR part 58) have been approved under OMB control number 0910–0119.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.regulations.gov*.

Dated: March 27, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–7350 Filed 4–1–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps (NHSC).

Dates and Times: May 7, 2009, 1 p.m.–4:45 p.m.; May 8, 2009, 8:30 a.m.–4 p.m.; and May 9, 2009, 8:30 a.m.–1:30 p.m.

Place: Marriott Philadelphia Downtown, 1201 Market St., Philadelphia, PA 19107. *Phone*: 215–625–2900.

Status: The meeting will be open to the public.

Agenda: The Council will be convening in Philadelphia, PA to hear updates from the Agency, discuss recruitment strategies for the NHSC and address current workforce issues. The Council will also participate in a regional town hall meeting sponsored by the NHSC.

For Further Information Contact: Jeanean Willis-Marsh, Bureau of Clinician Recruitment and Service, Health Resources and Services Administration, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857; e-mail: *JWillis@hrsa.gov*; telephone: 301–449–4494.

Dated: March 26, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–7424 Filed 4–1–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: May 14, 2009, 8:30 a.m. to 5 p.m. May 15, 2009, 8:30 a.m. to 5 p.m.

Place: Hilton Palacio del Rio Hotel, 200 South Alamo Street, San Antonio, Texas 78205, Telephone: (210) 222–1400, Fax: (210) 270–0761.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

The Council meeting is being held in conjunction with the National Farmworker Health Conference sponsored by the National Association of Community Health Centers, which is being held in San Antonio, Texas, May 12–14, 2009.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Gladys Cate, Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Maryland 20857; telephone (301) 594–0367.

Dated: March 27, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–7435 Filed 4–1–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Request for Nominations.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill two (2) vacancies on the Advisory Committee on Heritable Disorders in Newborns and Children. The Secretary of Health and Human Services (the Secretary, HHS) is soliciting nominations for individuals with expertise either in ethics or infectious diseases.

Authority: The Advisory Committee on Heritable Disorders in Newborns and Children (Committee) was established under section 1111 of the Public Health Service (PHS) Act, 42 U.S.C. 300b-10, as amended in the Newborn Screening Saves Lives Act of 2008 (Act). The Committee is governed by the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees.

DATE: The agency must receive nominations on or before May 18, 2009.

ADDRESSES: All nominations are to be submitted to Michele A. Lloyd-Puryear, M.D., PhD, Designated Federal Official and Executive Secretary, Advisory Committee on Heritable Disorders in Newborns and Children, at: Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Nominations will not be accepted by e-mail or facsimile.

FOR FURTHER INFORMATION CONTACT: Ms. Alaina M. Harris, Genetic Services Branch, Maternal and Child Health Bureau, HRSA, at *aharris@hrsa.gov* or (301) 443–0721. A copy of the Committee Charter and list of the current membership can be obtained by contacting Ms. Harris or by accessing the Advisory Committee web site at *http://www.hrsa.gov/heritabledisorderscommittee/*.

SUPPLEMENTARY INFORMATION: Title XXVI of the Children's Health Act of 2000, ''Screening for Heritable Disorders,'' enacted sections 1109, 1110, and 1111 of the PHS Act. This Act established grant programs to improve the ability of States to provide newborn and child screening for heritable disorders (section 1109) and for evaluating the effectiveness of screening, counseling or health care services in reducing the morbidity and mortality caused by heritable disorders in newborns and children (section 1110).

On April 24, 2008, this Act was reauthorized and programs and activities for sections 1109, 1110, and 1111 were expanded by the ''Newborn Screening Saves Lives Act of 2008'' which also added sections 1112, 1113, 1114, 1115 and 1116. Section 1112 establishes a clearinghouse of newborn screening; section 1113 establishes a program for laboratory quality; section 1114 establishes an Interagency Coordinating Committee on Newborn and Child Screening (ICC); section 1115 establishes a national contingency plan for newborn screening; and section 1116 establishes the Hunter Kelly newborn screening research program.

The Secretary, HHS, was directed under section 1111 to establish an Advisory Committee on Heritable Disorders in Newborns and Children (Committee). The Committee provides to the Secretary advice about aspects of newborn and childhood screening and technical information for the development of policies and priorities that will enhance the ability of the State and local health agencies to provide for newborn and child screening, counseling and health care services for newborns and children having or at risk for heritable disorders. The Committee also makes recommendations, gives advice, or provides information to the Secretary about the grant program established under section 1109 of the

Act. Activities carried out under sections 1112–1114 and 1116 are undertaken in consultation with the Committee.

The individuals selected by the Secretary for appointment to the Committee will be invited to serve for up to 4 years. A member may be reappointed to serve up to an additional 4 years at the request of the Secretary. Members may serve after the expiration of their term until their successors have taken office, but no longer than 120 days. Members who are not Federal employees will receive a stipend for each day they are engaged in the performance of their duties as members of the Committee. Members shall receive per diem and travel expenses as authorized by section 5 U.S.C. 5703 for persons employed intermittently in Government service. Members who are officers or employees of the United States Government shall not receive compensation for service on the Committee. Nominees will be invited to serve beginning from September 30, 2009.

To allow the Secretary to choose from a highly qualified list of potential candidates, more than one nomination is requested per open position. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude the Committee membership—potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest; (2) the nominator's name, address, and daytime telephone number, and the home/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Please submit nominations no later than May 18, 2009.

The Department of Health and Human Services will ensure that the membership of the Committee reflects an equitable geographical and gender distribution, provided that the effectiveness of the Committee would not be impaired. Appointments shall be made without discrimination on the basis of age, ethnicity, gender, sexual orientation, and cultural, religious, or socioeconomic status.

Dated: March 23, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–7425 Filed 4–1–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Biology Member Conflict SEP.

Date: April 10, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Daniel F. McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioanalytical and Biophysical Measurements.

Date: April 16–17, 2009.

Time: 7:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7196 Filed 4–1–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 22, 2009, 11 a.m. to April 22, 2009, 1 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 16, 2009, 74 FR 11120–11121.

The meeting will be held May 12, 2009. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7198 Filed 4–1–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the National Science Advisory Board for Biosecurity (NSABB).

Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established NSABB to provide advice, guidance and leadership regarding federal oversight of dual use research, defined as biological research with legitimate scientific purposes that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open to the public, however pre-registration is strongly recommended due to space limitations. Persons planning to attend should register online at *http://www.biosecurityboard.gov* or by calling Capital Consulting Corporation (Contact: Saundra Bromberg at 301–468–6004, ext. 406). Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: April 29, 2009.

Open: 8:30 a.m. to 5 p.m.

Agenda: Presentations and discussions regarding: (1) Strategies for a personnel reliability program for individuals with access to Select Agents and Toxins; (2) overview of Public Consultation meeting on April 3, 2009 on proposed optimal characteristics of individuals with access to Select Agents; (3) public comments; and (4) other business of the Board.

Place: National Institutes of Health, Building 1, Wilson Hall, Bethesda, Maryland 20892.

Contact Person: Ronna Hill, NSABB Program Assistant, 6705 Rockledge Drive, Bethesda, Maryland 20892, (301)–496–9838.

This meeting will also be Web cast. The draft meeting agenda and other information about NSABB, including information about access to the Web cast and pre-registration, will be available at *http://www.biosecurityboard.gov* Please check this Web site for updates. Times are approximate and subject to change.

Any member of the public interested in presenting oral comments at the meeting may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee. All written comments must be received by April 20, 2009 and should be sent via e-mail to *nsabb@od.nih.gov* with ''NSABB Public Comment'' as the subject line or by regular mail to 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, Attention: Ronna Hill. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: March 25, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7199 Filed 4–1–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N0049; 94240–1341–9BIS–N5]

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The ANS Task Force will meet from 8 a.m. to 5 p.m. on Tuesday, May 19 through Thursday, May 21, 2009.

ADDRESSES: The ANS Task Force meeting will take place at the Holiday Inn—Bozeman, 5 Baxter Lane, Bozeman, MT 59715 (406–587–4561). You may inspect minutes of the meeting at the office of the Chief, Division of Fisheries and Aquatic Resource Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203, during regular business hours, Monday through Friday. You may also view the minutes on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php.*

FOR FURTHER INFORMATION CONTACT: Susan Mangin, ANS Task Force, Executive Secretary, at (703) 358–2466, or by e-mail at *Susan_Mangin@fws.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces meetings of the ANS Task Force. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics that the ANS Task Force plans to cover during the meeting include: Regional Panel issues and recommendations, Committee recommendations, and consideration for approval of state ANS management plans. The agenda and other related meeting information are on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php*.

Dated: March 6, 2009.

Gary Frazer,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. E9–7427 Filed 4–1–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC00000.L16400000.BF0000.241A.0]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting and Recreation Subcommittee Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) and Recreation RAC Subcommittee will meet as indicated below.

DATES: May 11, 2009. The meeting will start at 10 a.m. and end no later than 4 p.m. The public comment period will be from 1 p.m. to 1:30 p.m. The meeting will be held at the Idaho Department of Labor and Commerce, 1350 Troy Rd., Moscow, ID.

FOR FURTHER INFORMATION CONTACT: Lisa Wagner, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone at (208) 769–5014.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the following topics: Election of Officers and Forest

Service recreation fee proposals (Recreation RAC Subcommittee). Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/rac/id/id_index.htm*.

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: March 23, 2009.

Stephanie Snook,

Acting District Manager.

[FR Doc. E9–7459 Filed 4–1–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–08–1310–DB]

Notice of Rescheduled Meeting of the Pinedale Anticline Working Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will meet in Pinedale, Wyoming. This meeting is open to the public.

DATES: The May 28, 2009 meeting has been rescheduled to coincide with the public comment period for an environmental assessment. The PAWG will meet the following date beginning at 1 p.m.: May 7, 2009.

ADDRESSES: The meeting will be held at the BLM Pinedale Field Office, 1625 West Pine Street, Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Shelley Gregory, PAWG Designated Federal Officer, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street., PO Box 768, Pinedale WY 82941; 307–367–5328; *shelley_gregory@blm.gov*.

SUPPLEMENTARY INFORMATION: On June 25, 2008, the Secretary of the Interior renewed the Charter for the PAWG which advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds.

The agenda for this meeting will include discussions concerning task group recommendations and overall adaptive management implementation. Public comments will be heard at the commencement and prior to adjournment of each meeting.

Dated: March 27, 2009.

Chuck Otto,

Field Office Manager.

[FR Doc. E9–7387 Filed 4–1–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the California Department of Parks and Recreation, Sacramento, CA. The human remains were removed from Border Field State Park, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by California Department of Parks and Recreation professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Diegueno Mission Indians of California); and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

In 1976, human remains representing a minimum of one individual were removed from archeological site CA–SDI–4281, located on Lichty Mesa within Border Field State Park in San Diego County, CA, during excavations by Jeffery C. Bingham, State Parks archeologist. The remains were identified as human remains in the archeology lab. No known individual was identified. No associated funerary objects are present.

The carbon 14 date of the materials surrounding the human remains indicated that the dates for the site were from 4340 ± 50 to 3840 ± 60 years before the present. Based on this dating, the human remains were determined to be Native American. The Kumeyaay Indians (historically also listed as ''Diegueno'' or ''Southern California Mission Indians'') of Western San Diego County are the Native peoples currently associated with archeological sites in this area. Based on the location of discovery and age of the human remains, the officials of the California Department of Parks and Recreation reasonably believe the human remains to be Kumeyaay. The descendants of the Kumeyaay are members of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron

Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Rebecca Carruthers, California Department of Parks and Recreation, 1416 9th Street, Sacramento, CA 95814, telephone (916) 653–8893, before May 4, 2009. Repatriation of the human remains to the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: March 18, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–7402 Filed 4–1–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: New York State Museum, Albany, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the New York State Museum, Albany, NY. The human remains were removed from the Engelbert site, Tioga County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the New York State Museum professional staff in consultation with representatives of the Cayuga Nation of New York; Delaware Tribe (part of the Cherokee Nation, Oklahoma); Delaware Nation, Oklahoma; Oneida Tribe of Indians of Wisconsin; Oneida Nation of New York; Onondaga Nation of New York; Saint Regis Mohawk Tribe, New York (formerly the St. Regis Mohawk Band of Mohawk Indians of New York); Seneca Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York.

In 1967 and 1968, human remains representing a minimum of 188 individuals were removed from the Engelbert site in Tioga County, NY, during gravel mining for construction of the Southern Tier Expressway (Rt. 17). Initial assessment of the site was done by Dr. Robert E. Funk of the New York State Museum in 1967, with excavation and recovery conducted in 1967 by students from the State University of New York (SUNY) at Buffalo under the direction of Dr. Marian E. White. In 1967 and 1968, additional archeological excavations were directed by Dr. William D. Lipe of SUNY-Binghamton over two field seasons with the assistance of members of the Triple Cities Chapter of the New York State Archeological Association, students from SUNY-Binghamton, and local volunteers. The excavations were funded in part by the New York State Museum. In 1967, the human remains were placed under the control of the Triple Cities Chapter of the New York State Archeological Association. In 1968, they were transferred to SUNY-Binghamton. In 1989, a minimum of 180 individuals were transferred to the New York State Museum for curation, while the associated funerary objects remained under the physical possession and control of SUNY-Binghamton. No known individuals were identified. No associated funerary objects are under the control of the New York State Museum.

The archeological evidence demonstrates that the Engelbert site is a large, multicomponent habitation site that was used intermittently over a period of about 5,000 years. The site was also used as a burial site during at least two different periods – about A.D. 1000 to the 1400s, and the late 1500s to

possibly the early 1600s. The later burials are few in number. Archeological evidence associated with the earlier burials, including diagnostic pottery and projectile point types, is similar across a broad geographic region that later was occupied by both Iroquoian– and Algonquian–speaking people.

Pottery types associated with the later burials at the site are typical of Susquehannock people who occupied the Susquehanna River Valley in New York and Pennsylvania, while 17th century historical records indicate that Susquehannock people were living in the area where the site is located until at least A.D. 1600. After the Susquehannock were greatly reduced by disease and warfare, they lived among a number of Indian Nations including Haudenosaunee and Delaware communities. Historical records and Haudenosaunee oral tradition show that individuals and groups, including the Susquehannock, were adopted into the Confederacy during this time. The Haudenosaunee Confederacy includes the six Nations: Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora Nations.

Based on expert opinion, namely the findings and recommendations of the Native American Graves Protection and Repatriation Review Committee (Review Committee) made during the October 11–12, 2008 meeting in San Diego, CA, and published in the **Federal Register** (74 FR 9427–9428, March 4, 2009), there is a relationship of shared group identity between the human remains from the Engelbert site and the Federally-recognized Onondaga Nation of New York, and the Haudenosaunee Confederacy, a non–Federally recognized Indian group for the purposes of NAGPRA.

Written and verbal support for repatriation to the Onondaga Nation were received from the Tonawanda Band of Seneca Indians of New York; Oneida Nation of New York; Tuscarora Nation of New York; Stockbridge Munsee Community, Wisconsin; Delaware Tribe (part of the Cherokee Nation, Oklahoma); Cayuga Nation of New York; Oneida Tribe of Indians of Wisconsin; Saint Regis Mohawk Tribe, New York; and Seneca Nation of New York.

Officials of the New York State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 180 individuals of Native American ancestry. Officials of the New York State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2) and the findings of the Review Committee, there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Federally-recognized Onondaga Nation of New York, and the Haudenosaunee Confederacy, a non–Federally recognized Indian group for the purposes of NAGPRA.

Representatives of any other Indian Nation or tribe that believes itself to be culturally affiliated with the human remains should contact Lisa Anderson, New York State Museum, 3049 Cultural Education Center, Albany, NY 12330, telephone (518) 486–2020, before May 4, 2009. Repatriation of the human remains to the Onondaga Nation of New York may proceed after that date if no additional claimants come forward.

The New York State Museum is responsible for notifying the Cayuga Nation of New York; Delaware Tribe (part of the Cherokee Nation, Oklahoma); Delaware Nation, Oklahoma; Oneida Tribe of Indians of Wisconsin; Oneida Nation of New York; Onondaga Nation of New York; Saint Regis Mohawk Tribe, New York; Seneca Nation of New York; Seneca–Cayuga Tribe of Oklahoma; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York that this notice has been published.

Dated: March 25, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–7404 Filed 4–1–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Moscow, ID. The human remains and associated funerary objects were removed from Park and Treasure Counties, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Idaho, Alfred W. Bowers Laboratory of Anthropology professional staff in consultation with representatives of the Crow Tribe of Montana.

On July 30, 1961, human remains representing a minimum of three individuals were removed along a cliff ledge on the property of Douglas and James Mouat (24TE0401), also known as Mouat Cliff Burial site, Treasure County, MT, during excavations by the Billings Archaeological Society. Prior to the excavation by the Billings Archaeological Society, the Mouat family discovered the burials and contacted the Society to document and excavate them. The human remains were cataloged by the Billings Archaeological Society. The human remains were then transferred to the University of Idaho, Alfred W. Bowers Laboratory of Anthropology for further inventory. No known individuals were identified. The 558 associated funerary objects are 220 beads, 26 lots of beads, 7 clothing items, 47 pieces of cloth, 12 pieces of leather, 5 pipes, 2 bows, 2 modified sticks, 1 bottle, 1 toy, 11 buttons, 26 bracelets, 15 pieces of ornamental metal, 134 pieces of miscellaneous metal, 13 non-human osteological elements, 19 mats of hair, 2 pieces of shell, 2 lots of feathers, 1 tobacco leaf, 2 minerals, 1 lithic artifact, and 9 ecofacts.

The inventory of the associated funerary items and human remains was conducted by the University of Idaho by cross-matching existing documents, materials, and human remains. Historic, ethnographic, and legal documents were consulted to determine the cultural affiliation of this collection. Based on this information, the officials of the University of Idaho, Laboratory of Anthropology reasonably believe that the human remains are culturally affiliated to the Crow Tribe of Montana.

Before April 1968, human remains representing a minimum of one individual were removed from the Bullis Creek Burial (24PA0503), Park County, MT, during excavations by Larry Lahren. No known individual was identified. The 43 associated funerary objects are 8 lots of beads, 14 non-human osteological elements, 2 mats of hair, 4 bracelets, 1 miscellaneous piece of metal, 3 pieces of cloth, 2 clothing

items, 2 projectile points, 3 pieces of leather, and 4 ecofacts.

Sometime between 1985 and 1990, the Museum of the Rockies, Bozeman, MT, sent the human remains and associated funerary objects to the University of Idaho. There is little known about the Bullis Creek collection before it came into the possession and control of the University of Idaho. What is known is that the site was documented by Mr. Lahren as a primary ''neo-Indian'' burial on property owned by the Brawner/Bullis families. In addition, the Museum of the Rockies had determined that the human remains were Crow, presumably by the location of the interment, clothing and beadwork style, and the other associated funerary objects.

Historic, ethnographic, and legal documents affirmed the Museum of the Rockies' cultural affiliation of this reservation period collection through the cultural continuity exhibited in patterns of residence and strongly-represented painted motifs of the beadwork. Based on this information, the officials of the University of Idaho, Laboratory of Anthropology reasonably believe that the human remains are culturally affiliated to the Crow Tribe of Montana.

Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of four individuals of Native American ancestry. Officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 601 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Idaho, Alfred W. Bowers Laboratory of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Crow Tribe of Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Leah K. Evans-Janke, Collections Manager, University of Idaho, Alfred W. Bowers Laboratory of Anthropology, Phinney Hall 101, Moscow, ID 83844–1111, telephone (208) 885–3733, before May 4, 2009. Repatriation of the human remains and associated funerary objects to the Crow Tribe of Montana may proceed after that date if no additional claimants come forward.

The University of Idaho, Alfred W. Bowers Laboratory of Anthropology is responsible for notifying the Crow Tribe of Montana that this notice has been published.

Dated: March 25, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–7407 Filed 4–1–09; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Intent To Prepare an Environmental Assessment for Emergency Repairs to the Presidio Flood Control Project in Presidio, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Intent to prepare an Environmental Assessment.

SUMMARY: This notice advises the public that pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) intends to prepare an Environmental Assessment (EA) for the proposed action of constructing emergency repairs within a 3000-foot reach of the Presidio Flood Control Levee. This notice is being provided as required by the Council on Environmental Quality Regulations (40 CFR 1501.7) and the USIBWC's Operating Procedures for Implementing Section 102 of the National Environmental Policy Act (NEPA), to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EA.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79932 or e-mail: *danielborunda@ibwc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The USIBWC operates and maintains the Presidio Flood Control Project (FCP) located along the Rio Grande within the city of Presidio, Texas. The FCP extends approximately 15.2 miles, from Haciendita, upstream of the Rio Conchos confluence, and ending downstream of Presidio near Brito Creek. In September and October 2008, the Presidio FCP levees sustained major flood damage from overtopping, under-seepage, and erosion. The USIBWC intends to prepare an EA to assess impacts associated with emergency repairs of a 3000-foot section of levee near Station 7+000 that is susceptible to under-seepage and possible levee failure. Recent geotechnical evaluations have identified this reach as requiring immediate attention in order to provide flood control protection to the city of Presidio in preparation of the regional monsoon season. The levee reach is located in the upper levee segment of the Presidio Flood Control project near the Cibolo Creek. The location of the deficient area requires immediate action by the USIBWC in order to ameliorate the eminent risk of levee failure.

Alternatives

In order to remediate the potential levee failure, within the 3000-foot reach, the USIBWC is proposing several alternatives actions, including: (1) No-action; (2) slurry-trench; (3) slurry trench with geotechnical membrane; and (4) sheet piling.

The NEPA analysis and documentation will identify and evaluate all relevant impacts, conditions, and issues associated with the proposed alternative actions.

Dated: March 27, 2009.

Robert McCarthy,

General Counsel.

[FR Doc. E9–7422 Filed 4–1–09; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1014, 1016, and 1017 (Review)]

Polyvinyl Alcohol From China, Japan, and Korea; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on polyvinyl alcohol from China, Japan, and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on June 2, 2008 (73 FR 31507) and determined on September 5, 2008 that it would conduct full reviews (73 FR 53443, September 16, 2008). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 22, 2008 (73 FR 54619). The hearing was held in Washington, DC, on January 27, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on March 27, 2009. The views of the Commission are contained in USITC Publication 4067 (March 2009), entitled *Polyvinyl Alcohol from China, Japan, and Korea: Investigation Nos. 731–TA–1014, 1016, and 1017 (Review).*

By order of the Commission.

Issued: March 27, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary.

[FR Doc. E9–7401 Filed 4–1–09; 8:45 am]

BILLING CODE

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–432 and 731–TA–1024–1028 (Review) and AA1921–188 (Third Review)]

Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, Korea, Mexico, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on prestressed concrete steel wire strand from India and antidumping duty orders on prestressed concrete steel wire strand from Brazil, India, Japan, Korea, Mexico, and Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on prestressed concrete steel wire strand from India and the antidumping duty orders on prestressed concrete steel wire strand from Brazil, India, Japan, Korea, Mexico, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Effective Date: Date of Commission approval of Action Jacket.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2009, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (74 FR 11967, March 20, 2009). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on September 10, 2009, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on September 30, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 24, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 28, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7

[2] Vice Chairman Daniel R. Pearson dissenting with respect to Korea.

business days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 21, 2009. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 9, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before October 9, 2009. On October 30, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 3, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 30, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–7421 Filed 4–1–09; 8:45 am]

BILLING CODE

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0052]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Strategic Planning Environmental Assessment Outreach.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 1, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lilia M. Vannett, Deputy Chief, Office of Strategic Management, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Strategic Planning Environmental Assessment Outreach.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, Federal Government, State, Local, or Tribal Government. Under the provisions of the Government Performance and Results Act, Federal agencies are directed to improve their effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction. This act requires that agencies update and revise their strategic plans every three years. The Strategic Planning Office at ATF will use the voluntary outreach information to determine the agency's internal strengths and weaknesses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete a 18 minute questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 450 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division,

Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 30, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–7429 Filed 4–1–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0039]

Agency Information Collection Activities: Proposed Collection; Comments Requested: 60-Day Notice of Information Collection Under Review: Federal Firearms Licensee Firearms Inventory Theft/Loss Report

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 1, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ben Hayes, Chief, Law Enforcement Support Branch, National Tracing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agencies 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. Authorization of this form is requested as the Violent Crime Control and Law Enforcement Act requires Federal firearms licensees to report to the Bureau of Alcohol, Tobacco, Firearms and Explosives and to the appropriate local authorities any theft or loss of a firearm from the licensee's inventory or collection, within a specific time frame after the theft or loss is discovered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,000 respondents will complete a 24 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,600 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 30, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–7431 Filed 4–1–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0002]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application for Restoration of Firearms Privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 1, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Stephanie I. Forbes, Firearms Enforcement Branch, 99 New York Avenue, NE., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agencies 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Firearms Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3210.1, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for profit. Certain categories of persons are prohibited from possessing firearms. ATF F 3210.1, Application For Restoration of Firearms Privileges is the basis for ATF investigating the merits of an applicant to have his/her rights restored.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 125 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 30, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–7433 Filed 4–1–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II

Notice is hereby given that, on February 19, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II (''HEDGE II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Borg Warner, Auburn Hills, MI; Corning, Inc., Corning, NY; Cummins Inc., Columbus, IN; Deutz AG, Cologne, Germany; Dytech Ensa S.L., Vigo, Spain; Eaton Corporation, Southfield, MI; ExxonMobil Research and Engineering Co., Paulsboro, NJ; Guangxi Yuchai Machinery Co., Ltd., Guangxi, People's Republic Of China; Honda R&D, Tochigi, Japan; Honeywell, Torrance, CA; Lubrizol Corporation, Wickliffe, OH; NGK Insulators, Ltd., Nagoya, Japan; Peugeot Citroen Automobiles, Velizy-Villacoublay, France; and Renault s.a.s, Billancourt, France. The general area of HEDGE II's planned activity is to develop and demonstrate the technologies required to run gasoline engines at efficiencies that are competitive with modern diesel engines in terms of performance but significantly lower emissions levels. The focus of the program will be on efficiency at high specific power levels using elevated levels of exhaust gas recirculation or other forms of charge dilution. Technologies that will be investigated include high-energy ignition systems, high efficiency boosting, fuels and lubricants technology, high EGR operation, and high BMEP operation. Design aspects of the program will be investigated using simulation and hardware testing to examine the effects of engine architecture, EGR loop configuration, pressure charging equipment and design for high cylinder pressures.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–7391 Filed 4–1–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental and Research Forum

Notice is hereby given that, on February 27, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Petroleum Environmental and Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Pall Corporation, East Hills, NY has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on November 26, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 2008 (73 FR 80431).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–7383 Filed 4–1–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on February 24, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Cement, LLC, Sumterville, FL, has been added as a party to this venture.

The following members have withdrawn as parties to this venture and become a subsidiary of Giant Cement Holding, Inc., Summerville, SC: Coastal Cement Corporation, Boston, MA; Dragon Products Company, Portland, ME.

Also, the following affiliate members have withdrawn as parties to this venture and become divisions of PCA: Great Lakes Cement Promotion Association, Lansing, MI; North Central Cement Council, Jordon, MN; Northeast Cement Shippers Association, Castleton, NY; Northwest Cement Producers Group, Gig Harbor, WA; Puget Sound Concrete Specifications Council, Des Moines, WA; Rocky Mountain Cement Council, Denver, CO; South Central Cement Promotion Association, Tulsa, OK; and Southeast Cement Association, Lawrenceville, GA.

In addition, the following parties have changed their names: St. Marys Cement Inc. (U.S.) to St. Marys Cement Inc. (U.S.)/VCNA, Detroit, MI.; St. Marys Cement Inc. (Canada), to St. Marys Cement Inc. (Canada)/VCNA, Toronto, Ontario, CANADA; Suwannee American Cement to Suwannee American Cement/VCNA, Jacksonville, FL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on August 14, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2008 (73 FR 57383).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–7385 Filed 4–1–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Overpayment Recovery Questionnaire (OWCP–20). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 1, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, e-mail *Lawrence.Steven@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

This information collection is necessary to determine whether the recovery of any Black Lung, Energy Employees Occupational Illness Compensation Program Act (EEOICPA) or Federal Employees' Compensation Act (FECA) overpayment, may be waived, compromised, terminated, or collected in full. Standards for Federal agency collection of government debts are regulated under the Federal Claims Collection Acts of 1966 and 1982 and the Debt Collection Improvement Act of 1996. In the Office of Workers' Compensation Programs, collection information pertaining to the collection of accounts receivable is authorized under the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. 923(b) and 20 CFR 725.544(c), the EEOICPA, 42 U.S.C. 7385j–2 and 20 CFR 30.510–30.520, and the Federal Employees' Compensation Act, 5 U.S.C. 8129(b) and 20 CFR 10.430–10.441. The information will be used by OWCP examiners to ascertain the financial condition of the beneficiary to see if the overpayment or any part can be recovered; to identify the possible concealment or improper transfer of assets; and to identify and consider present and potential income and current assets for enforced collection proceedings. The questionnaire provides a means for the beneficiary to explain why he/she is without fault in an overpayment matter. If this information were not collected Black Lung, EEOICPA and FECA would have little basis to decide on collection proceedings. This information collection is currently approved for use through October 31, 2009.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to assure payment of compensation benefits to injured workers at the proper rate.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Overpayment Recovery Questionnaire (OWCP–20).

OMB Number: 1215–0144.

Agency Numbers: OWCP–20.

Affected Public: Individuals or households.

T*otal Respondents:* 4,020.

Total Annual Responses: 4,020.

Estimated Total Burden Hours: 4,020.

Estimated Time per Response: One hour.

Frequency: On occasion and annually.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $1,809.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 30, 2009.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E9–7415 Filed 4–1–09; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Authorization for Release of Medical Information (CM–936). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 1, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, e-mail *Lawrence.Steven@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.* and 20 CFR 725.405 require that all relevant medical evidence be considered before a decision can be made regarding a claimant's eligibility for benefits. The CM–936 is used by black lung claimants who wish to submit medical evidence to support their claim. The form provides the claimant's consent for medical institutions and private physicians to release medical information to the Division of Coal Mine Workers' Compensation (DCMWC). The form may be completed by the claimant and the claims examiner (CE). This information collection is currently approved for use through October 31, 2009.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to assure payment of compensation benefits to injured workers at the proper rate.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Authorization for Release of Medical Information.

OMB Number: 1215–0057.

Agency Numbers: CM–936.

Affected Public: Individual or households.

Total Respondents: 900.

Total Annual Responses: 900.

Estimated Total Burden Hours: 75.

Estimated Time per Response: 5 minutes.

Frequency: Once.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $491.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 30, 2009.

Hazel Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E9–7416 Filed 4–1–09; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities; Proposed Collection; Comment Request: Vocational Rehabilitation and Employment (Chapter 31) Tracking Report (VETS 201); Jobs for Veterans State Grant Budget Information Summary (VETS 401); Jobs for Veterans State Grant Expenditure Detail Report (VETS 402A, Quarterly Expenditures, or VETS 402B, Cumulative Expenditures); Jobs for Veterans State Grant Staffing Directory (VETS 501); Transition Assistance Program Workshop Forecast (VETS 601)

AGENCY: Veterans' Employment and Training Service, U.S. Department of Labor.

ACTION: Notice.

SUMMARY: The Veterans' Employment and Training Service (VETS) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on five (5) separate collections of information: (1) VETS 201 entitled ''Vocational Rehabilitation and Employment (Chapter 31) Tracking Report'' and identified by VETS ICR No.

1293–0009 and OMB Control No. 1293–0009; (2) VETS 401 entitled ''Jobs for Veterans State Grant Budget Information Summary'' and identified by VETS ICR No. 1293–0009 and OMB Control No. 1293–0009; (3) VETS 402A/B entitled ''Jobs for Veterans State Grant Expenditure Detail Report'' and identified by VETS ICR No. 1293–0009 and OMB Control No. 1293–0009; (4) VETS 501 entitled ''Jobs for Veterans State Grant Staffing Directory'' and identified by VETS ICR No. 1293–0009 and OMB Control No. 1293–0009; and (5) VETS 601 entitled ''Transition Assistance Program (TAP) Employment Workshop Forecast'' and identified by VETS ICR No. 1293–0009 and OMB Control No. 1293–0009. Before submitting the ICRs to OMB for review and approval, VETS is soliciting comments on specific aspects of the proposed information collections.

DATES: Submit written or electronic comments on the collection of information by 60 days from publication date.

ADDRESSES: Submit comments on this collection of information by any of the following methods:

- *By mail to:* Patrick Hecker, Jobs for Veterans' State Grants Lead, Office of Grants and Transition Programs, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1312, 200 Constitution Avenue, NW., Washington, DC 20210.
- *Electronically to: hecker.patrick@dol.gov*
- *By fax to:* (202) 693–4755 (not a toll free number) Attn: Patrick Hecker

All comments should be identified with the OMB Control Number 1293–0009. Written comments should be limited to 10 pages or fewer. Receipt of comments will not be acknowledged but the sender may request confirmation that a submission has been received by telephoning VETS at (202) 693–4709 or via fax at (202) 693–4755.

FOR FURTHER INFORMATION CONTACT: Pamela Langley, Chief, Grants and Programs Division, Department of Labor/VETS, Room S–1312, 200 Constitution Avenue, NW., Washington, DC 20210, by e-mail at *langley.pamela@dol.gov* or by phone at (202) 693–4708. Copies of the proposed data collection instruments can be obtained from the contact listed above.

SUPPLEMENTARY INFORMATION:

I. With respect to the following collection of information, VETS is particularly interested in comments on these topics:

(1) Whether the proposed collection of information is necessary for the proper performance and oversight of the Jobs for Veterans State Grant, including whether the information will have practical utility;

(2) The accuracy of the VETS' estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

II. Comments are requested on one or more of the following ICRs:

(1) *Title:* Vocational Rehabilitation and Employment (Chapter 31) Tracking Report (VETS 201).

ICR numbers: VETS ICR No. 1293–0009, OMB Control No. 1293–0009.

ICR status: This ICR is for a revised information collection activity. 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 VETS information collections are displayed on the applicable data collection instrument.

Abstract: VETS and the Department of Veterans Affairs Vocational Rehabilitation and Employment (VA VR&E) share a mutual responsibility for the successful readjustment of disabled veterans into the civilian workforce. Since August, 1995, the two Federal Agencies have worked together under a Memorandum of Understanding to cooperate and coordinate services provided to veterans and transitioning service members referred to or completing a program of vocational rehabilitation authorized under Title 31, United States Code (hereinafter referred to as the Chapter 31 program).

To help Congress understand the status of new initiatives in the Department of Veterans Affairs, the Government Accountability Office (GAO) conducted a study and released Report Number GAO–07–0120: Disabled Veterans' Employment—Additional Planning, Monitoring, and Data Collection Efforts Would Improve Assistance. One of the findings encouraged the two agencies ''*to collect and assess complete information on the progress of the states in implementing the agreement using well-designed and appropriate methodology* * * *''

As a result of the GAO recommendations, a Joint Work Group was formed to establish and standardize processes to ensure disabled veterans participating in the Chapter 31 program achieve the ultimate goal of successful career transition and suitable long-term employment. The Joint Work Group refined processes and strengthened the team approach to serving these disabled veterans. Both Agencies jointly implemented the partnership nationally by issuing a Technical Assistance Guide that included a new data collection instrument.

The Vocational Rehabilitation & Employment (Chapter 31) Tracking Report (VETS 201) is designed to respond to the GAO finding by compiling information on disabled veterans jointly served by the VA, VETS and Jobs for Veterans State Grant recipients. All partners agree to share information exclusively to facilitate job development and placement services for participating veterans. It replaces the information currently reported in the quarterly Manager's Report on Services to Veterans. The information is collected only with documented consent from veterans in accordance with the Privacy Act of 1974 and other applicable regulations and each agency will provide practical and appropriate safeguards to protect Personally Identifiable Information in accordance with applicable regulations and laws, including the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 and reauthorizations, and Title VII of the Civil Rights Act of 1964.

The information is collected by the Jobs for Veterans State grant recipient and submitted to the state Director for Veterans' Employment and Training (DVET) once per Federal fiscal quarter.

(2) *Title:* Jobs for Veterans State Grant Budget Information Summary (VETS 401).

ICR numbers: VETS ICR No. 1293–0009, OMB Control No. 1293–0009.

ICR status: This ICR is for a revised information collection activity. 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 VETS information collections are displayed on the applicable data collection instrument.

Abstract: This form is used by Jobs for Veterans State Grant applicants to forecast annual grant spending by subprogram and by Federal fiscal year quarter. The one-page form illustrates a grantee's annual planned costs across the programs funded under the Jobs for Veterans State Grants. The current OMB-approved Standard Form (SF) 424A form has insufficient columns and rows to accommodate all the categories funded by the Jobs for Veterans State Grant. Therefore, VETS currently

requires States to submit two separate SF 424A forms annually. One form is used to forecast the costs and quarterly cash needs for Disabled Veterans' Outreach Program (DVOP) activities and DVOP special initiatives and a second form is used to forecast the costs and quarterly cash needs for Local Veterans' Employment Representative (LVER) activities, LVER special initiatives, Transition Assistance Program activities, and Incentive Awards. The proposed single form accommodates forecasted costs for all programs by Object Class Category and cash needs for each program by quarter.

The proposed data collection instrument is designed to streamline the collection of data needed and to reduce the current reporting burden on grantees. The information is required to be submitted once per Federal fiscal year as a condition of receiving Jobs for Veterans State Grant funds. Grant recipients are required to submit a revised form to request a modification to their existing grant if the modification affects funding of any program covered by the Jobs for Veterans State Grant.

(3) *Title:* Jobs for Veterans State Grant Expenditure Detail Report (VETS 402A or B).

ICR numbers: VETS ICR No. 1293–0009, OMB Control No. 1293–0009.

ICR status: This ICR is for a revised information collection activity. 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 VETS information collections are displayed on the applicable data collection instrument.

Abstract: 38 U.S.C. 4102A(b)(5) requires the Assistant Secretary of Labor for Veterans' Employment and Training (ASVET) to make funds available to each State to staff and support multiple programs under the Jobs for Veterans State Grant: DVOP, LVER, TAP, and Performance Incentive Awards. The ASVET is also legislatively required to monitor and supervise the distribution and use of these funds on a continuing basis.

The Expenditure Detail Report (EDR) (VETS 402A or B) is used by Jobs for Veterans State Grant recipients to detail total expenditures by funding source to supplement the quarterly Federal Financial Report (FFR) which is used to report total grant spending and draw down of funds. To accommodate differences in States' accounting systems, two separate versions of the self-calculating EDR allow States to report either quarterly (VETS 402A) or cumulative expenditures (VETS 402B) each quarter. The EDR (VETS 402A or B) effectively cross-walks to both the FFR and the Jobs for Veterans State Grant Budget Information Summary (VETS 401) that details projected funding needs for each separate program awarded to States through the Jobs for Veterans State Grant.

VETS collects and compiles the EDR (VETS 402A or B) information to effectively monitor the use of Jobs for Veterans State Grant funds for each separate program purpose in accordance with the regulations at Title 29, Part 97.41 a.3. The proposed EDR requires States to report total expenditures for each funding source as well as the amounts expended for Personal Services and Personnel Benefits for each program. As a condition of receiving Jobs for Veterans State Grant funds, grantees are required to submit the EDR (VETS 402A or B) once per Federal fiscal quarter, including a fifth quarter if funds are obligated or expended in the quarter following the end of the fiscal year (when authorized in the annual appropriation).

(4) *Title:* Jobs for Veterans State Grant Staffing Directory (VETS 501).

ICR numbers: VETS ICR No. 1293–0009, OMB Control No. 1293–0009.

ICR status: This ICR is for a revised information collection activity. 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 VETS information collections are displayed on the applicable data collection instrument.

Abstract: Jobs for Veterans State Grant applicants and grantees use the Jobs for Veterans State Grant Staffing Directory (VETS 501) to satisfy two grant requirements. First, grant applicants satisfy an assurance required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR part 85, §§ 85.605 and 85.610 by listing the locations where grant-funded staff will be assigned. Second, grantees fulfill a requirement set forth in 38 U.S.C. Chapter 41 as amended by Section 601 (c) of Public Law 109–461 by providing the name, assignment as a DVOP specialist or LVER, assignment as half-time or full-time, and date appointed to current position for all staff funded in whole or in part by the Jobs for Veterans State Grant. As amended, the statute requires each DVOP specialist and LVER to complete specialized training provided by the National Veterans' Training Institute (NVTI) within three years of assignment if appointed on or after January 1, 2006.

The proposed data collection instrument is designed to streamline the requirement for staffing information and to minimize the reporting burden on grantees. The information is required to be submitted once per Federal fiscal year as a condition of receiving Jobs for Veterans State Grant funds. Grantees will identify changes to staff assignments, if applicable, for each of the four Federal fiscal quarters and when requesting a modification to their existing grant if the modification affects staffing assignments.

(5) *Title:* Jobs for Veterans State Grant TAP Employment Workshop Forecast (VETS 601).

ICR numbers: VETS ICR No. 1293–0009, OMB Control No. 1293–0009.

ICR status: This ICR is for a revised information collection activity. 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 VETS information collections are displayed on the applicable data collection instrument.

Abstract: This form is used by Jobs for Veterans State Grant applicants to project the location and number of TAP Employment Workshops to be facilitated by grant-funded staff at military installations located in the State. Grant applicants that request funding to facilitate these workshops are required to forecast the total number of workshops and total number of workshop hours planned at each location by Federal fiscal quarter.

As a condition of receiving TAP funds in addition to the allocated Jobs for Veterans State Grant funds, grantees are required to submit the TAP Employment Workshop Forecast (VETS 601) once per Federal fiscal year. Grant recipients will also be required to submit a revised form when requesting a modification to their existing grant if the modification affects TAP funding.

Affected Public: Jobs for Veterans State Grant Applicants/Recipients (53); DVOP specialists and LVER staff (2,000).

Estimated Annual Burden:

(a) VETS 201 (Proposed): 16,000 Hours.

(b) VETS 401 (Proposed): 79.5 Hours.

(c) VETS 402A/B (Proposed): 1,168 Hours.

(d) VETS 501 (Proposed): 106 Hours.

(e) VETS 601 (Proposed): 38 Hours.

Estimated Average Burden Per Respondent:

(a) VETS 201 (Proposed): 2 Hours, Range 1–3 Hours.

(b) VETS 401 (Proposed): 1.5 Hours, Range 1–2 Hours.

(c) VETS 402A or B (Proposed): 2 Hours, Range 1–3 Hours.

(d) VETS 501 (Proposed): 2 Hours, Range 1–3 Hours.

(e) VETS 601 (Proposed): 1 Hour, Range 0.5–1.5 Hours.

Frequency of Response: Annually and/or Quarterly.

Estimated Number of Respondents:

(a) VETS 201 (Proposed): 2,000.

(b) VETS 401 (Proposed): 53.

(c) VETS 402A or B (Proposed): 53.

(d) VETS 501 (Proposed): 53.

(e) VETS 601 (Proposed): 40.

Total Annualized Capital/startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the agency's request for OMB approval of the information collection request. Comments will become a matter of public record.

Dated in Washington, DC, this 27th day of March, 2009.

John M. McWilliam,

Deputy Assistant Secretary.

[FR Doc. E9–7341 Filed 4–1–09; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL MEDIATION BOARD

Submission for OMB Review; Comment Request

AGENCY: National Mediation Board (NMB).

SUMMARY: The Director, Office of Administration, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, *e.g.* new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Investigation of Representation Dispute and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 30, 2009.

June D.W. King,

Director, Office of Administration, National Mediation Board.

Application for Investigation of Representation Dispute

Type of Review: Extension.

Title: Application for Investigation of Representation Dispute,

OMB Number: 3140–0001.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 68 annually.

Burden Hours: 17.00.

Abstract: When a dispute arises among a carrier's employees as to who will be their bargaining representative, the National Mediation Board (NMB) is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the NMB has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.2, provides that applications for the services of the NMB under Section 2, Ninth, to investigate representation disputes may be made on printed forms secured from the NMB's Office of Legal Affairs or on the Internet at *http://www.nmb.gov/representation/rapply.html*. The application requires the following information: The name of the carrier involved; the name or description of the craft or class involved; the name of the petitioning organization or individual; the name of the organization currently representing the employees, if any; the names of any other organizations or representatives involved in the dispute; and the estimated number of employees in the craft or class involved. This basic information is essential in providing the NMB with the details of the dispute so that it can determine what resources will be required to conduct an investigation.

The extension of this form is necessary considering the information is used by the Board in determining such matters as how many staff will be required to conduct an investigation and what other resources must be mobilized to complete our statutory responsibilities. Without this information, the Board would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

Requests for copies of the proposed information collection request may be accessed from *http://www.nmb.gov* or should be addressed to Denise Murdock, NMB, 1301 K Street NW, Suite 250 E, Washington, DC 20005 or addressed to the e-mail address *murdock@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D.W. King at 202–692–5010 or via internet address *king@nmb.gov*. Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–7403 Filed 4–1–09; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012–COL and 52–013–COL; ASLBP No. 09–883–06–COL–BD01]

South Texas Project Nuclear Operating Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register,** 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321,

notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the appeal from the NRC Staff's determination to deny requests for access to sensitive unclassified non-safeguards information (SUNSI) in the following proceeding:

South Texas Project Nuclear Operating Company

(South Texas Project Units 3 and 4)

This appeal arises from an ''Order Imposing Procedures for Access to [SUNSI] and Safeguards Information for Contention Preparation'' dated February 13, 2009, which was included as part of a **Federal Register** notice providing an opportunity to petition for leave to intervene in a hearing on the application for a combined license for the South Texas Project Units 3 and 4 in Matagorda County, Texas. *See* 74 FR 7943 (Feb. 20, 2009). By e-mail submission dated March 2, 2009, several individuals requested access to SUNSI material. By letter dated March 12, 2009, the NRC Staff denied the requests. On March 17, 2009, the requesters appealed the Staff's determination.

The Board is comprised of the following Administrative Judges:

E. Roy Hawkens, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 27th day of March 2009.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E9–7418 Filed 4–1–09; 8:45 am]

BILLING CODE 7590–01–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:

Form D and Regulation D, OMB Control No. 3235–0076, SEC File No. 270–72.

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 extension of the previously approved collection of information discussed below.

Regulation D (17 CFR 230.501 *et seq.*) sets forth rules governing the limited offer and sale of securities without Securities Act registration. Those relying on Regulation D must file Form D (17 CFR 239.500). The purpose of the Form D is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. In addition, the form allows the Commission to elicit information necessary to assess the effectiveness of Regulation D and Section 4(6) of the Securities Act of 1933 (U.S.C. 77d(6)) as capital-raising devices. Form D information is required to obtain or retain benefits under Regulation D. Approximately 25,000 issuers file Form D and it takes approximately 4 hours per response. We estimate that 25% of the 4 hours per response (1 hour per response) is prepared by the issuer for an estimated annual reporting burden of 25,000 hours (1 hour per response × 25,000 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (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 send an e-mail to *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 27, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7354 Filed 4–1–09; 8:45 am]

BILLING CODE 8010–01–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:

Form TH; OMB Control No. 3235–0425; SEC File No. 270–377.

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 extension of the previously approved collection of information discussed below.

Form TH (17 CFR 239.65, 249.447, 269.10 and 274.404) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) is used by registrants to notify the Commission that an electronic filer is relying on the temporary hardship exemption for the filing of a document in paper format that would otherwise be required to be filed electronically as prescribed by Rule 201(a) of Regulation S–T (17 CFR 232.201(a)). Form TH is a public document and is filed on occasion. Form TH must be filed every time an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of a required electronic filing. Approximately 70 registrants file Form TH and it takes an estimated 0.33 hours per response for a total estimated annual burden of 23 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (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 send an e-mail to *Shagufta_Ahmed@omb.eop.gov*; (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to:

PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 27, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7355 Filed 4–1–09; 8:45 am]

BILLING CODE 8010–01–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 FD; OMB Control No. 3235–0536; SEC File No. 270–475.

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 an extension of the previously approved collection of information discussed below.

Regulation FD (17 CFR 243.100 *et seq.*)—Other Disclosure Materials requires public disclosure of material information from issuers of publicly traded securities so that investors have current information upon which to base investment decisions. The purpose of the regulation is to require that: (1) When an issuer intentionally discloses material information, it does so through public disclosure, not selective disclosure; and (2) whenever an issuer learns that it has made a non-intentional material selective disclosure, the issuer makes prompt public disclosure of that information. Regulation FD was adopted due to a concern that the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets. All information is provided to the public for review. The information required is filed on occasion and is mandatory. We estimate that approximately 13,000 issuers make Regulation FD disclosures approximately five times a year for a total of 58,000 submissions annually, not including an estimated 7,000 issuers who file Form 8–K (17 CFR 249.308) to comply with Regulation FD. We estimate that it takes approximately 5 hours per response (58,000 responses × 5 hours) for an estimated total burden of 290,000 hours annually. In addition, we estimate that 25% of the 5 hours (1.25 hours) is prepared by the filer for an estimated annual reporting burden of 72,500 hours (1.25 hours per response × 58,000 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (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 send an e-mail to *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 27, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7356 Filed 4–1–09; 8:45 am]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59647; File No. 4–546]

Joint Industry Plan; Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.; Notice of Filing of Proposed Options Order Protection and Locked/Crossed Market Plan

March 30, 2009.

I. Introduction

On September 13, 2007, and September 18, 2007, pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (''Act'') (''Rule 608''),[1] the International Securities Exchange, LLC (''ISE'') and NYSE Arca, Inc. (''NYSE Arca''), respectively, filed with the Securities and Exchange Commission (''Commission'') the proposed Options Order Protection and Locked/Crossed Market Plan.[2] On December 11, 2007, ISE and NYSE Arca separately filed Amendment No. 1 to the Proposed Plan.[3] On April 24, 2008, and April 17, 2008, ISE and NYSE Arca, respectively, filed Amendment No. 2 to the Proposed Plan.[4] On November 10, 2008 and October 31, 2008, ISE and NYSE Arca, respectively, filed Amendment No. 3 to the Proposed Plan.[5] On April 30, 2008, May 8, 2008, June 18, 2008, June 18, 2008, and July 9, 2008, respectively, Chicago Board Options Exchange, Incorporated (''CBOE''), The NASDAQ Stock Market LLC (''Nasdaq''), American Stock Exchange LLC (''Amex'') (f/k/a NYSE Alternext US LLC, ''NYSE Alternext,'' n/k/a NYSE Amex LLC, ''NYSE Amex''), Philadelphia Stock Exchange, Incorporated (n/k/a NASDAQ OMX PHLX, Inc., ''Phlx''), and Boston Stock Exchange, Inc. (''BSE'') (n/k/a NASDAQ OMX BX, Inc., ''BX'' and together with ISE, NYSE Arca, CBOE, Nasdaq, NYSE Amex, and Phlx, the ''Proposing Exchanges'') filed with the Commission the Proposed Plan.[6] On November 25, 2008, November 26, 2008, December 2, 2008, December 4, 2008, and December 5, 2008, CBOE, NYSE Alternext, BSE,

[1] 17 CFR 242.608.

[2] *See* letter from Michael J. Simon, General Counsel, ISE, to Nancy M. Morris, Secretary, Commission, dated September 12, 2007 (''ISE Letter 1''); and letter from Peter G. Armstrong, Managing Director, Options, NYSE Arca, to Nancy M. Morris, Secretary, Commission, dated September 14, 2007 (''NYSE Arca Letter 1''). The proposed Options Order Protection and Locked/Crossed Market Plan, as amended, is defined herein as the ''Proposed Plan.''

[3] *See* letter from Michael J. Simon, General Counsel, ISE, to Nancy M. Morris, Secretary, Commission, dated December 10, 2007; and letter from Peter G. Armstrong, Managing Director, Options, NYSE Arca, to Nancy M. Morris, Secretary, Commission, dated December 10, 2007.

[4] Amendment No. 2 superseded Amendment No. 1 and replaced it in its entirety. *See* letter from Michael J. Simon, General Counsel, ISE, to Nancy M. Morris, Secretary, Commission, dated April 16, 2008; and letter from Peter G. Armstrong, Managing Director, Options, NYSE Arca, to Nancy M. Morris, Secretary, Commission, dated April 16, 2008.

[5] *See* letter from Michael J. Simon, General Counsel, ISE, to Florence Harmon, Acting Secretary, Commission, dated November 7, 2008 (''ISE Letter 2''); and letter from Peter G. Armstrong, Managing Director, Options, NYSE Arca, to Florence Harmon, Acting Secretary, Commission, dated October 30, 2008 (''NYSE Arca Letter 2'').

[6] In their respective filings of the Proposed Plan, Amex, BSE, CBOE, Nasdaq, and Phlx incorporated the changes made by ISE and NYSE Arca in Amendment No. 2. *See* letters from Jeffrey P. Burns, Vice President and Associate General Counsel, Amex, to Nancy M. Morris, Secretary, Commission, dated June 17, 2008 (''Amex Letter 1''); Bruce Goodhue, Chief Regulatory Officer, BSE, to Florence Harmon, Acting Secretary, Commission, dated July 8, 2008 (''BSE Letter 1''); Edward J. Joyce, President and Chief Operating Officer, CBOE, to Nancy M. Morris, Secretary, Commission, dated April 29, 2008 (''CBOE Letter 1''); Jeffrey S. Davis, Vice President and Deputy General Counsel, The NASDAQ OMX Group, Inc., to Nancy M. Morris, Secretary, Commission, dated May 7, 2008 (''Nasdaq Letter 1''); and Richard S. Rudolph, Vice President and Counsel, Phlx, to Nancy M. Morris, Secretary, Commission, dated June 17, 2008 (''Phlx Letter 1'').

Phlx, and Nasdaq, respectively, filed Amendment No. 1 to the Proposed Plan.[7] Pursuant to Rule 608, the Commission is publishing this notice of, and soliciting comments on, the Proposed Plan.

II. Background

Currently, the Proposing Exchanges are signatories to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Current Plan'').[8]

The Current Plan is a national market system plan linking its participants. In adopting the Securities Acts Amendments of 1975, Congress stated its finding that ''linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.''[9] Consequently, Congress directed the Commission to oversee the development of a national market system. One of the principal purposes of the national market system is to assure ''the practicability of brokers executing investors' orders in the best market.''[10]

Prior to 1999, options were primarily traded on a single exchange. However, as the options exchanges increasingly began multiply listing and trading options classes previously listed on a single exchange, the need for measures to ensure that customer orders are executed in the best market became necessary.[11] For this reason, on October 19, 1999, the Commission ordered the options markets to submit a linkage plan within 90 days that, at a minimum, included uniform trade-through rules and expanded firm quote obligations to cover agency orders presented by competing exchanges.[12] In response, Amex, CBOE, and ISE submitted the Current Plan, and Pacific Exchange, Inc. (''PCX,'' n/k/a NYSE Arca) and Phlx each filed separate plans. The Commission published these plans for comment in the **Federal Register** and ultimately approved the Current Plan on July 28, 2000.[13] Subsequently, both PCX and Phlx submitted proposed amendments to the Current Plan to become participants to the Current Plan. Both of these proposed amendments were approved on November 16, 2000.[14] On February 5, 2004, BSE's proposed amendment to become a participant to the Current Plan became effective.[15] Further, Nasdaq's proposed amendment to become a participant to the Current Plan became effective on March 21, 2008.[16]

The Current Plan requires its participants to avoid, absent reasonable justification and during normal market conditions, trading at a price inferior to that displayed on another market (''trade-through'').[17] The Current Plan provides for several exceptions to trade-through liability, including, among other things, systems malfunction, failure of the receiving market to respond to an incoming order within 30 seconds, failure of the market traded through to complain within the specified time period, complex trades, trading rotations, and non-firm quotations on the market that was traded through.[18] The Current Plan also provides a mechanism by which a member of a participating exchange could seek satisfaction if a customer order is traded through.[19]

In addition, under the Current Plan, its participants agree that the dissemination of ''locked'' or ''crossed'' markets should be avoided, and, if their members lock or cross a market, they should take remedial actions to unlock or uncross such market.[20] Further, the Current Plan contains provisions to address trade comparison, clearing, trading halts, non-firm quotations, and administration of the Current Plan.[21] Except with respect to the addition of new participants and the withdrawal of current participants, any proposed change to the Current Plan must be approved unanimously by its participants.[22]

The participating exchanges comply with the requirements of the Current Plan, including the prohibition against trade-throughs, by utilizing a stand alone system (''Linkage Hub'') to send and receive specific order types. The Linkage Hub is a centralized data communications network that electronically links the options exchanges to one another. The Options Clearing Corporation (''OCC'') operates the Linkage Hub.[23]

There are three defined order types under the Current Plan that its participants could route through the Linkage Hub to limit trade-throughs: orders represented by eligible market makers on behalf of customers (''Principal Acting as Agent Orders'' or ''P/A Orders'');[24] orders for the principal accounts of market makers and specialists (''Principal Orders'');[25] and orders intended to satisfy trade-through liabilities (''Satisfaction Orders'').[26] Non-market-maker broker-dealers do not have access to the Linkage Hub.

While acknowledging that the Current Plan largely has worked satisfactorily,[27] the Proposing Exchanges seek to withdraw from the Current Plan[28] and

[7] In their respective Amendment No. 1 to the Proposed Plan, BSE, CBOE, NYSE Alternext, Phlx, and Nasdaq made changes identical to those made by ISE and NYSE Arca in Amendment No. 3. *See* letters from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Florence Harmon, Acting Secretary, Commission, dated November 25, 2008 (''CBOE Letter 2''); Jeffrey P. Burns, Managing Director, NYSE Alternext, to Florence Harmon, Acting Secretary, Commission, dated November 25, 2008 (''Amex Letter 2''); John Katovich, Vice President, BSE, to Florence Harmon, Acting Secretary, Commission, dated December 1, 2008 (''BSE Letter 2''); Richard S. Rudolph, Vice President and Counsel, Phlx, to Florence Harmon, Acting Secretary, Commission, dated December 3, 2008 (''Phlx Letter 2''); and Jeffrey S. Davis, Vice President and Deputy General Counsel, The NASDAQ OMX Group, Inc., to Florence Harmon, Acting Secretary, Commission, dated December 4, 2008 (''Nasdaq Letter 2'').

[8] On July 28, 2000, the Commission approved the Current Plan which was proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[9] Section 11A(a)(1)(D) of the Act.

[10] 15 U.S.C. 78k–1(a)(1)(C)(iv).

[11] See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023, 48024 (August 4, 2000).

[12] *See* Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674, 57675–76 (October 26, 1999).

[13] *See supra* note 8. The plans filed by PCX and Phlx could not be approved as national market system plans, pursuant to Rule 11Aa3–2 (n/k/a Rule 608) under the Act, because neither was filed by two or more sponsors, as required by the rule. 17 CFR 240.11Aa3–2 (n/k/a 17 CFR 242.608).

[14] *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

[15] *See* Securities Exchange Act Release No. 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[16] *See* Securities Exchange Act Release No. 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008).

[17] Section 8(c) of the Current Plan.

[18] Section 8(c)(iii) of the Current Plan.

[19] Section 8(c)(ii) of the Current Plan.

[20] Section 7(a)(i)(C) of the Current Plan.

[21] Sections 5, 9, and 10 of the Current Plan.

[22] Section 5(c)(i) of the Current Plan.

[23] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[24] Sections 2(16)(a) and 7(a)(ii)(B) of the Current Plan.

[25] Sections 2(16)(b) and 8(b)(iii) of the Current Plan.

[26] Sections 2(16)(c) and 7(a)(ii)(C) of the Current Plan.

[27] *See* ISE Letter 1 and NYSE Arca Letter 1, *supra* note 2; *see also* Amex Letter 1, BSE Letter 1, CBOE Letter 1, Nasdaq Letter 1, and Phlx Letter 1, *supra* note 6.

[28] Section 4(d) of the Current Plan states that a participant could withdraw from the Current Plan by giving notice, filing an amendment to the Current Plan, and paying any accrued costs for which it is responsible. Section 5(c)(iii) of the Current Plan further states that the amendment effecting the withdrawal must specify how such participant ''plans to accomplish, by alternate means, the goals of the [Current Plan] regarding limiting Trade-Throughs of prices on other

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operate under an alternative linkage plan, the Proposed Plan. The Proposing Exchanges contend that the continuing growth in the volume of options traded since the Commission approved the Current Plan has strained market makers' ability to comply with the current Linkage Hub rules. They further note that the options markets have been moving towards quoting in pennies, and options quoted in pennies now represent a significant amount of the total industry volume. The Proposing Exchanges assert that quoting in pennies increases the number of price changes in an option, which in turn gives rise to a greater chance of missing the market.[29]

The Proposing Exchanges also state that the operating rules of the Current Plan are complex. They contend that there are restrictions on when market makers could send Principal Orders, and rules on the size of P/A Orders are complicated. Moreover, the Proposing Exchanges represent that, unlike the Current Plan, their proposed alternative linkage would eliminate the need for achieving unanimity to change even the most minor aspect of the linkage mechanism.[30]

The Proposing Exchanges propose an alternative, rules-based approach to intermarket options linkage. This rules-based approach would require neither a central linkage mechanism, nor a complex set of operating rules.

III. Description of the Proposed Plan

A brief summary of the Proposed Plan is provided below. The full text of the Proposed Plan submitted by the Proposing Exchanges, is available on the Commission's Web site at *http://sec.gov/rules/sro/nms/nmsarchive/nms2007.shtml#4-546*, at the each Proposing Exchange's principal office, and at the Commission's Public Reference Room.

A. Order Protection

1. Prevention of Trade-Throughs

The Proposed Plan would require each Participant[31] to establish, maintain, and enforce written policies and procedures as approved by the Commission that are reasonably designed to prevent Trade-Throughs in Eligible Options Classes.[32] The Proposed Plan would define an ''Eligible Options Class''[33] as all option series overlying a security or group of securities, which class is available for trading on two or more Eligible Exchanges. A ''Trade-Through''[34] would be defined as a transaction in an option series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer. A ''Protected Bid'' or a ''Protected Offer''[35] would mean a bid or offer in an option series that is displayed by an Eligible Exchange, is disseminated pursuant to the OPRA Plan, and is the Best Bid or Best Offer of an Eligible Exchange. A ''Best Bid'' or ''Best Offer''[36] would mean the highest bid price or the lowest offer price communicated by a member of an Eligible Exchange to any broker-dealer or to any customer[37] at which such member is willing to buy or sell, either as principal or agent. A Best Bid or Best Offer would not include indications of interest.

The Proposed Plan would also require each Participant to agree to conduct surveillance of its market on a regular basis to ascertain the effectiveness of the policies and procedures to prevent Trade-Throughs and to take prompt action to remedy any deficiencies in such policies and procedures.[38] In addition, the Commission notes that Rule 608(c) requires that each self-regulatory organization, absent reasonable justification or excuse, enforce compliance with any national market system plan by its members and persons associated with its members.[39]

2. Exceptions to Trade-Throughs

The Proposed Plan would provide exceptions for certain transactions from the prohibition against Trade-Throughs. The Proposed Plan would also provide that, if a Participant relies on an exception, it would be required to establish, maintain, and enforce written policies and procedures reasonably designed to assure compliance with the terms of the exception.[40] Below is a discussion of the proposed exceptions.

System Issues:[41] The Proposing Exchanges state that this exception corresponds to the system-failure exception in Regulation NMS for equity securities and would permit a Participant to trade through a Protected Quotation when the Eligible Exchange displaying such Protected Quotation is experiencing system problems.[42] The Participants would adopt ''self-help'' rules to implement this exception.[43]

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exchanges trading the same options classes.'' The Commission notes that, should the Proposing Exchanges choose to withdrawal from the Current Plan, they would be required to meet these requirements.

[29] *See* ISE Letter 1 and NYSE Arca Letter 1, *supra* note 2; *see also* Amex Letter 1, BSE Letter 1, CBOE Letter 1, Nasdaq Letter 1, and Phlx Letter 1, *supra* note 6.

[30] *See infra* note 84 and accompanying text.

[31] The Proposed Plan defines ''Participant'' to mean an Eligible Exchange whose participation in the plan has become effective pursuant to Section 3(c) of the Proposed Plan. *See* Section 2(15) of the Proposed Plan. As with the Current Plan, the Proposed Plan defines ''Eligible Exchange'' to mean a national securities exchange registered with the Commission in accordance with Section 6(a) of the Act that is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws) and is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan). In addition, under the Proposed Plan, if a national securities exchange chooses not to become a party to the Proposed Plan, it would still be included in the definition of ''Eligible Exchange'' if it is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. *See* Section 2(6) of the Proposed Plan and Section 2(6) of the Current Plan. Thus, the Best Bids and Best Offers on exchanges that remain participants in the Current Plan would be protected against Trade-Throughs by Participants in the Proposed Plan. ''OPRA Plan'' means the plan filed by the Options Price Reporting Authority with the Commission pursuant to Section 11Aa(1)(C)(iii) of the Act and approved by the Commission and declared effective as of January 22, 1976, as from time to time amended. *See* Section 2(14) of the Proposed Plan. For the definitions of ''Trade-Through,'' ''Best Bid'' or ''Best Offer,'' ''Locked Market,'' and ''Crossed Market,'' *see infra* notes 34, 36, 78, and 79, respectively, and accompanying texts.

[32] Section 5(a)(i) of the Proposed Plan.

[33] Section 2(7) of the Proposed Plan. The Current Plan defines ''Eligible Options Class'' to mean all option series overlying a security or group of securities, including both put options and call options, which class is traded on two or more participants of the Current Plan. *See* Section 2(8) of the Current Plan.

[34] Section 2(21) of the Proposed Plan. The Current Plan defines ''Trade-Through'' to mean a transaction in an options series at a price that is inferior to the national best bid and offer in an options series calculated by that plan's participant, but does not include a transaction that occurs at a price that is one minimum quoting increment inferior to the national best bid and offer provided a linkage order is contemporaneously sent to each of that plan' participant disseminating the national best bid and offer for the full size of the participant's bid (offer) that represents the national best bid and offer. *See* Section 2(29) of the Current Plan.

[35] Section 2(17) of the Proposed Plan. Protected Bid and Protected Offer, together are referred to herein as ''Protected Quotation.'' *See* Section 2(18) of the Proposed Plan.

[36] Sections 2(1) and 2(2) of the Proposed Plan. Under the Current Plan, ''best'' as used with reference to bids (offers) means the bid (offer) that is highest (lowest). *See* Section 2(2) of the Current Plan.

[37] A ''customer'' would be defined an individual or organization that is not a broker-dealer. *See* Section 2(5) of the Proposed Plan.

[38] Section 5(a)(ii) of the Proposed Plan. The Current Plan states each of its participants shall establish procedures to conduct surveillance of its market to identify trades executed at prices inferior to the national best bid and offer. *See* Section 8(c)(i)(B) of the Current Plan.

[39] 17 CFR 242.608(c).

[40] Section 5(a)(i) of the Proposed Plan.

[41] Section 5(b)(1) of the Proposed Plan.

[42] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7. *See also* Rule 611(b)(1) of Regulation NMS under the Act (17 CFR 242.611(b)(1)).

[43] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7. Such proposed rules would be subject to

Trading Rotations:[44] This exception would permit a Participant to trade through a Protected Quotation disseminated by an Eligible Exchange during a trading rotation. It carries forward a trade-through exception in the Current Plan[45] and is the options equivalent to the single price opening exception in Regulation NMS for equity securities.[46] Options exchanges use a trading rotation to open an option for trading or reopen an option after a trading halt. The rotation is effectively a single price auction to price the option,[47] and there are no practical means to include prices on other exchanges in that auction.[48]

Crossed Markets:[49] This exception would permit a Participant to trade through when markets are crossed and is identical to the crossed quote exception in Regulation NMS.[50] A Crossed Market is when a Protected Bid is higher than a Protected Offer. The Proposing Exchanges state that permitting transactions to be executed without regard to Trade-Throughs in a Crossed Market would allow the market quickly return to equilibrium.[51]

Intermarket Sweep Orders:[52] The Proposed Plan includes two exceptions from the prohibition against Trade-Throughs for certain transactions involving Intermarket Sweep Orders[53] (or ''ISOs''). An ISO would be defined as a limit order for an options series that, when routed to an Eligible Exchange, is identified as an Intermarket Sweep Order and, simultaneously with the routing of the order, one or more additional orders, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the order. Such additional orders would also be marked as ISOs.[54]

The Proposed Plan would permit a Participant to execute orders marked as ISOs even when the Participant is not at the national best bid or offer (''NBBO''). A Participant would also be permitted to execute an order when it is not at the NBBO, provided the Participant simultaneously ''sweeps'' all Protected Quotations using an ISO.[55] The Proposing Exchanges state that these exceptions correspond to the ISO exceptions in Regulation NMS.[56]

Quote Flickering:[57] This exception would permit a Participant to trade through a Protected Quotation on an Eligible Exchange if within one second prior to the execution, such Eligible Exchange had displayed a price equal or inferior to the price of the transaction. The Proposing Exchanges state that this exception corresponds to the flickering quote exception in Regulation NMS.[58] The Proposing Exchanges state that options quotations change as rapidly, if not more rapidly, than cash-equity quotations. Options quotations track the price of the underlying instrument or index and thus generally change when the price of the underlying changes. This exception would provide a form of ''safe harbor'' to Participants to allow them to trade through prices that have changed within a second of the transaction causing a nominal Trade-Through.[59]

Non-Firm Quotes:[60] This exception carries forward the current non-firm quote Trade-Through exception in the Current Plan[61] and would permit a Participant to trade through a Protected Quotation that was ''Non-Firm.''[62] The Proposing Exchanges state that an Eligible Exchange's quotations may not be firm for automatic execution during this trading state and thus should not be protected from Trade-Throughs, and, in effect, these quotations are akin to ''manual quotations'' under Regulation NMS.[63]

Complex Trades:[64] This exception carries forward the complex trade exception in the Current Plan[65] and would permit a Participant to trade through a Protected Quotation if the transaction was part of a ''complex trade.'' The definition of ''complex trade'' would be implemented through rules adopted by the Participants, which would be subject to notice, comment, and Commission review pursuant to the Section 19(b) rule filing process. The Proposing Exchanges state that because complex trades are composed of multiple transactions (''legs'') effected at a net price, it is not practical to price each leg at a price that does not constitute a Trade-Through. Narrowly-crafted implementing rules should ensure that this exception does not undercut Trade-Through protections.[66]

Customer Stopped Orders:[67] This exception would permit a Participant to trade through a Protected Quotation if the trade executed a ''stopped order.'' The exception would require that the ''stopped order'' be for the account of a Customer; that the Customer agreed to the specified price on an order-by-order basis; and that the price of the Trade-Through was, for a stopped buy order, lower than the national Best Bid in the options series at the time of execution, or, for a stopped sell order, higher than the national Best Offer in the options series at the time of execution. The Proposing Exchanges[68] state that this exception corresponds to the customer stopped order exception in Regulation

notice, comment, and Commission review pursuant to Section 19(b) of the Act.

[44] Section 5(b)(ii) of the Proposed Plan.

[45] Section 8(c)(iii)(E) of the Current Plan.

[46] *See* Rule 611(b)(3) of Regulations NMS under the Act (17 CFR 242.611(b)(3)).

[47] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[48] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[49] Section 5(b)(iii) of the Proposed Plan. For the definition of a ''Crossed Market,'' *see infra* note 79 and accompanying text.

[50] *See* Rule 611(b)(4) of Regulation NMS under the Act (17 CFR 242.611(b)(4)).

[51] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[52] Section 5(b)(iv) and (v) of the Proposed Plan.

[53] Section 2(9) of the Proposed Plan. Moreover, the Proposed Plan would provide that each Participant would be required to take reasonable steps to establish that ISOs meet the requirements of the Proposed Plan. *See* Section 5(c) of the Proposed Plan.

[54] A Participant could place any unexecuted, and uncancelled, portion of an ISO on its book.

[55] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[56] *Id. See also* Rule 611(b)(5) and (6) of Regulation NMS under the Act (17 CFR 242.611(b)(5) and (6)).

[57] Section 5(b)(vi) of the Proposed Plan.

[58] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7. *See also* Rule 611(b)(8) of Regulation NMS under the Act (17 CFR 242.611(b)(8)).

[59] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[60] Section 5(b)(vii) of the Proposed Plan.

[61] Section 8(c)(iii)(C) of the Current Plan.

[62] ''Non-Firm'' would be defined to mean, with respect to Quotations in an Eligible Options Class, that members of a Participant are relieved of their obligations under that Participant's firm quote rule in that Eligible Options Class. *See* Section 2(11) of the Proposed Plan. The Commission notes that, when quotations in an Eligible Options Class are non-firm, exchange rules require the exchange to provide notice that its quotations are non-firm by appending an indicator to its quotations. *See, e.g.*, CBOE Rule 43.14(b) and NYSE Arca Rule 6.86(d)(1)(C).

[63] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[64] Section 5(b)(viii) of the Proposed Plan.

[65] Section 8(c)(iii)(G) of the Current Plan.

[66] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[67] Section 5(b)(ix) of the Proposed Plan.

[68] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

NMS.[69] The Proposing Exchanges state that this exception would permit broker-dealers to execute large Customer orders over time at a price agreed upon by a customer, even though the price of the option may change before the order is executed in its entirety.[70]

Stopped Orders and Price Improvement:[71] This exception would permit a Participant to trade through a Protected Quotation if the trade executes an order that is stopped at a price that did not constitute a Trade-Through at the time of the stop.[72] The Proposing Exchanges state that this exception would allow a Participant to seek price improvement for an order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently-displayed market.[73]

Benchmark Trades:[74] This exception would permit a Participant to trade through a Protected Quotation if the trade was executed at a price not tied to the price of an option at the time of execution and for which the material terms were not reasonably determinable at the time of the commitment to make the trade. An example would be a volume-weighted average price trade, or ''VWAP.'' The Proposing Exchanges state that this exception corresponds to a Trade-Through exemption in Regulation NMS.[75] No Participant currently permits these types of options trades, and any transaction-type relying on this exemption would require the Participant to adopt rules, which would be subject to notice, comment, and Commission review pursuant to the Section 19(b) rule filing process.[76]

B. Locked and Crossed Markets

The Proposed Plan would also address Locked and Crossed Markets.[77] A ''Locked Market''[78] would be defined as a quoted market in which a Protected Bid is equal to a Protected Offer in a series of an Eligible Options Class. A ''Crossed Market''[79] would be defined as a quoted market in which a Protected Bid is higher than a Protected Offer in a series of an Eligible Options Class.

Under the Current Plan, its participants agree that the dissemination of ''locked'' or ''crossed'' markets should be avoided. Further, the Current Plan requires its participants to have rules requiring that, if a member of a participating exchange locks or crosses a market, such member must take remedial actions to unlock or uncross such market. In addition, under the Current Plan, eligible market makers may direct a Principal Order through the Linkage to trade against the bid or offer that was locked or crossed.[80]

The Proposed Plan would require each Participant to establish, maintain, and enforce written rules that require their members reasonably to avoid displaying Locked and Crossed Markets.[81] Participants would also be required to establish, maintain, and enforce written rules reasonably designed to assure the reconciliation of Locked and Crossed Markets.[82] Finally, the Proposed Plan would provide that Participants must establish, maintain, and enforce written rules that prohibit its members from engaging in a pattern or practice of displaying Locked and Crossed Markets, subject to exceptions as may be contained in the rules of a Participant, as approved by the Commission.[83]

C. Compliance With the Proposed Plan

1. Amendments to the Proposed Plan

Any proposed change in, addition to, or deletion from the Proposed Plan could be effected only by means of a written amendment to the Proposed Plan that is unanimously approved and executed by the Participants.[84] Any amendment would need to set forth the change, addition, or deletion and would not become effective until approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.[85]

2. Joining the Proposed Plan

Any national securities exchange would be eligible to become a Participant by executing a copy of the Proposed Plan and providing each Participant with a copy of such executed Proposed Plan[86] if it is: (1) Registered with the Commission in accordance with Section 6(a) of the Act; (2) a Participant Exchange[87] in OCC; and (3) a party to the OPRA Plan.[88] Further, any such national securities exchange wishing to become a Participant would be required to file an amendment to the Proposed Plan by executing a copy of the Proposed Plan and submitting such executed Proposed Plan to the Commission.[89] Such

[69] *See* Rule 611(b)(9) of Regulation NMS under the Act (17 CFR 242.611(b)(9)).

[70] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7. For a further discussion on how this exemption operates, see the Regulation NMS Adopting Release, Securities Exchange Act Release No. 51808, June 9, 2005 at notes 322–325.

[71] Section 5(b)(x) of the Proposed Plan.

[72] The rules of several of the Proposing Exchanges currently contain provisions relating to price improvement mechanisms. *See, e.g.*, ISE's Price Improvement Mechanism and ISE Rule 723. Under these price improvement mechanisms, certain exchange members are typically given the opportunity to offer price improvement to orders received by the exchange during a specified period of time (''auction''). During this auction period, the NBBO could move from where the NBBO was when the order was received. However, the exchange is not required to execute the order at a price at or better than this new NBBO, but instead must guarantee a price no worse than the NBBO at the time the order was received. Thus, following the auction, an execution could result in a Trade-Through if the NBBO improves from the time the order was received although, had the order been executed at the time of receipt, the execution would not have resulted in a Trade-Through.

[73] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[74] Section 5(b)(xi) of the Proposed Plan.

[75] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7. *See also* Rule 611(b)(7) of Regulation NMS under the Act (17 CFR 242.611(b)(7)).

[76] *See* ISE Letter 2 and NYSE Arca Letter 2, *supra* note 5; *see also* Amex Letter 2, BSE Letter 2, CBOE Letter 2, Nasdaq Letter 2, and Phlx Letter 2, *supra* note 7.

[77] Section 6 of the Proposed Plan.

[78] Section 2(10) of the Proposed Plan.

[79] Section 2(4) of the Proposed Plan.

[80] Section 7(a)(i)(C) of the Current Plan.

[81] Section 6(a) of the Proposed Plan. All such rules would be subject to notice, comment, and Commission review pursuant to Section 19(b) of the Act.

[82] Section 6(b) of the Proposed Plan.

[83] Section 6(c) of the Proposed Plan.

[84] The Commission notes that the Proposing Exchanges believe that the Proposed Plan would eliminate the need for achieving unanimity to change even the most minor aspect of the linkage mechanism. *See supra* note 30 and accompanying text. Although, as with the Current Plan, any change to the Proposed Plan requires the unanimous approval by its Participants, unlike the Current Plan, the Proposed Plan does not prescribe order types or a method of routing such order types through a centralized linkage mechanism to prevent Trade-Throughs. *See supra* notes 23–26 and accompanying text. Thus, for example, a Participant in the Proposed Plan would not need to seek the approval of any other Participant to modify the method by which it routes orders to other Participants to comply with the requirements of the Proposed Plan.

[85] Section 4(a) of the Proposed Plan.

[86] Section 3(c) of the Proposed Plan. The Commission notes that Section 3(c) of the Proposed Plan actually states that an ''Eligible Exchange'' may become a Participant by executing a copy of the Proposed Plan and providing each Participant with a copy of the same. The definition of an ''Eligible Exchange'' includes the conditions listed above and also the condition that, if a national securities exchange who chooses not to become a party to the Proposed Plan, such exchange is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. *See infra* note 31. As this portion of the Eligible Exchange definition is not applicable to the instance of an exchange joining the Proposed Plan as a new Participant, it is not included in the discussion above.

[87] For a definition of a ''Participant Exchange,'' *see* Section VII of the OCC by-laws.

[88] For more information on who is a party to the OPRA Plan, *see* Section I of the OPRA Plan.

[89] Section 4(b) of the Proposed Plan.

amendment would be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.[90]

3. Withdrawal From the Proposed Plan

Any Participant may withdraw from the Proposed Plan at any time by providing not less than 30 days' prior written notice to each of the other Participants of such intent to withdraw.[91] To withdraw, such Participant also would be required to effect an amendment to the Proposed Plan by submitting such amended Proposed Plan to the Commission for approval.[92] In submitting the amended Proposed Plan to the Commission, the Participant proposing to withdraw from the Proposed Plan would be required to state how the Participant plans to accomplish, by alternate means, the goal of the Proposed Plan regarding limiting Trade-Throughs of prices on other exchanges trading the same options classes.[93] Such withdrawal from the Proposed Plan would be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder. Upon the effectiveness of such withdrawal, the withdrawing Participant would have no further rights or obligations under the Proposed Plan.

D. Implementation

As noted above,[94] the Proposed Plan would permit a member of a Participant to trade at a price inferior to another market's disseminated quotation if the member sends an Intermarket Sweep Orders to such market for the full size of the disseminated quotation. Thus, unless each Eligible Exchange can accept and execute Intermarket Sweep Orders, a trade-through could occur because the Eligible Exchange would not have the ability to fill the better priced order. Therefore, unless the Commission otherwise authorizes, the Proposed Plan may not be implemented unless all Eligible Exchanges either (1) have become parties to the Proposed Plan and the Commission has approved all necessary implementing rules[95] or (2) have developed the ability to accept and execute incoming ISOs. If either of these conditions has been met, the Proposed Plan would be implemented on a date upon which all Participants agree, but not later than February 27, 2009.[96]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Proposed Plan is consistent with the Act. The Commission generally invites comments on all aspects of the Proposed Plan, including whether the foregoing assures fair competition. In addition, the Commission seeks comment on the following issues:

1. The Commission requests comment on the relative merits of the Proposed Plan in comparison to the Current Plan. Should the Commission approve the Proposed Plan and permit exchanges to withdraw from the Current Plan? For example, have options volumes increased since the Commission's approval of the Current Plan such that that the option markets are constrained in their ability to comply with the current Linkage Hub rules, as the Proposing Exchanges contend? If so, is the Proposed Plan an appropriate alternative to the Current Plan? Further, under the Current Plan, does quoting in pennies give rise to a greater chance of missing the market by increasing the number of price changes in an option, as the Proposing Exchanges contend? If so, is the Proposed Plan more appropriate means to address this concern?

2. Is the Proposed Plan's model for addressing Trade-Throughs and Locked and Crossed Markets, which is similar to that used in the equities markets, appropriate for use in the options markets? If not, please specify the aspects of the Proposed Plan that should be modified, how they should be modified, and why. Beyond modifications to the Proposed Plan, please specify if there any aspects of the Proposed Plan that should be eliminated and why.

3. The Commission requests comment as to whether, and if so, to what extent, the Proposed Plan's order protection provisions would have the desired effect of limiting Trade-Throughs.

4. Is the proposed requirement that each Participant establish, maintain, and enforce policies and procedures that are reasonably designed to prevent Trade-Throughs sufficient to protect investors who would no longer have an avenue under the Proposed Plan to obtain satisfaction when an order has been traded through and no exception applies? Are there any consequences for investors and other market participants if satisfaction for Trade-Throughs is no longer is available under the Proposed Plan? How often is satisfaction requested following a Trade-Through? How often are requests for satisfaction filled?

5. Commenters are also asked to comment on the proposed exceptions to the general Trade-Through prohibitions and whether these exceptions would permit adequate protection of customer orders. Are there proposed exceptions that should not be included or that should be adjusted in the Proposed Plan? Should the Commission consider adding additional exceptions? If so, what are they?

6. The Commission requests comment regarding the proposed use of Intermarket Sweep Orders in the options market. What types of identifiers should be required to help ensure Participants know that they are receiving an Intermarket Sweep Order so that the receiving Participant would be able to execute the order without regard to whether a better price was displayed on another market center?

7. The Proposed Plan would require each Participant to take reasonable steps to establish that Intermarket Sweep Orders meet the requirement of the Proposed Plan. The Commission requests comment on what such reasonable steps should be. For example, because the Proposed Plan would permit members of a Participant to send ISOs, what rules, policies, and procedures should Participants have in place to ensure that such ISOs comply with the requirements of the Proposed Plan?

8. The Commission specifically requests comment on the appropriateness of the proposed Trade-Through exception relating to a systems or equipment failure, material delay, or malfunction. What are the types of situations in which this proposed exception would appropriately apply?

9. Are there any situations for which the exception relating to non-firm quotes would not be sufficient?

10. The proposed definition of ''Bid'' or ''Offer'' states that the terms shall mean the bid price or the offer price communicated by a member of an Eligible Exchange to any Broker/Dealer,

[90] *Id.* These requirements are identical to those contained in the Current Plan. *See* Sections 4(c)(i) and 5(c) of the Current Plan. The Current Plan also requires that an eligible exchange pay a fee to join the Current Plan. *See* Section 4(c)(i)(iv) of the Current Plan. The Proposed Plan does not require an Eligible Exchange to pay a fee to join the Proposed Plan.

[91] Section 3(d) of the Proposed Plan.

[92] Section 4(c) of the Proposed Plan.

[93] *Id.* These requirements are identical to those contained in the Current Plan. *See* Sections 4(d) and 5(c)(iii) of the Current Plan.

[94] *See supra* notes 52–56 and accompanying text.

[95] Section 7 of the Proposed Plan. As noted above, consideration of the exchanges' proposed rules to implement the Proposed Plan would be pursuant to Section 19(b) of the Act. *See supra* notes 43 and 81 and accompanying text.

[96] Section 7 of the Proposed Plan.

or to any customer, at which it is willing to buy or sell, as either principal or agent, but shall not include indications of interest. Is this definition sufficiently clear? For example, when would a communication constitute an indication of interest, and thus not be considered a Bid or Offer under the Proposed Plan? Should this concept be defined in the Proposed Plan? If so, how should it be defined?

11. The Commission requests comment on the Proposed Plan's treatment of Locked and Crossed Markets. Are there aspects of the options market that call for different treatment of Locked Market from the equities market? Are there exceptions to Locked Markets that the Commission should consider? What are possible methods the Participants could adopt in their policies and procedures for a member to reconcile or clear Locked and Crossed Markets?

12. Amendments to the Proposed Plan would require the unanimous approval by the Participants. The Commission requests comment on whether a unanimous vote is appropriate.

13. The Commission requests comment on whether the Proposed Plan's February 27, 2009, implementation date is sufficient to allow market participants time to adapt to the new linkage system. If not, what would be an appropriate implementation date?

14. Unless the Commission otherwise authorizes, the Proposed Plan could not be implemented unless all Eligible Exchanges either have become parties to the Proposed Plan or have developed the ability to accept and execute incoming Intermarket Sweep Orders. The Commission requests comment on whether it is appropriate to delay implementation of the Proposed Plan until all Eligible Exchanges have met such requirements. In addition, the Commission requests comment on under what circumstances, if any, it would be appropriate for the Commission to authorize the implementation of the Proposed Plan, despite one or more Eligible Exchanges failing to satisfy such prerequisites.

15. The Commission requests comment, if it were to approve the Proposed Plan, on the nature and length of implementation periods that would be appropriate to allow market participants to prepare for the new linkage system in an efficient and orderly manner.

16. The proposed definition for ''Eligible Options Class'' is ''all options series overlying a security (as that term is defined in Section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is available for trading on two or more Eligible Exchanges.'' Is this definition sufficient for the Proposed Plan? Is it too narrowly drafted? For example, should the definition include Foreign Currency Options, which are not currently covered by the proposed definition? Are there other products that are, or might be, multiply traded that should be included in the definition of Eligible Options Class?

17. As in Rule 611(a)(1) of Regulations NMS, Section 5(a)(i) of the Proposed Plan provides, in pertinent part, that each Participant agrees to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs. Unlike Regulation NMS, however, the Proposed Plan requires that such policies and procedures be approved by the Commission. In addition, the Current Plan does not require the trade-through surveillance procedures of its Participants to be approved by the Commission.[97] While national securities exchanges must file proposed rule changes pursuant to Section 19(b) of the Act and the rules thereunder, the Commission notes that it generally does not approve, pursuant to Section 19(b), policies and procedures, though they may be reviewed by the Commission, for example, pursuant to inspections and examinations. The Commission requests comment on whether the Proposed Plan should require that such policies and procedures be approved by the Commission, or whether such a requirement should be deleted.

18. The Proposed Plan requires participants to establish, maintain, and enforce policies and procedures that are reasonably designed to prevent Trade-Throughs in Eligible Options Classes. The Commission requests comment on the impact that fees charged by exchanges to trade with their best displayed prices would have on the ability of participants to comply with this requirement under the Proposed Plan. Should there be a maximum amount that an exchange is permitted to charge for trading with its displayed prices? If so, what should this maximum amount be? 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 e-mail to *rule-comments@sec.gov*. Please include File Number 4–546 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 4–546. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the respective principal office of BX, CBOE, ISE, Nasdaq, Phlx, NYSE Amex, and NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–546 and should be submitted on or before April 23, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–7410 Filed 4–1–09; 8:45 am]

BILLING CODE 8010–01–P

[97] *See* Section 8(c)(i)(B) of the Current Plan.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59630; File No. SR–CBOE–2009–021]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

March 26, 2009.

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 March 24, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE rules relating to the Penny Pilot Program. 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's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The industry-wide Penny Pilot Program is scheduled to expire on March 27, 2009.[5] CBOE is filing this proposed rule change to amend the Penny Pilot Program such that it will continue ''as is'' until July 3, 2009, in the option classes that have been selected to participate in the Penny Pilot Program. Extending the Pilot Program as proposed in this rule filing will allow further analysis of the Pilot Program.

Additionally, CBOE states that it intends to submit to the Commission a report analyzing the Penny Pilot Program for the period February 1, 2009 through April 30, 2009. CBOE's report should be submitted by the end of May 2009.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, in that extending the Penny Pilot Program will allow for further analysis.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] Initially, thirteen option classes were included in the Pilot Program. On September 28, 2007, twenty-two additional option classes were added to the Pilot Program. On March 28, 2008, twenty-eight additional classes were added to the Pilot Program. Presently, fifty-eight option classes participate in the Penny Pilot Program. CBOE also quotes and trades XSP options and DJX options in $.01 increments for all option series below $3, and $.05 increments for all option series $3 and above. *See* Securities Exchange Act Release No. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); *See also* Securities Exchange Act Release No. 56139 (July 26, 2007), 72 FR 42159 (August 1, 2007) (SR–CBOE–2007–86); Securities Exchange Act Release No. 56565 (September 27, 2007), 72 FR 56403 (October 3, 2007) (SR–CBOE–2007–98); Securities Exchange Act Release No. 57576 (March 28, 2008) 73 FR 18306 (April 3, 2008) (SR–CBOE–2008–33).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through July 3, 2009.[11] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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,

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4.

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–021 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–2009–021. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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–CBOE–2009–021 and should be submitted on or before April 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7351 Filed 4–1–09; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59633; File No. SR–ISE–2009–14]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Penny Pilot Program

March 26, 2009.

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 March 24, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 ISE is proposing to extend, until July 3, 2009, a pilot program to quote and to trade certain options in pennies. The text of the proposed rule change is available at the Exchange and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 24, 2007, the Commission approved ISE's rule filing, SR–ISE–2006–62, which permits 13 option classes to quote in penny increments in connection with the implementation of an industry wide, six month pilot program (the ''Penny Pilot Program'').[5] Under the Penny Pilot Program, the minimum price variation for all 13 option classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), is $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The QQQQs are quoted in $0.01 increments for all options series.

Subsequent ISE rule filings initiated a two-phase expansion of the Penny Pilot Program. SR–ISE–2007–74 initiated Phase I of the expansion and added 22 option classes to the Penny Pilot Program that are among the most actively traded, multiply-listed option classes based on national average daily volume, and together with the original 13 option classes, represent approximately 35% of the total industry volume.[6]

SR–ISE–2008–27 implemented Phase II of the expansion, which added an additional 28 option classes to the Penny Pilot Program.[7] The total number of option classes in the Penny Pilot Program currently stands at 63. A Regulatory Information Circular, attached as Exhibit 5 to this proposed rule change, identifies all 63 underlying securities. Phase II of the Penny Pilot Program is set to expire on March 27, 2009. ISE now proposes to extend the current Penny Pilot Program until July 3, 2009.

ISE believes extending the Penny Pilot Program as proposed by this rule filing will allow the Exchange and the Commission additional time to continue its analysis of the impact of quoting and trading option classes in penny increments and the impact of the Penny

[5] *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (the ''Initial Filing''). The Penny Pilot Program was subsequently extended for an additional two month period, until September 27, 2007. *See* Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007).

[6] *See* Securities Exchange Act Release No. 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007).

[7] *See* Securities Exchange Act Release No. 57508 (March 17, 2008), 73 FR 15243 (March 21, 2008).

Pilot Program on liquidity, market structure and quote traffic.

As proposed in the Initial Filing, ISE represents that options trading in penny increments will not be eligible for split pricing, as permitted under ISE Rule 716. In the Initial Filing, the Exchange also made references to quote mitigation strategies that are currently in place and proposed to apply them to the Penny Pilot Program. The Exchange proposes to continue applying those quote mitigation strategies during the extension of the Penny Pilot Program, as contemplated by this rule filing. Specifically, as proposed in Rule 804, ISE will continue to utilize a holdback timer that delays quotation updates for up to, but not longer than, one second. The Exchange's monitoring and delisting policies, as proposed in the Initial Filing, shall also continue to apply.

Finally, ISE intends to submit an additional report to the Commission analyzing the Penny Pilot Program for the following time period: February 1, 2009–April 30, 2009. The Exchange anticipates its report will analyze the impact of penny pricing on market quality and options system capacity. The Exchange will submit the report within one month following the end of the period being analyzed.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to continue the Penny Pilot Program uninterrupted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through July 3, 2009.[12] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 Exchange 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–14 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–ISE–2009–14. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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–ISE–2009–14 and should be submitted on or before April 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7352 Filed 4–1–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59638; File No. SR–BX–2009–015]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Reduction of Certain Order Handling and Exposure Periods on the Boston Options Exchange Facility From Three Seconds to One Second

March 27, 2009.

I. Introduction

On February 27, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') 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 reduce certain order exposure periods on the Boston Options Exchange Facility from three seconds to one second. The proposed rule change was published for comment in the **Federal Register** on March 11, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to reduce certain order handling and exposure periods in the rules of the Boston Options Exchange (''BOX'') from three seconds to one second. Specifically, BOX rules provide that an Options Participant may not cause the execution of an order it represents as agent on BOX through the use of orders it solicited unless the agency order is first exposed to the BOX Book for at least three seconds.[4] BOX rules also provide that an order flow provider (''OFP'') may not execute as principal an order it represents as agent unless the OFP (i) exposes the order to the BOX Book for three seconds; (ii) has been bidding or offering on BOX for at least three seconds prior to receiving an agency order that is executable against such bid or offer; or (iii) sends the agency order to the Price Improvement Period (''PIP'') or Universal Price Improvement Period (''UPIP'').[5] Finally, the duration of the PIP, which allows Options Participants to designate certain orders for price improvement and submit such orders to the PIP with a matching contra order, is three seconds.[6] Under the proposal, these time periods would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[9] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of BOX, reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that BOX Options Participants could receive, process, and communicate a response back to BOX within one second, BOX stated that it distributed a survey to its members that would be affected by this proposal or that regularly participate in the PIP. BOX stated that the survey indicated that it typically takes at most 110 milliseconds for Participants to receive, process, and respond to broadcast messages related to the PIP or facilitation or solicitation related broadcasts and for such responses to reach BOX.[10] BOX also stated that the Participants indicated that reducing the order exposure period to one second would not impair their ability to participate in solicitation or facilitation orders or orders executed through the PIP.[11] Based on BOX's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for the Exchange to reduce the order handling and exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its belief that its market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by other exchanges.[12] Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[13] to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–BX–2009–015), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7353 Filed 4–1–09; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59497 (March 4, 2009), 74 FR 10634 (''Notice'').

[4] *See* BOX Rules, Chapter V, Section 17, Supplementary Material .02.

[5] *See* BOX Rules, Chapter V, Section 17, Supplementary Material .03.

[6] *See* BOX Rules, Chapter V, Section 18(e)(i).

[7] 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).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(8).

[10] *See* Notice.

[11] *Id.*

[12] *See e.g.*, Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (SR–CBOE–2008–16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR–ISE–2007–94); and 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008) (SR–Phlx–2008–79).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59629; File No. SR–BX–2009–017]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program on the Boston Options Exchange Facility

March 26, 2009.

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 March 24, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 33 (Penny Pilot Program) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to extend, through July 3, 2009, the pilot program that permits certain classes to be quoted in penny increments on BOX (''Penny Pilot Program''). The text of the proposed rule change is available at the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to extend the effective date of the Penny Pilot Program on BOX for approximately three additional months, through July 3, 2009.[5] The Penny Pilot Program permits certain classes to be quoted in penny increments on BOX. The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will continue to be quoted in $0.01 increments for all options series. The Exchange is not currently proposing any changes to the classes included within the Penny Pilot Program.

BOX will deliver a report (''Penny Pilot Report'') to the Commission which will be composed of data from approximately three months of trading, from February 1, 2009 through April 30, 2009. This Penny Pilot Report will be delivered to the Commission during the month of May 2009. The Penny Pilot Report will analyze the impact of penny pricing on market quality and options system capacity.[6]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposed extension will allow the Penny Pilot Program to remain in effect on BOX without interruption.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Penny Pilot Program has been in effect on BOX since January 26, 2007. *See* Securities Exchange Act Release No. 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007)(SR–BSE–2006–49). The Penny Pilot Program was later extended through September 27, 2007. *See* Securities Exchange Act Release No. 56149 (July 26, 2007), 72 FR 42450 (August 2, 2007)(SR–BSE–2007–38). A subsequent rule filing by the Exchange on September 27, 2007 initiated a two-phased expansion of the Penny Pilot Program. *See* Securities Exchange Act Release No. 56566 (September 27, 2007), 72 FR 56400 (October 3, 2007)(SR–BSE–2007–40). *See also* Securities Exchange Act Release No. 57566 (March 26, 2008), 73 FR 18013 (April 2, 2008)(SR–BSE–2008–20). The Penny Pilot Program is currently set to expire on March 27, 2009. The extension of the effective date is the only change to the Penny Pilot Program being proposed at this time.

[6] BOX has previously delivered several Penny Pilot Reports to the Commission composed of data from preceding time periods during which the Penny Pilot Program has been in effect on BOX.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4.

interest because such waiver will allow the Penny Pilot Program to continue without interruption through July 3, 2009.[13] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–017 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–BX–2009–017. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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–BX–2009–017 and should be submitted on or before April 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7408 Filed 4–1–09; 8:45 am]

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[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59631; File No. SR–Phlx–2009–25]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Penny Pilot Program

March 26, 2009.

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 March 25, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 extend a pilot (the ''pilot'') that permits certain options series to be quoted and traded in increments of $0.01. The Exchange proposes to extend the pilot through July 3, 2009. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to continue to permit specified options series to be quoted and traded in increments of $0.01 by extending the pilot through July 3, 2009.

The pilot began on January 26, 2007.[5] All series in options included in the pilot (''pilot options'') trading at a price of less than $3.00 are currently quoted and traded in minimum increments of $0.01, and pilot options with a price of $3.00 or higher are currently quoted and traded in minimum increments of $0.05, except that options overlying the PowerShares QQQ Trust (''QQQQ'') are quoted and traded in minimum increments of $0.01 for all series regardless of the price. A list of all pilot options was communicated to membership via Exchange circular.[6]

Report to the Commission

Throughout the pilot, the Exchange has prepared and submitted periodic analytical reports (''reports'') to the Commission that address the impact of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74). In that filing, the Exchange also made conforming amendments to various Exchange rules in order to be consistent with the pilot. These conforming changes were also approved on a pilot basis. Therefore, the Exchange is proposing to extend the effective date for these rules through July 3, 2009.

[6] Any additions to or deletions from the list will be published in an Options Trader Alert, which will be available on the Exchange's Web site.

the pilot on the quality of the Exchange's markets and option quote traffic and capacity. The Exchange will submit another such report not later than the last business day of May, 2009, covering the period from February 1, 2009 through April 30, 2009, and will submit further reports as requested by the Commission as the pilot continues. The Exchange will amend its rules accordingly.

Technical Changes to Rule 1034

In addition to the above, the Exchange proposes two technical amendments to Rule 1034. First, Rule 1034(a)(i)(B) would be amended to reflect that the former Nasdaq-100 Index Tracking Stock is now known as the PowerShares QQQ Trust (''QQQQ'').® Second, the proposed rule would be amended to reflect the manner in which it notifies its members of changes in the Exchange's rules or systems that might affect such members' business. Specifically, Rule 1034(a)(i)(B) would be amended to reflect that such notification is no longer made via an Exchange Circular and is instead made via an ''Options Trader Alert'' which is posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by ensuring the orderly continuity of the pilot.

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 that is 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.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through July 3, 2009.[13] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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:

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied the pre-filing requirement.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–25 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–Phlx–2009–25. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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–2009–25 and should be submitted on or before April 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7371 Filed 4–1–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59641; File No. SR–Phlx–2009–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Permit Fees

March 27, 2009.

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 March 24, 2009, NASDAQ OMX PHLX, Inc. (''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: (i) Increase the Order Flow Provider Permit fee to $500 and eliminate the distinctions related to trading venues; (ii) increase the Other Permit Holder fee to $500; and (iii) eliminate the Excess Permit Holder fee. Additionally, the Exchange proposes to delete immaterial language in endnotes related to permit fees.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be implemented beginning April 1, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to simplify the Order Flow Provider Permit fee[3] by eliminating the distinctions related to trading venues, which distinctions are no longer necessary as the Exchange will no longer assess permit fees based on the number of trading venues. Additionally, the Exchange proposes to increase both the Order Flow Provider Permit fee and the Other Permit Holders fee to $500. The Exchange believes that it can continue to attract business even with a modest increase, which should raise revenue.

Currently, the Exchange assesses members who use an Order Flow Provider Permit fee to submit orders to the foreign currency options trading floor or options trading floor a fee of $200. A member who uses the Order Flow Provider Permit fee [sic] to submit orders to more than one trading venue is assessed a fee of $300. The Exchange proposes to increase the Order Flow Provider Permit fee to $500 for any order submitted regardless of the number of trading venues.

The Exchange also proposes to increase the Other Permit Holder fee.[4] The Other Permit Holder category was adopted for billing purposes to address the limited situation where permit holders did not fall under one of the existing permit fee categories. The Other Permit Holder Fee is currently $200. The Exchange proposes to similarly increase this fee to $500 to align this fee with the proposed increase to the Order Flow Permit fee.

The Exchange proposes to eliminate the Excess Permit Holders fee[5] of $200, as the Exchange believes that this category of Excess Permit Holders is no longer necessary. The Excess Permit Holder category was intended to cover permit holders who did not fall within an existing category to ensure that each permit is subject to a permit fee. This separate category is no longer necessary as all members are currently captured by either the Order Flow Permit Fee or the Floor Broker, Specialist, ROT, Off-Floor Trader, or Market Maker Authorized Traders Permit Fee or Other Permit Fee categories.

The Exchange proposes to delete the following immaterial language from both endnotes 45a and 45b ''[t]hese policies will be effective as of February 2, 2004.'' The Exchange believes that this statement, as to the effectiveness of the policies related to those endnotes, is irrelevant.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the above proposals are equitable in that they propose to assess the same fee on members who pay either the Order Flow Provider Permit Fee or the Other Permit Holders Fee. Additionally, the elimination of the Excess Permit Holder fees should not impact members. The Exchange believes that all members should be captured under a remaining permit fee category.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This fee applies to a permit holder who does not have physical access to the Exchange's trading floor, is not registered as a Floor Broker, Specialist or ROT (on any trading floor) or Off-Floor Trader, and whose member organizations submits orders to the Exchange. See Exchange Rule 620.

[4] Status as an Other Permit Holder requires that a permit holder or the member organization for which they solely qualify has no transaction activity for the applicable monthly billing period. Should a permit holder actively transact business during a particular month, the highest applicable monthly permit fee will apply to such permit holder and the member organization for that monthly period. The ''other'' status only applies to permit holders who solely qualify their member organization, or in other words there is just one permit holder in that member organization. If there is more than one permit holder in a member organization and that permit holder does not fit within any of the existing permit fee categories, then this ''other'' category does not apply. Such permit holder or the member organization they solely qualify for must apply for such ''other'' status in writing to the Membership Department.

[5] Permit holders are designated as ''excess'' permit holders in cases where the permit holders in the same organization, other than the permit holder who qualifies the member organization, are either (1) not Floor Brokers, Specialists or ROTs (on any trading floor) or Off-Floor Traders; or (2) not associated with a member organization that meets the definition of an order flow provider. The highest applicable permit fee will be assessed each month. Therefore, in the same month, if one was a floor broker and then became a clerk (and therefore, an ''excess'' permit holder, if one kept his or her permit) for the same member organization, such person would be charged the higher of the possible applicable fees.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

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 [8] and paragraph (f)(2) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–26 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–Phlx–2009–26. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–26 and should be submitted on or before April 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7409 Filed 4–1–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59628; File No. SR–NYSEArca–2009–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Option Trading Rules in Order To Extend the Penny Pilot Program

March 26, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 25, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b–4(f)(6) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its option trading rules in order to extend the Penny Pilot in options classes in certain issues (''Pilot Program'') previously approved by the Securities and Exchange Commission (''Commission''), through July 3, 2009. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to extend the time period of the Pilot Program [6] which is currently scheduled to expire on March 27, 2009 through July 3, 2009. This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange agrees to submit a report to the Commission that includes data and written analysis of information collected from February 1, 2009 through

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 55156 (January 23, 2007), 72 FR 4759 (February 21, 2007); Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007).

April 30, 2009 and will be submitted by the close of May 2009. The report will analyze the impact of the Pilot Program on market quality and options systems capacity. This report will include, but is not limited to: (1) Data and written analysis on the number of quotations generated for options selected for the Pilot Program; (2) an assessment of the quotation spreads for the options selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the NYSE Arca's automated systems; (4) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them; and (5) an assessment of trade through complaints that were sent by the Exchange during the operation of the Pilot Program and how they were addressed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

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 that is 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.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through July 3, 2009.[13] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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:

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4.

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–26 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–NYSEArca–2009–26. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–26 and should be submitted on or before April 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7370 Filed 4–1–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6563]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Global Connections and Exchange Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA–PE–C–PY–09–03.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: June 1, 2009.

Executive Summary: The Youth Programs Division, Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs announces an open competition for the Global Connections and Exchange (GCE) program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to administer the following GCE programs: Program One: GCE Kyrgyzstan; and/or Program Two: GCE in countries in the Middle East/North Africa (*see http://www.state.gov/p/nea/*), South and Central Asia (*see http://www.state.gov/p/sca/*), and Sub-Saharan Africa (*see http://www.state.gov/p/af*). Countries of interest include: Kazakhstan, Maldives, South Africa, Tanzania, Algeria and Yemen. GCE programs are currently being funded in Afghanistan, Bangladesh, Turkmenistan, and the West Bank; therefore, they are disqualified from this competition. While all other countries in the regions mentioned above qualify, proposals focusing on countries of interest will be deemed more competitive under the Quality of Program Idea review element (*see* V.1. REVIEW PROCESS). The Bureau will award one grant for the Kyrgyzstan program and one grant for the multi-country program. The grantee organizations and/or their partners will select overseas schools and develop collaborative school partnerships with U.S. schools. Thematic online projects will enhance learning, research and cross-border communication among participating schools. If feasible, a small number of U.S. and/or foreign participants may travel to partner schools for a minimum of three weeks in order to enhance mutual understanding and strengthen online relationships. All Global Connections and Exchange activities will be undertaken in regular and consistent consultation with the Youth Programs Division and the Public Affairs Section (PAS) of the U.S. Embassy in each participating country.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The Global Connections and Exchange program is designed to introduce youth to a broad range of ideas and resources while enhancing the use of information technology in schools. Through this program, overseas secondary schools will expand computer literacy skills, improve general education, and gain a deeper understanding of U.S. society, culture, and values. They will also increase their capacity to generate change through programs that foster tolerance and mutual respect while promoting grassroots activism among youth. American students will, in turn, gain a greater understanding of foreign cultures and an interest in learning foreign languages while increasing their knowledge of international affairs. The goals of the program are:

- Generate personal and institutional ties between youth and educators in the United States and their overseas counterparts;
- Improve educational tools, resources, and learning through the application of information technology, online resource development, school partnerships, and student collaboration.
- Empower youth through online projects, Internet resources and leadership skills development to act as catalysts of change in their communities.

Information about similar programs can be found at: *http://exchanges.state.gov/youth/programs/connections.html.* Applicants should identify specific objectives and measurable outcomes based on program goals and project specifications provided in the solicitation. Should organizations wish to apply for more than one program, they must submit a separate proposal for each. Each of the two programs will be reviewed independently. Organizations applying for the programs MUST refer to individual Project Objectives, Goals and Implementation (POGI) guidelines for each of the two programs.

Guidelines

Program 1—Kyrgyzstan: Total funding: $300,000. ECA will award one grant. The grant period will be 12 months in duration. The grant is intended to include a network of schools that have already been equipped with computers and Internet access. Grant funds may be used to provide equipment and connectivity to a small number of schools in rural areas.

Program 2—Multiple countries: Total funding: $250,000. ECA will award one grant for the whole amount. To enhance diversity and expand opportunities, ECA strongly encourages the grant recipient to offer sub-awards to individual U.S. schools and school districts, education technology professionals and other qualified organizations that have substantive experience supporting online interaction between schools in the U.S. and schools overseas. Applicants offering sub-awards to partner organizations will be deemed more competitive under the Quality of Program Idea review element (*see* V.1. REVIEW PROCESS). The grant period will be 12 months in duration. Applicants should select the countries with which they plan to work and present a strong justification for their choices in their proposals.

For both programs, applicants must demonstrate their capacity for conducting programs of this nature. This includes administrative infrastructure in the geographic areas from which schools will be selected and resources to link the foreign schools with schools in the United States to facilitate substantive online programs.

Grants to be awarded under this competition will be based upon the quality and responsiveness of proposals to the review criteria presented later in this RFGP. The grants should begin on or about August 1, 2009.

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: 2009.

Approximate Total Funding: $550,000.

Approximate Number of Awards: Kyrgyzstan—One award.

Multiple countries—One award.

Approximate Average Award: Kyrgyzstan—$300,000.

Multiple countries—$250,000.

Anticipated Award Date: September 1, 2009.

Anticipated Project Completion Date: September 2010.

Additional Information

Pending successful implementation of these programs and the availability of funds in subsequent fiscal years, it is ECA's intent to renew these awards for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making awards for each of the two programs in amounts exceeding $60,000 to support program and administrative costs required to facilitate activities. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply for either of the two grants. However, organizations are strongly encouraged to offer sub-awards in order to enhance diversity and expand opportunities to organizations otherwise ineligible to apply.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Office of Citizen Exchanges, ECA–PE–C–PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, *telephone*: 202–203–7506, *fax number*: 202–203–7529, *e-mail*: *MussmanAP@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA–PE–C–PY–09–03) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. *Please see* section IV.3f. for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document for each of the two programs, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Anna Mussman and refer to the Funding Opportunity Number (ECA–PE–C–PY–09–03) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note**: Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must:

(2) Include a copy of relevant portions of this form.

(3) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in

the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa:

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq*.

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq*., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, *Telephone*: (202) 203–5029, *FAX*: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable timeframe), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of ata collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and

institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it: (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: Sustainability, overall program management, staffing, coordination with ECA and PAS and the development and implementation of online projects that promote mutual understanding and youth activism.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Support for U.S. and overseas schools;

(2) Small grants to encourage active participation;

(3) Exchanges for a small group of teachers and/or students to/from the United States.

Organizations are required to use free and existing Web sites for purposes of social networking and project implementation. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: June 1, 2009.

Reference Number: ECA–PE–C–PY–09–03.

Methods of Submission:

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) Electronically through *http://www.grants.gov*.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov Web portal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1—Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–09–03, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

IV.3f.2—Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov*. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* Web portal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site,

well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support,

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible*.

Please refer to the Grants.gov Web site for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov*. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. The substance of online activities, including overall themes and strategies to build partnerships between American and overseas schools, should be described in detail. Reviewers will evaluate the applicant's understanding of the goals of the program, specifically as they relate to enhancing mutual understanding among participating countries and the United States. **Please note:** Proposals that involve schools in countries of interest (Kazakhstan, Maldives, South Africa, Tanzania, Algeria and Yemen) and offer sub-awards to qualified individuals and/or organizations will be deemed more competitive under this review element.

2. *Program Planning/Ability To Achieve Program Objectives:* A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. Objectives should be reasonable, feasible and flexible. Proposals should clearly demonstrate how the program design will fulfill stated objectives.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Geographic, gender and socio-economic diversity should be reflected in the selection of schools and participants. The curriculum content should reinforce cultural diversity in the broadest sense of the term. Reviewers will examine the extent in which diversity issues are incorporated into the curricula. Applicants are encouraged to facilitate activities specific to women, young girls and students with disabilities.

4. *Institutional Capacity/Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should exhibit significant experience in developing school-based Internet programs. Reviewers will assess the organization's institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements as determined by the Bureau's Grants Division. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Follow-on Activities*: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events. Reviewers will examine ways in which Web sites are managed and their applicability for use when funds are no longer available.

6. *Project Evaluation*: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness/Cost sharing*: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b The Following Additional Requirements Apply to This Project:

For assistance awards involving Iran: A critical component of current U.S. government Iran policy is the support for indigenous Iranian voices. The State Department has made the awarding of grants for this purpose a key component

of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department will collect information from grantees and sub-grantees regarding the identity and background of their key employees and Boards of Directors.

Note: To assure that planning for the inclusion of Iran complies with requirements, please contact David Benze—Country Affairs Officer at 202–776–8985; e-mail—*BenzeDK@state.gov* for additional information.

For assistance awards involving performance in a designated combat area:

Special Provision for Performance in a Designated Combat Area (Currently Iraq and Afghanistan) (December 2008)

All Recipient personnel deploying to areas of combat operations, as designated by the Secretary of Defense (currently Iraq and Afghanistan), under assistance awards over $100,000 or performance over 14 days must register in the Department of Defense maintained Synchronized Pre-deployment and Operational Tracker (SPOT) system. Recipients of federal assistance awards shall register in SPOT before deployment, or if already in the designated operational area, register upon becoming an employee under the assistance award, and maintain current data in SPOT. Information on how to register in SPOT will be available from your Grants Officer or Grants Officer Representative during the final negotiation and approval stages in the federal assistance awards process. Recipients of federal assistance awards are advised that adherence to this policy and procedure will be a requirement of all final federal assistance awards issued by ECA.

Recipient performance may require the use of armed private security personnel. To the extent that such private security contractors (PSCs) are required, grantees are required to ensure they adhere to Chief of Mission (COM) policies and procedures regarding the operation, oversight, and accountability of PSCs.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants
http://fa.statebuy.state.gov

VI.3. Reporting Requirements

You must provide ECA with a hard copy original of the following reports plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

(4) One interim report, midway into the program, describing activities and progress.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

(3) Information about schools including, but not limited to, location, demography, participating teachers and classes.

Note: All travelers must have participated in online projects with a partner school.

VII. Agency Contacts

For questions about this announcement, contact: Anna Mussman, Office of Citizen Exchanges, ECA–PE–C–PY, Room 568, ECA–PE–C–PY–09–03, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, *telephone*: 202–203–7506, fax number: 202–203–7529, E-mail: *MussmanAP@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA–PE–C–PY–09–03.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative.

Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the

needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 23, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–7208 Filed 4–1–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6564]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program With Central America

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–09–40.

Catalog of Federal Domestic Assistance Number: 00.000.

Application Deadline: May 28, 2009.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Youth Leadership Program with Central America. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth and adult participants in the seven countries of Central America and to provide the participants with three-week, U.S.-based exchanges focused on entrepreneurship and business skills, community engagement, and leadership. The program will conclude with follow-on activities in the participants' home communities in which they apply the knowledge and skills acquired during the exchange experience. ECA plans to award a single grant for the management of the program and encourages organizations to work together as partners for effective administration in all seven countries and in the United States.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Overview: This Youth Leadership Program will bring secondary school-aged youth (ages 16–18) and adult educators from seven countries in Central America to the United States for three-week exchanges focused on entrepreneurship and business skills, community engagement, and leadership. The youth participants will be recruited from underserved or disadvantaged populations in these countries.

The participating countries are Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

The goals of the programs are to (1) promote mutual understanding between the United States and the people of Central America; (2) provide young adults with transferable skills appropriate to their needs; (3) develop a sense of civic responsibility to community and business development among youth; and (4) foster relationships among youth from different ethnic, religious, and national groups.

Applicant organizations should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

ECA plans to award a single grant for the management of the program in all seven countries. The Bureau encourages organizations with expertise in a few of the participating countries to partner with other organizations with experience in the remaining countries in order to submit a single comprehensive proposal. Consortia must designate a lead institution for the grant award.

Through this program, five exchange projects in the United States will be offered for a total of approximately 110–120 youth and educators.

One project for Belize will be conducted in English, and will be designed for approximately 14 participants.

Four other projects will be conducted in Spanish, with interpreters accompanying the students. As proposed by applicant organizations, the Spanish-language projects will be single-country or regional projects, *i.e.*, a group of students may be drawn from multiple participating countries in order to promote regional cooperation. Each of these exchange projects should be designed for 20 to 30 participants.

Examples of possible Spanish-language projects include:

- One delegation of 24 participants from Guatemala travels to the United States in April.
- Two delegations of 27 participants each, with 9 participants each from El Salvador, Honduras, and Nicaragua, travel to the United States in April and September.
- One delegation of 24 participants from Panama and Costa Rica, with 12 participants from each country, travels to the United States in May.

The preceding are only examples of possible projects, and should not be construed as Bureau preferences. Organizations are encouraged to be creative and flexible in their arrangements and to be responsive to Embassy preferences.

Planning will start in 2009, and after a careful recruitment and selection process, the exchanges will take place at various points throughout 2010, including during the U.S. school year.

The organization that receives the grant will recruit and select the exchange participants, provide a U.S.-based exchange experience, and lead the alumni in implementing projects in their home communities, enabling them to apply their newfound skills. A portion of the funding will be used to support in-country activities with all alumni and their peers in order to promote integration among youth in each country.

The exchange activities will focus on school-to-work transition, allowing the participants to develop practical business and job skills, such as communication, technology, marketing, and financial management skills. They will also explore the effective and sustainable use of resources, learn about civic engagement, life skills, and ethics, and identify the appropriate conditions for entrepreneurial projects. Activities will include workshops, school visits, community service/volunteer work, and site visits with community organizations and local businesses. Participants will live with American host families for a portion of the exchange period and have opportunities to interact with their American peers, including students of Spanish.

The applicant should present a program plan that allows the participants to thoroughly explore the themes in a creative, memorable, and practical way. Activities should be designed to provide practical knowledge and skills that the participants can

apply to school, work, and civic activities at home in a positive and productive way.

U.S. Embassy Involvement: Before submitting a proposal, applicants should consult with the Public Affairs Officers at U.S. Embassies in the participating countries as they develop proposals responding to this RFGP, particularly to review recruitment and the audience for the exchange and the timing of the exchange. Please e-mail ECA Program Officer Carolyn Lantz (*LantzCS@state.gov*) for contact information. Also, it is important that the proposal narrative clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. Embassy in the relevant countries to develop plans for project implementation and to select project participants.

Organizational Capacity: Applicant organizations must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience working on programs with Latin America. Applicants must have the organizational capacity in the participating countries necessary to implement the in-country activities, or they must partner with an organization or institution with the requisite capacity to recruit and select participants for the program and to provide follow-on activities. The importance of a viable, experienced in-country partner cannot be over-emphasized.

Organizations must convincingly demonstrate their capacity to manage a complex, multi-phase program with several separate exchange projects.

Guidelines: The grant will begin on or about September 1, 2009. The grant period will be approximately 18 months in duration, as appropriate for the applicant's program design. Applicants should propose the period of the exchange(s) in their proposals, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient.

The grant recipient will be responsible for the following:

- Recruitment and selection of youth and adult educators from diverse geographic regions in the partner countries. The Public Affairs Section of the U.S. Embassy in the partner country will have a key role in developing a recruitment strategy and deciding how finalists are chosen.
- Provision of orientations for exchange participants and for those participating from the host communities.
- Designing and planning of activities that provide a substantive project on the specified themes. Some activities should be school and/or community-based, as feasible, and the projects will involve as much sustained interaction with American peers as possible.
- Homestay arrangements with properly screened and briefed American families for the majority of the exchange period.
- Provision of effective interpretation and translation for the Spanish-language projects.
- Logistical arrangements, including visa applications, international and domestic travel, accommodations, and disbursement of stipends.
- Follow-on activities in the partner country that reinforce the ideas, values and skills imparted during the U.S. program through community projects.

Recruitment and Selection: The grant recipient will manage the recruitment and merit-based selection of participants in cooperation with the Public Affairs Sections of the U.S. Embassies in the seven participating countries. The grant recipient must consult with the Public Affairs Section at the U.S. Embassy to review a recruitment and participant selection plan and to determine the degree of Embassy involvement in the process.

Organizers must strive for regional, socio-economic, and ethnic diversity, as well as gender balance. The Department of State and/or its overseas representatives will have final approval of all selected delegations.

Participants: The youth participants will be teenagers, 16 to 18 years old, recruited from underserved or disadvantaged populations of youth in these countries, including public school students, high school dropouts, and those at risk for involvement with drugs and/or gang activities. The exchange participants will also include adults who are teachers, school administrators, and/or community leaders who work with youth; they will have the dual role of both exchange participant and chaperone. The ratio of teenagers to adults will be approximately 6:1. Participants from Hispanophone countries will not need to speak English; the grantee organization will provide interpretation for the program and will place them with suitable host families.

U.S. Program: High school students and educators will spend approximately 21 days in the United States—in Washington, DC, and in one or two other communities—on an intensive program that is designed to develop the participants' knowledge and skill base in entrepreneurship and business skills, community engagement, and leadership.

The U.S. program should focus primarily on interactive activities, practical experiences, and other hands-on opportunities related to the program themes. All programming should include American teenagers wherever possible. The program will also provide opportunities for the adult educators to work with their American peers. Cultural, social, and recreational activities will balance the schedule. Participants will live with American families in homestays for at least half of the exchange period.

Follow-on Activities and In-Country Programming: In-country activities that help to support alumni in their post-exchange activities are required, and should enable the alumni to share their experiences and apply their skills. Applicant organizations should present creative and effective ways to address the project themes, for both program participants and their peers, as a means to amplify the program impact. U.S. project staff or trainers should travel to the partner countries several months after the exchange to conduct trainings that reinforce the themes of the exchange.

All participants and alumni should identify themselves with the Youth Leadership Program with Central America. Materials produced for grant activities need to acknowledge the U.S. Department of State as the sponsor and reflect the State Department's goals for the program.

The Bureau reserves the right to reduce, revise, or increase proposal budgets and participant numbers in accordance with the needs of the program and the availability of funds.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations for the International Visitor category.

Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY–2008 Economic Support Funds transferred to ECA in FY–2009 for obligation.

Approximate Total Funding: $994,000.

Approximate Number of Awards: One.

Floor of Award Range: $994,000.

Ceiling of Award Range: $994,000.

Anticipated Award Date: September 1, 2009.

Anticipated Project Completion Date: Approximately 18 months after start date, to be specified by the applicant based on project plan.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:* III.3.a. Bureau grant guidelines require that applicant organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making an award in an amount exceeding $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges at the time of application are not eligible to apply under this competition.

III.3.b. Proposed sub-award recipients are also limited to grant funding of $60,000 or less if they do not have four years of experience in conducting international exchanges.

III.3.c. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. *Contact Information to Request an Application Package:* Please contact the Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 453–8171, Fax (202) 453–8169; E-mail: *PiersonCompeauHM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–09–40 when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Program Officer Carolyn Lantz and refer to the Funding Opportunity Number ECA/PE/C/PY–09–40 on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, the award recipient will also be required to submit a one-page document, derived from program reports, listing and describing grant activities. For the award recipient, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its *USASpending.gov* Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq*.

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq*., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well

it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

The Recipient organization will be required to provide reports analyzing evaluation findings to the Bureau in regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the POGI and PSI for complete budget guidelines and formatting instructions.

IV.3.f. *Application Deadline and Methods of Submission:*

Application Deadline Date: Thursday, May 28, 2009.

Reference Number: ECA/PE/C/PY–09–40.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) electronically through *http://www.grants.gov*.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through *Grants.gov*. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original, one fully-tabbed copy, and five (5) copies with Tabs A–E and appendices (no Tab F) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–09–40, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word and/or Excel to the program officer at *LantzCS@state.gov*. The Bureau will provide these files electronically to the Public Affairs Section at the U.S. Embassies for their review.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

PLEASE NOTE: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov Web portal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov.*

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system and will be technically ineligible.

Please refer to the Grants.gov Web site for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. Quality of the program idea: Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be well developed, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should also include a plan to support participants' community activities upon their return home.

2. Program planning: A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. Support of diversity: The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in participant recruitment and selection and in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. Institutional capacity and track record: Proposed personnel and institutional resources in both the United States and the partner country(ies) should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for any past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

5. Program evaluation: The proposal should include a plan to evaluate the program's success in meeting its goals, both as the activities unfold and after they have been completed. The proposal should include a draft survey questionnaire or other technique, plus a description of a methodology to link outcomes to original project objectives. The grant recipient will be expected to submit intermediate reports after each project component is concluded.

6. Cost-effectiveness and cost sharing: The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants
http://fa.statebuy.state.gov

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

1. Interim reports, as required in the Bureau grant agreement.

2. A final program and financial report no more than 90 days after the expiration of the award;

3. A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

4. A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 203–7505. Fax (202) 203–7529. E-mail: *LantzCS@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and the reference number ECA/PE/C/PY–09–40.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

March 24, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–7215 Filed 4–1–09; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 6565]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Young Turkey/Young America: A New Relationship for a New Age

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/EUR–SCA–09–45. Catalog of Federal Domestic Assistance Number 00.000.

Key Dates:

Application Deadline: June 4, 2009.

Executive Summary

Secretary of State Hillary Rodham Clinton announced a new exchange program for Turkish and American young people while in Ankara on March 7, 2009. This two part program, called ''Young Turkey/Young America: A New Relationship for a New Age,'' will bring 20 to 30 emerging leaders (ages 20–35) from the two countries together to develop grassroots initiatives that will positively impact people's lives and will result in stronger ties between the two nations.

ECA is seeking proposals from qualified applicants for two separate programs. The Bureau expects total funding in the amount of $500,000 to be available. ECA expects to award a total of two grants in this competition of up to $250,000, one for each topic.

The first project, ''Political Challenges for Future Leaders'' will enable 10–15 young professionals from Turkey and the United States to participate in a structured bi-national dialogue on foreign policy issues of importance to both countries, both face-to-face and via the full range of communication media.

The second project, ''Social and Economic Challenges for Future Leaders'' will work to expand the capacity of grassroots organizations to empower women, to improve job skills for young people in economically disadvantaged communities and to raise environmental awareness and activism.

Note: Applicants may not submit more than one proposal in this competition. Applicants that do so will be declared technically ineligible and will receive no further consideration in the review process.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The initiative ''Young Turkey/Young America: A New Relationship for a New Age'' is built around two new exchange programs that will bring emerging young leaders (ages 20–35) in Turkey and the United States together to develop grassroots initiatives that will positively impact people's lives and deepen ties between the future leaders of both countries. It will also reach beyond the two new exchanges to network with alumni of previous leadership exchange programs in both countries to build a solid foundation of mutual understanding.

Applicants must identify the U.S. and Turkish organizations and individuals with whom they are proposing to collaborate and describe previous cooperative activities, if any. Information about the mission, activities, and accomplishments of partner organizations should be included in the submission. Proposals should contain letters of commitment or support from partner organizations for the proposed project. Applicants should clearly outline and describe the role and responsibilities of all partner organizations in terms of project logistics, management and oversight.

Competitive proposals will include the following:

- A brief description of the theme to be addressed and how it relates to Turkey and the United States. (Proposals that request resources for an initial needs assessment will be deemed less competitive under the review criterion Program Planning and Ability to Achieve Objectives, per item V.1 below.);
- A clear, succinct statement of program objectives and expected outcomes that responds to Bureau goals as listed in this RFGP. Desired outcomes should be described in qualitative and quantitative terms. (*See* the Program Monitoring and Evaluation section per item V.1 below, for more information on project objectives and outcomes.);

- A proposed timeline;
- A description of participant recruitment and selection processes;
- Letters of support from Turkish and U.S. partners. (Letters from prospective partner institutions should demonstrate a capacity to arrange and conduct U.S. and overseas activities.);
- An outline of the applicant organization's relevant expertise in the project theme and working in Turkey;
- An outline of relevant experience managing previous exchange programs;
- Resumes of experienced staff who have demonstrated a commitment to implement and monitor projects and ensure outcomes;
- A comprehensive plan to evaluate whether program outcomes will achieve the specific objectives described in the narrative. (*See* the Program Monitoring and Evaluation section [IV.3d.d below] for further guidance on evaluation.);
- A post-grant plan that demonstrates how the grantee plans to maintain contacts initiated through the program. Applicants should discuss ways that U.S. and Turkish participants or host institutions will collaborate and communicate after the ECA-funded grant has concluded. (*See* Review Criterion #5, per item V.1 below for more information on post-grant activities.)
- Successful projects will demonstrate the importance Americans place on community service as an element of active citizenship and may include ideas and projects to strengthen civil society through community service either during participants' stay in the U.S. or upon their return to Turkey.
- In addition to addressing the specific themes described below, proposals should develop partner organizations' capacity in such areas as strategic planning, performance management, fund raising, financial management, human resources management, and decision-making.

U.S. Embassy Involvement: Before submitting a proposal, all applicants are strongly encouraged to consult with the Bureau of Educational and Cultural Affairs Washington, DC-based State Department contact, Brent Beemer; *tel:* 202–453–8147; e-mail: *BeemerBT@state.gov*. Applicants are also strongly encouraged to consult with Public Affairs Officers at U.S. Embassy in Ankara as they develop proposals responding to this. For direct contact information at the U.S. Embassy in Ankara, please contact the Washington, DC-based State Department officer for this competition, Brent Beemer, listed above. Also, it is important that the proposal narrative clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. Embassy in Ankara to develop plans for project implementation and to select project participants. Proposals should also acknowledge U.S. Embassy involvement in the final selection of all participants. Applicants should state their willingness to invite representatives of the Embassy to participate in program sessions or site visits.

Project Details:

Project 1: Political Challenges for Future Leaders: A Foreign Policy Dialogue Among Emerging Leaders

This project is designed to support and to promote the participation of young Turkish leaders in the transatlantic dialogue on foreign policy issues. This program intends to show how democratic nations/governments/citizens can disagree—and very strongly—on specific issues with other countries, but still maintain healthy bilateral and interpersonal relationships. The program should work to bring together an equal number of Turkish and American professionals who, for the duration of the project, will work together, for the duration of the project, on fostering personal and institutional linkages through dialogue. This dialogue should center on major foreign policy issues of importance to the United States and Turkey, specifically regional cooperation, conflict management and resolution, and policy advocacy in a modern democracy. Competitive proposals will outline a framework for this dialogue and activities to foster the linkages to be developed. ECA envisions a program where U.S. and Turkish professionals form a core dialogue group that, with facilitation, develops an action plan that will be developed and implemented over the course of the exchanges and continued post-program to maintain engagement between the organizations. The action plan might include policy proposals to be presented to governmental officials in both countries, the development of a free-standing continuous dialogue association in both countries, the use of ''new media'' outlets such as weblogs, online videos, and social networking for joint projects, etc.

Audience: Emerging leaders selected through merit-based competitions (10–15 from the U.S. and 10–15 from Turkey) age 20–35 involved in international affairs from youth wings of political parties, NGOs with youth focus, universities, business organizations, active politicians, journalists, business people, think tanks, and cultural figures. Participants should include individuals who work at the local, state, and federal levels.

A successful program will provide participants:

- The opportunity to engage in serious, important, and productive dialogue on international issues in ways that strengthen civil society and the democratic process.
- New links between a core group of emerging leaders in Turkey and the United States who will work together on policy formulation issues.
- Development of negotiation and advocacy skills among the participants.
- A better understanding of the processes involved in developing foreign policy including input from academia, think-tanks, media, interest groups, as well as government actors.
- A fuller understanding of the U.S. and Turkish political, social, and cultural structures that influence and shape foreign policy formulation.

Ideal Program Model:

- An open recruitment and selection of a core group of participants from the U.S. and Turkey. In Turkey, recruitment and selection should include close consultation with the U.S. Embassy Public Affairs Section.
- A two to three week U.S.-based program where the core group of American and Turkish participants come together as one group. The majority of this program should include ''hands on'' work between the core group on skills trainings, leadership development, new technology opportunities, and the development of a joint action plan by the core group. Outside site visits, job-shadowing opportunities, and homestays—ideally with the U.S. participants—that compliment the core group work are encouraged. Should also include a one or two-day debriefing session at the end of the program in Washington, DC.
- A one to two week Turkey-based program where the core group of American and Turkish participants come together as a follow-on to what was done during the previous U.S.-based program. The majority of this program should continue facilitated work between the core group on skills trainings, leadership development, and the completion of the joint action plan by the core group. Outside site visits, job-shadowing opportunities, and homestays for the U.S. participants with the Turkish participants that compliment the core group work are encouraged.
- A follow-on period where the implementation of the joint action plan is completed. During this period, travel by select participants (one or two) to Turkey and/or the U.S. to further the

implementation plan could be planned. Use of new information and communication technologies to enhance and broaden the dialogue should be implemented at this point.

Project 2: Social and Economic Challenges for Future Leaders: Grassroots Development in a Modern Democracy

This project will work to expand the capacity of Turkish grassroots organizations (NGOs) to empower women, to improve job skills for young people in economically disadvantaged communities and to raise environmental awareness and activism. ECA envisions a ''hands on'' program where U.S. and Turkish grassroots organizations with similar missions will partner on joint projects (addressing women's empowerment, job skills for young people, and environmental awareness) that will be developed and implemented over a series of exchanges and continued post-program engagement between the organizations. ECA seeks competitive proposals that will build NGO capacity in practice, giving NGO leaders from the two countries opportunities to adopt best practices by doing. Joint projects should be developed, implemented, monitored and evaluated by both sides. The implementing U.S. grantee will be required to partner and involve one or more Turkish grassroots organizations in the program that have demonstrated a commitment to civil society development and the establishment of a dialogue between the government and non-governmental sectors in Turkey. Applicants should consult with the U.S. Embassy in Ankara when selecting these partners.

Audience: Emerging grassroots leaders (10–15 from the U.S. and 10–15 from Turkey selected through merit-based competitions) age 20–35 involved with grassroots efforts in empowering women, improving job skills for young people in economically disadvantaged communities, and environmental awareness and activism.

A successful program will provide participants:

- Developed leadership skills, including how to conceptualize and develop community-based projects to reach diverse citizenry, using clear objectives, solid management structures and evaluation feedback mechanisms at the local level;
- An understanding and review of the impact of public interest and government policies on the primary issues, as well as a comprehensive discussion of proposed solutions;
- An introduction to volunteerism and the ways in which different NGOs and charities give service to their communities. This includes knowledge of how the needs of a community are identified, how service organizations find their niches, how service projects are funded, and how they are organized;
- New links between emerging grassroots leaders and organizations in Turkey and the United States;
- A review of new technologies, such as weblogs, online videos, and social networking sites, and how these new media can be used to effect positive change in their communities.
- A fuller understanding of American and Turkish policies, political structures, societies, and cultures.

Ideal Program Model:

- A two to three week U.S.-based program that would mainly focus on the development of a joint community-based project that both Turkish and U.S. participants would develop and implement for the rest of the program. This program could also include seminars; site visits; and individual mentoring for the Turkish participants. Programs should also include a one- or two-day debriefing and evaluation session at the end of the program in Washington, DC.
- A one to two week program in Turkey for U.S. participants. This would mainly focus on the continual implementation of the joint community-based project originally started during the U.S.-based program. This program could also include seminars; site visits; and on-site consultancies by U.S. participants to Turkish organizations/workplaces. It should also include a one- or two-day debriefing and evaluation session at the end of the program.
- The project should establish a plan for regular communication between participants through electronic and digital image communications. Also, the project should reach out to participants in other similar ECA exchange programs in Turkey. Programs could also support materials translated into Turkish, small grants for projects designed to expand the exchange experience and support for the development of alumni association.

II. Award Information

Type of Award: Grant Agreement ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2009.

Approximate Total Funding: $500,000.

Approximate Number of Awards: 2.

Approximate Average Award: $250,000.

Ceiling of Award Range: $250,000.

Anticipated Award Date: Pending availability of funds, September 1, 2009.

Anticipated Project Completion Date: August 31, 2011.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making two one awards, in an amount up to $250,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants

until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 453–8147, *gustafsondp@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/EUR–SCA–09–45 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Program Officer Brent Beemer and refer to the Funding Opportunity Number ECA/PE/C/EUR–SCA–09–45 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to all Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq*.

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq*., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, *Telephone:* (202) 203–5029, *FAX:* (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender,

religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation:

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. Budget requests may not exceed $250,000 per proposal. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

1. Travel. International and domestic airfare; airline baggage and seat fees; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=9704&channelId=-15943&ooid=16365&contentId=17943&pageTypeId=8203&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MTT*.

ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://aoprals.state.gov/web920/per_diem.asp*.

3. Interpreters. For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both ''lodging'' and ''M&IE'') and ''home-program-home'' transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who

accompany delegations from their home country or travel internationally.

4. Book and Cultural Allowances. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. Room rental. The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. Materials. Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. Equipment. Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

9. Working meal. Normally, no more than one working meal may be provided during the program. Per capita costs may not exceed $15–$25 for lunch and $20–$35 for dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered ''participants.''

10. Return travel allowance. A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered during their participation in the program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Wire transfer fees. When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. In-country travel costs for visa processing purposes. Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: June 4, 2009.

Reference Number: ECA/PE/C/EUR–SCA–09–45.

Methods of Submission: Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) Electronically through *http://www.grants.gov*.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov Web portal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, *Ref.*: ECA/PE/C/EUER–SCA–09–45, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov *http://www.grants.gov.* Complete solicitation

packages are available at Grants.gov in the ''Find'' portion of the system.

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* 800–518–4726, *Business Hours*: Monday—Friday, 7 a.m.–9 p.m. Eastern Time, *e-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance award grants resides with the Bureau's Grants Officer.

Review Criteria:

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample schedules should be outlined. Responsibilities of proposed in-country partners should be clearly described. A discussion of how the applicant intends to address language issues should be included, if needed.

2. *Institutional Capacity:* Proposals should include (1) the institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards—U.S. government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive (*see* IV.3e.2 #14 for clarification on this). Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive on this criterion.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI) and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

5. *Post-Grant Activities*: Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities must not appear in the proposal budget, but should be outlined in the narrative.

6. *Program Monitoring and Evaluation*: Proposals should include a detailed plan to monitor and evaluate the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, and proposals should include draft data collection instruments (surveys, questionnaires, etc.) in Tab E. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants

http://fa.statebuy.state.gov

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one electronic copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (*Please* refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Brent Beemer, Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 453–8147, *beemerbt@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/EUR–SCA–09–45. Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 25, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–7302 Filed 4–1–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Brownsville/South Padre Island International Airport, Brownsville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Brownsville/South Padre Island International Airport under the provisions of Title 49, U.S.C. Section 47153(c).

DATES: Comments must be received on or before May 4, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Brown, Director of Aviation, at the following address:

City of Brownsville, Department of Aviation, 700 South Minnesota Avenue, Brownsville, Texas 78521–5721.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Boles, Program Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650, e-mail: *Glenn.A.Boles@faa.gov*, fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Brownsville/South Padre Island International Airport.

On March 23, 2009, the FAA determined that the request to release property at Brownsville/South Padre Island International Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, 30 days from the posting of this **Federal Register** Notice.

The following is a brief overview of the request:

The City of Brownsville requests the release of 10.971 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1948. The funds generated by the release will be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."** In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Brownsville/South Padre Island International Airport, telephone number (956) 542–4373.

Issued in Fort Worth, Texas on March 24, 2009.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. E9–7255 Filed 4–1–09; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–14]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before April 22, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–25156 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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 19477–78).

Docket: To read background documents or comments received, go to http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor (425–227–2127), Transport Standards Staff, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 30, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25156.

Petitioner: Hawker Beechcraft Corporation.

Section of 14 CFR Affected: 14 CFR 25.981(a)(3).

Description of Relief Sought: Hawker Beechcraft petitions for an amendment to Exemption No. 8761A from the fuel tank safety provisions of § 25.981(a)(3), as amended by Amendment 25–102, regarding the structural lightning protection of wing fasteners. They

request to extend the compliance dates in Exemption 8761A because § 25.981 mandated new design changes, and they are in the process of testing and qualifying components to be incorporated into their design.

[FR Doc. E9–7420 Filed 4–1–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-use Assurance; DeKalb-Taylor Municipal Airport, DeKalb, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the lease of airport property. The proposal consists of a leasing 3.528 acres of Lot 51 of the original M.D. Shipman's Farm parcel. Lot 51 became part of Tract No. 1 (16.83 acres) that was deeded to the City of DeKalb by the United States of America as government surplus property under the Surplus Property Act of 1944. Tract 1 also is currently subject to the National Emergency Use Provision (for times of National emergency), a condition that the City of DeKalb would also like to remove from the 3.528 parcel requesting the change in use. This subject land currently has a metal storage building on it miscellaneous bituminous and concrete drives and parking areas located on it. It is the intent of the City of DeKalb, as owner and operator of the DeKalb—Taylor Municipal Airport (DKB) to retain ownership of the 3.528 acre parcel and allow for commercial development on said parcel. This notice announces that the FAA is considering the proposal to authorize the change from aeronautical use to non-aeronautical use of the subject airport property at the DeKalb—Taylor Municipal Airport (DKB), DeKalb, IL. Approval does not constitute a commitment by the FAA to financially assist in the lease or development of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before May 4, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Pur, Program Manager, 2300 East Devon Avenue, Des Plaines, IL, 60018. Telephone Number 847–294–7527/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location by appointment or at the DeKalb—Taylor Municipal Airport, 3232 Pleasant Street, DeKalb, Illinois 60115.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property being changed to non aeronautical use located in DeKalb, DeKalb County, Illinois, and described as follows:

Portion of Tract 1

That part of the north 1,200 feet of Lot 51 of the M.D. Shipman's Farm Flat on the North Half of Section 24, Township 40 North, Range 4 East of the Third Principal Meridian, except that part conveyed and quitclaimed to DeKalb Township for the DeKalb Bypass per Document No. 8305201 in DeKalb County, Illinois, being more particularly described as:

Commencing at the northeast corner of said Lot 51; thence on an assumed bearing of South 00 degrees 17 minutes 28 seconds West, 35.50 feet along the east line of said Lot 51 to the southerly right-of-way of Pleasant Street and to the Point of Beginning; thence continuing South 00 degrees 17 minutes 28 seconds West, 451.57 feet along said east line; thence South 76 degrees 04 minutes 52 seconds West, 265.58 feet to the easterly right-of-way line of Peace Road conveyed per said Document No. 8305201; thence North 12 degrees 28 minutes 32 seconds West, 335.12 feet along said easterly right-of-way line; thence continuing along said easterly right-of-way line, 190.96 feet, being a curve to the right having a radius of 1,145.92 feet, the chord of said curve bears North 07 degrees 42 minutes 09 seconds West, 190.74 feet to the north line of said Lot 51; thence South 89 degrees 52 minutes 32 seconds East, 358.03 feet along said north line to the Point of Beginning.

Said parcel contains 3.528 acres, more or less.

Issued in Des Plaines, Illinois, on March 6, 2009.

James G. Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. E9–7254 Filed 4–1–09; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2009–0002]

Notice of Buy America Waiver Request by ElDorado National for Minivan Chassis

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Buy America waiver request and call for comments.

SUMMARY: Several parties have asked the Federal Transit Administration to waive its Buy America requirements of 49 CFR 661.11 for the purchase of minivans that are manufactured or assembled outside the United States. According to these parties, minivans and minivan chassis are not available from a domestic source. FTA seeks public comment before deciding whether to grant these requests. If granted, a waiver would apply to all minivans and minivan chassis, not only those manufactured by Chrysler.

DATES: Comments must be received by April 16, 2009. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2009–0002. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov*. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web Site: http://www.regulations.gov*. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

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

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2009–0002. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to

ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov*. For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For questions please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov*.

SUPPLEMENTARY INFORMATION:

The purpose of this notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements of 49 CFR part 661 for minivans and minivan chassis that are manufactured or assembled outside the United States. Such waiver would apply to the domestic content and final assembly requirements of 49 CFR 661.11.

ElDorado National, Kansas, has asked FTA to waive its Buy America requirements, on the basis of non-availability, for minivan chassis manufactured and assembled by Chrysler in Ontario, Canada. ElDorado National uses Chrysler minivan chassis to manufacture its Amerivan lowered-floor minivans. In its request for a waiver, a copy of which has been placed in the Docket, ElDorado National asserts that General Motors and Chrysler minivan chassis, including those used on the Chevrolet Uplander, Pontiac Montana, Buick Terraza, Saturn Relay, Chrysler Town & Country, and Dodge Grand Caravan, are no longer manufactured in the United States.

In addition to ElDorado National, FTA has received a number of inquiries from its grantees about the availability of minivans from a domestic source. According to these grantees, minivans are no longer available from a source that can comply with FTA's Buy America requirements.

With certain exceptions, FTA's ''Buy America'' requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). One exception, however, is if ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.'' 49 U.S.C. 5323(j)(2)(B).

FTA notes that, unlike with public interest waivers, it is not required to publish a notice in the **Federal Register** before waiving its Buy America requirements on the basis of non-availability. In this instance, however, FTA is proceeding with an abundance of caution. In order to understand completely the facts surrounding the ElDorado National's request, FTA seeks comment from all interested parties regarding the availability of domestically manufactured minivans and minivan chassis. If granted, a waiver would apply to all minivans and minivan chassis, not only those manufactured by Chrysler. A full copy of ElDorado National's petition has been placed in docket number FTA–2009–0002.

Issued this 26th day of March, 2009.

Scott A. Biehl,

Acting Chief Counsel.

[FR Doc. E9–7372 Filed 4–1–09; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Assistance to Small Shipyards Grant Program

AGENCY: Maritime Administration, Department of Transportation, Office of Shipyards and Marine Technology.

ACTION: Notice of Small Shipyard Grant Program.

Catalog of Federal Domestic Assistance Number: 20.814.

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Associate Administrator for Business and Workforce Development, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–5737; fax: (202) 366–6988; or e-mail: *jean.mckeever@dot.gov*.

Key Dates: The period for submitting grant applications, as mandated by statute, commenced on March 11, 2009 and will terminate on May 10, 2009. The applications must be received by the Maritime Administration by 5 p.m. EDT on May 10, 2009. Applications received later than this time will not be considered. The Maritime Administrator intends to award grants no later than July 9, 2009.

Funding Opportunity: Section 3508 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and the section entitled ''Assistance to Small Shipyards'' in the Omnibus Appropriations Act, 2009, provide that the Maritime Administration shall establish an assistance program for small shipyards. Under this program, there is currently an aggregate of $17,150,000 available for grants for capital improvements, and related infrastructure improvements at qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration. ($350,000 of the $17,500,000 appropriated for the program is reserved for program administration.) Such grants may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Administrator as being consistent with and supplemental to capital and related infrastructure improvements. Grant funds may also be used for maritime training programs to foster technical skills and operational productivity in communities whose economies are related to or dependent upon the maritime industry. However, grants for such training programs may only be awarded to ''Eligible Applicants'' as described below but training programs can be established through vendors to such applicants.

Applications received for funding under the Assistance for Small Shipyards program funded by the American Recovery and Reinvestment Act of 2009, as announced in the **Federal Register**, Volume 74 Number 41 on March 4, 2009, will also be considered for funding under this announcement without any additional action required by the applicant. Applications for funding received by the Maritime Administration after 5 p.m. EDT on April 20, 2009 and prior to 5 p.m. EDT on May 10, 2009 will be considered only for funding under this announcement.

Award Information: The Maritime Administration intends to award the full amount of the available funding through grants to the extent that there are worthy applications. No more than 25 percent of the funds available will be awarded to shipyard facilities that have more than 600 production employees. The Maritime Administration will seek to obtain the maximum benefit from the available funding by awarding grants for as many of the most worthy projects as possible. The Maritime Administration may partially fund projects by selecting parts of the total project. The start date and period of performance for each award will depend on the specific project and must be agreed to by the Maritime Administration.

Eligibility Information: 1. Eligible Applicants—the statutes referenced in ''Funding Opportunity'' above provide that shipyards can apply for grants. The

shipyard facility for which a grant is sought must be in a single geographical location, located in or near a maritime community, and may not have more than 1,200 production employees. 2. Other Considerations in Making Awards—In providing grants, the Administrator shall take into account (a) the economic circumstances and conditions of the maritime community near to which a shipyard facility is located; (b) projects that would be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (c) projects that would be effective in fostering employee skills and enhancing productivity.

Matching Requirements: (1) Except as provided in item (2) below, Federal funds for any eligible project shall not exceed 75 percent of the total cost of such project. The remaining portion of the cost shall be paid in funds from or on behalf of the awardee. The applicant will be required to submit detailed financial statements and any necessary supporting documentation demonstrating how and when such matching requirement is proposed to be funded. (2) Exceptions—If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for such project with a lesser matching requirement than is described in item (1). (3) Unless waived for good cause, the awardee's matching requirement must be paid prior to payment of any federal funds for the project.

Application: An application should be filed on standard Form SF–424 which can be found on the internet at *Marad.dot.gov*. Although the form is available electronically, we request that the application be filed in hard copy as indicated below due to the amount of information requested. A shipyard facility may include multiple projects in one application. In order to allow us to evaluate whether an applicant meets the statutory criteria, the application for a grant should also provide the following information as an addendum to Form SF–424:

1. *Unique identifier of entity's parent company (when applicable):* Data Universal Numbering System (DUNS + 4 number) (when applicable).

2. *Shipyard company officer's certification as to shipyard's compliance with the following requirements:* (a) The shipyard facility for which a grant is sought is located in a single geographical location in or near a maritime community and (b)(i) The shipyard facility has no more than 600 production employees, or (ii) The shipyard facility has more than 600 production employees, but less than 1,200 production employees.

3. A comprehensive detailed description of the project.

4. A description of the need for the project and an explanation of how the project will fulfill this need.

5. An analysis demonstrating how the project will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, or reconfiguration.

6. A detailed itemization of the cost of the project together with supporting documentation, including vendor quotes and installation costs.

7. Detailed methodology and timeline for implementing the project.

8. A prioritized list of project elements and cost of each if funding for entire project is not available.

9. Most recent CPA audited, reviewed or compiled financial statements.

10. Detailed pro forma financial statements together with any supporting documentation demonstrating how and when such matching requirement is proposed to be funded.

11. Shipyard company officer's certification that the applicant has the authority to carry out the proposed project.

12. Any existing programs or arrangements that can be used to supplement or leverage the federal grant assistance.

13. Information concerning the economic circumstances and conditions of the maritime community near to which the shipyard is located.

14. Certification in accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR part 20, that the applicant has not, and will not, make any prohibited payments out of the requested grant.

Additional information may be requested as deemed necessary by the Maritime Administration in order to facilitate and complete its review of the application. If such information is not provided, the Maritime Administration may deem the application incomplete and cease processing it.

Where to File Application: Submit an original copy and seven additional copies of the application to Jean E. McKeever, Associate Administrator for Business and Workforce Development, Room W21–318, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

Evaluation of Applications: The Maritime Administration will evaluate the applications on the basis of the economic information provided and in terms of how well the project for which a grant is requested would be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration. The Administrator will award grants in his sole discretion in such amounts and under such conditions for those projects he determines will best further the statutory purposes of the small shipyard grant program.

Conditions Attached to Awards: The grant agreement will set out the records to be maintained by the awardee which must be available for review and audit by the Administrator, as well as any other conditions and requirements. Awardees that receive more than $5 million in assistance under this program will be required to certify that it has filed all Federal tax returns required during the three years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

(Authority: 46 U.S.C. 54101; 49 CFR 1.66)

Dated: March 27, 2009.

By order of the Acting Deputy Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–7384 Filed 4–1–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105606–99; REG–161424–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning REG–161424–01 (Final), Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns, and REG–105316–98 (Final), Information Reporting for Payments of Interest on Qualified Education Loans; Magnetic Media Filing Requirements for Information (TD 8992).

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: REG–161424–01 (Final), Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns, and REG–105316–98 (Final), Information Reporting for Payments of Interest on Qualified Education Loans; Magnetic Media Filing Requirements for Information.

OMB Number: 1545–1678.

Regulation Project Numbers: REG–105316–98 and REG–161424–01.

Abstract: These regulations relate to the information reporting requirements in section 6050S of the Internal Revenue Code for payments of qualified tuition and related expenses and interest on qualified education loans. These regulations provide guidance to eligible education institutions, insurers, and payees required to file information returns and to furnish information statements under section 6050S.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

The burden is reflected in the burdens for Form 1098–T and Form 1098–E.

Estimated total annual reporting burden for 2005 for Form 1098–T: 4,848,090 hours.

Estimated average annual burden hours per response for Form 1098–T: 13 minutes.

Estimated number of responses for 2002 for Form 1098–T: 21,078,651.

Estimated total annual reporting burden for 2005 for Form 1098–E: 1,051,357 hours.

Estimated average annual burden hours per response for Form 1098–E: 7 minutes.

Estimated number of responses for 2005 for Form 1098–E: 8,761,303.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2009.

R. Joseph Durbala,

Reports Clearance Officer.

[FR Doc. E9–7322 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8569

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8569, Geographic Availability Statement.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Geographic Availability Statement.

OMB Number: 1545–0973.

Form Number: 8569.

Abstract: This form is used to collect information from applicants for the Senior Executive Service Candidate Development Program and other executive positions. The form states an applicant's minimum area of availability and is used for future job replacement consideration.

Current Actions: There are no changes being made to Form 8569 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Number of Respondents: 20 minutes.

Estimated Total Annual Burden Hours: 84.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–7324 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–253578–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–253578–96, Health Insurance Portability for Group Health Plans; and temporary regulation (TD 8716) Interim Rules for Health Insurance Portability for Group Health Plans (§§ 54.9801–3T, 54.9801–4T, 54.9801–5T, and 54.9801–6T).

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Health Insurance Portability for Group Health Plans, and temporary regulation, Interim Rules for Health Insurance Portability for Group Health Plans.

OMB Number: 1545–1537.

Regulation Project Number: REG–253578–96 (Final).

Abstract: These regulations contain rules governing access, portability, and renewability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. The regulations also provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 2,600,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 262,289.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 13, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7327 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–5–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–5–91 (TD 8437), Limitations on Percentage Depletion in the Case of Oil and Gas Wells (Section 1.613A–3(e)).

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be

directed to Allan Hopkins, at (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–1251.

Regulation Project Number: PS–5–91.

Abstract: This regulation concerns oil and gas property held by partnerships. Because the depletion allowance with respect to production from domestic oil and gas properties is computed by the partners and not by the partnership, section 1.613A–3(e)(6)(i) of the regulation requires each partner to separately keep records of the partner's share of the adjusted basis in each oil and gas property of the partnership.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 49,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7328 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107644–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107644–97 (TD 8769), Permitted Elimination of Preretirement Optional Forms of Benefit (§ 1.411(d)–4).

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Permitted Elimination of Preretirement Optional Forms of Benefit.

OMB Number: 1545–1545.

Regulation Project Number: REG–107644–97.

Abstract: This regulation permits an amendment of a qualified plan or other employee pension benefit plan that eliminates plan provisions for benefit distributions before retirement age but after age 70½. The regulation affects employers that maintain qualified plans and other employee pension benefit plans, plan administrators of these plans and participants in these plans.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 135,000.

Estimated Average Time per Respondent: 22 min.

Estimated Total Annual Burden Hours: 48,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7329 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[RP–97–27]

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–27, Changes in Methods of Accounting.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Changes in Methods of Accounting.

OMB Number: 1545–1541. *Regulation Project Number*: Revenue Procedure 97–27.

Abstract: The information requested in Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of that change.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 3,276.

Estimated Time per Respondent: 2 hours, 46 minutes.

Estimated Total Annual Burden Hours: 9,083.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7330 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Revenue Procedure 2006–10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006–10, Acceptance Agents.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Acceptance Agents.

OMB Number: 1545–1499.

Revenue Procedure Number: Revenue Procedures 2006–10.

Abstract: Revenue Procedure 2006–10 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and State, local or tribal governments.

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 3 hrs., 12 minutes.

Estimated Total Annual Burden Hours: 24,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 15, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7331 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1127

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1127, Application for Extension of Time for Payment of Tax.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time for Payment of Tax.

OMB Number: 1545–2131.

Form Number: 1127.

Abstract: Under IRC 6161, individual taxpayers and business taxpayers are allowed to request an extension of time for payment of tax shown or required to be shown on a return or for a tax due on a notice of deficiency. In order to be granted this extension, they must file Form 1127, providing evidence of undue hardship, inability to borrow, and collateral to ensure payment of the tax.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 7 hours, 50 minutes.

Estimated Total Annual Burden Hours: 7,960.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7332 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–27, Certification of Energy Efficient Home Credit.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Certification of Energy Efficient Home Credit.

OMB Number: 1545–1995.

Notice Number: Notice 2006–27.

Abstract: This notice sets forth a process under which a taxpayer who constructs a dwelling unit (other than a manufactured home) may obtain a certification that the dwelling unit is an energy efficient home that satisfies the requirements of § 45L(c)(1)(A) and (B) of the Internal Revenue Code. This notice is intended to provide (1) guidance concerning the methods by which taxpayers can construct dwelling units to meet the energy efficiency requirements of § 45L and certify such units for purposes of the credit, and (2) guidance concerning which software programs can be used to complete the

calculations necessary for claiming the credit.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 45.

Estimated Average Time per Respondent: 3 hrs.

Estimated Total Annual Burden Hours: 135.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7333 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–157302–02 (Final), TD 9142

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–157302–02 (final), TD 9142; Deemed IRAs in Qualified Retirement Plans.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Deemed IRAs in Qualified Retirement Plans.

OMB Number: 1545–1841.

Form Number: REG–157302–02; TD 9142.

Abstract: Section 408(q), added to the Internal Revenue Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001, provides that separate accounts and annuities may be added to qualified employer plans and deemed to be individual retirement accounts and individual retirement annuities if certain requirements are met. Section 1.408(q)–1(f)(2) provides that these deemed IRAs must be held in a trust or annuity contract separate from the trust or annuity contract of the qualified employer plan. This collection of information is required to ensure that the separate requirements of qualified employer plans and IRAs are met.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, Not-for-profit Institutions, and State, local or tribal government.

Estimated Number of Respondents: 800.

Estimated Time Per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 40,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7334 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for REG–118861–00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–118861–00, Application of section 338 to Insurance Companies.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application of section 338 to Insurance Companies.

OMB Number: 1545–1990.

Form Number: REG–118861–00.

Abstract: REG–118861–00, Application of section 338 to Insurance Companies, will allow companies to retroactively apply the regulations to transactions completed prior to the effective date and to stop an election to use a historic loss payment pattern.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 12.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 12.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7335 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8903

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8903, Domestic Production Activities Deduction.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at (*Carolyn.N.Brown@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Domestic Production Activities Deduction.

OMB Number: 1545–1984.

Form Number: 8903.

Abstract: Taxpayers will use the new Form 8903 and related instructions to calculate the domestic production activities deduction.

Current Actions: Burden hours increased to 6,450,000 due to a previous computation error.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 300,000.

Estimated Time per Response: 21 hours, 30 minutes.

Estimated Total Annual Burden Hours: 6,450,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 19, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7337 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13750

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13750, Election to Participate in Announcement 2005–80 Settlement Initiative.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at (202) 622–6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Election to Participate in Announcement 2005–80 Settlement Initiative.

OMB Number: 1545–1970.

Form Number: 13750.

Abstract: The information requested on Form 13750 (as required under Announcement 2005–80) will be used to determine the applicant's eligibility for participation in the settlement initiative as well as to calculate the tax liabilities resolved under this initiative, including penalties and interest.

Current Actions: There are no changes being made to Form 13750 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, Individual or households, and not-for-profit institutions, and Federal Government.

Estimated Number of Responses: 500.

Estimated Time Per Response: 5 hrs.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 19, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7338 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–22, 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Abstract: This revenue procedure provides guidance to taxpayers who maintain books and records by using an electronic storage system that either images their paper books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. The information requested in the revenue procedure is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of Internal Revenue Code section 6001.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and State, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 20 hours, 1 minute.

Estimated Total Annual Burden Hours: 1,000,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7358 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–50

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–50, Combined Information Reporting.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Combined Information Reporting.

OMB Number: 1545–1667.

Revenue Procedure Number: Revenue Procedure 99–50.

Abstract: Revenue Procedure 99–50 permits combined information reporting by a successor business entity (*i.e.*, a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. Combined information reporting may be elected by a successor with respect to certain Forms 1042–S, all forms in the series 1098, 1099, and 5498, and Forms W–2G. The successor must file a statement with the IRS indicating what forms are being filed on a combined basis.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 6,000.

Estimated Average Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7359 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

OMB Number: 1545–0233.

Form Number: 7004.

Abstract: Form 7004 is used by corporations and certain nonprofit institutions to request an automatic extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and non-profit institutions.

Estimated Number of Respondents: 2,834,328.

Estimated Time Per Respondent: 6 hr., 46 min.

Estimated Total Annual Burden Hours: 19,216,744.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7360 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4876–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4876–A, Election To Be Treated as an Interest Charge DISC.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at (202) 622–6665, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as an Interest Charge DISC.

OMB Number: 1545–0190.

Form Number: 4876–A.

Abstract: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 6 hrs., 22 minutes.

Estimated Total Annual Burden Hours: 6,360.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7386 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5884–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5884–A, Credits for Affected Midwestern Disaster Area Employers.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Credits for Affected Midwestern Disaster Area Employers.

OMB Number: 1545–1978.

Form Number: 5884–A.

Abstract: Qualified employers will file Form 5884–A to claim a credit for wages paid to employees kept on the payroll for the period the business is rendered inoperable as a result of damages inflicted by Hurricane Katrina.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 3 hours, 2 minutes.

Estimated Total Annual Burden Hours: 760,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7394 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498–ESA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498–ESA, Coverdell ESA Contribution Information.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Coverdell ESA Contribution Information.

OMB Number: 1545–1815.

Form Number: 5498–ESA.

Abstract: Form 5498–ESA is used by trustees or issuers of Coverdell Education Savings accounts to report contributions and rollovers to these accounts to beneficiaries.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization.

Estimated Number of Responses: 150,000.

Estimated Time Per Response: 7 minutes.

Estimated Total Annual Burden Hours: 18,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7398 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 9207 (Final & Temp.); REG–106736–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, TD 9207 (Final & Temp.), REG–106736–00(NPRM), Assumptions of Partner Liabilities.

DATES: Written comments should be received on or before June 1, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Assumptions of Partner Liabilities.

OMB Number: 1545–1843.

Regulation Project Number: TD 9207 (Final & Temp), REG–106736–00 (NPRM).

Abstract: In order to be entitled to a deduction with respect to the economic performance of a contingent liability that was contributed by a partner and assumed by a partnership, the partner, or former partner of the partnership, must receive notification of economic performance of the contingent liability from the partnership or other partner assuming the liability.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate 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 of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–7399 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Corrected Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue 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 Friday, May 8, 2009 and Saturday, May 9, 2009.

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 Volunteer Income Tax Assistance Issue Committee will be held Friday, May 8, 2009 from 8:30 a.m. to 4:30 p.m. and Saturday, May 9, 2009 from 8:30 a.m. to 12 p.m. Eastern Time in Atlanta, GA. 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 Marisa 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 contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 24, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–7336 Filed 4–1–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Determination of Presumption of Service Connection Concerning Illnesses Discussed in National Academy of Sciences Report on Gulf War and Health: Volume 5: Infectious Diseases

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Persian Gulf War Veterans Act of 1998, Public Law 105–277, title XVI, 112 Stat. 2681–742 through 2681–749 (codified in part at 38 U.S.C. 1118), has determined that there is no basis to establish a presumption of service connection for Al Eskan disease, idiopathic acute eosinophilic pneumonia, wound and nosocomial infection, mycoplasmas, as discussed in the October 2006 report of the National Academy of Sciences, titled ''Gulf War and Health Volume 5: Infectious Diseases'', or for any illness based on exposure to biologic-warfare agents during service in the Persian Gulf during the Persian Gulf War.

FOR FURTHER INFORMATION CONTACT: Thomas Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725.

SUPPLEMENTARY INFORMATION:

I. Statutory Requirements

The Persian Gulf War Veterans Act of 1998, Public Law 105–277, title XVI, 112 Stat. 2681–742 through 2681–749 (codified at 38 U.S.C. 1118), and the Veterans Programs Enhancement Act of 1998, Public Law 105–368, 112 Stat. 3315, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and evaluate the available scientific evidence regarding associations between illnesses and exposure to toxic agents, environmental or wartime hazards, or preventive medicines or vaccines to which service members may have been exposed during service in the Persian Gulf during the Persian Gulf War. Congress directed the NAS to identify agents, hazards, medicines, and vaccines to which service members may have been exposed during service in the Persian Gulf during the Persian Gulf War.

Congress mandated that the NAS determine, to the extent possible: (1) Whether there is a statistical association between exposure to the agent, hazard, medicine, or vaccine and the illness, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association; (2) the increased risk of illness among individuals exposed to the agent, hazard, medicine, or vaccine; and (3) whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the agent, hazard, medicine, or vaccine and the illness.

Section 1118 of Title 38 of the United States Code provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (*i.e.*, the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans or animals to a biological, chemical, or other toxic agent, environmental or wartime hazard, or preventive medicine or vaccine known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War and the occurrence of a diagnosed or undiagnosed illness in humans or animals, the Secretary will publish regulations establishing presumptive service connection for that illness. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Although section 1118 does not define ''credible evidence,'' it does instruct the Secretary to consider whether the results (of any report, information, or analysis) are statistically significant, are capable of replication, and withstand peer review. *See* 38 U.S.C. 1118(b)(2)(B). Simply comparing the number of studies that report a significantly increased relative risk to the number of studies that report a relative risk that is not significantly increased is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between exposure to an agent, hazard, medicine, or vaccine and the subsequent development of the particular illness. Because of differences in statistical significance, confidence levels, control for confounding factors, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary gives the more credible studies more weight in evaluating the overall weight of the evidence concerning specific illnesses.

II. Prior National Academy of Sciences Reports

The NAS issued its initial report titled, Gulf War and Health, Volume 1: ''Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines,'' on January 1, 2000. In that report, NAS limited its analysis to the health effects of depleted uranium, the chemical warfare agent, sarin, vaccinations against botulism toxin and anthrax, and pyridostigmine bromide, which was used in the Persian Gulf War as a pretreatment for possible exposure to nerve agents. On July 6, 2001, VA published a notice in the **Federal Register** announcing the Secretary's determination that the available evidence did not warrant a presumption of service connection for any disease discussed in that report. See 66 FR 35702 (2001).

The NAS issued its second report titled, ''Gulf War and Health, Volume 2: Insecticides and Solvents,'' on February 18, 2003. In that report, the NAS focused on the health effects of insecticides and solvents that were shipped to the Persian Gulf during the Persian Gulf War. The pesticides considered by the NAS were organophosphorous compounds (Malathion, diazinon, chlorpyrifos, dichlorvos, and azamethiphos), carbamates (carbaryl, propoxur, and methomyl), pyrethrins and pyrethyroids (permethrin and d-phenothrin), lindane, and *N,N*-diethyl-3-methylbenzamide (DEET). The NAS considered 53 solvents in eight groups: aromatic hydrocarbons (including benzene), halogenated hydrocarbons (including tetrachloroethylene and dry-cleaning solvents), alcohols, glycols, glycol esters, esters, ketones, and petroleum distillates. On August 24, 2007, VA published a notice in the **Federal Register** announcing the Secretary's determination that the available evidence did not warrant a presumption of service connection for any disease discussed in that report. 72 FR 48734 (2007).

The NAS issued an update on sarin in a report titled ''Gulf War and Health: Updated Literature Review of Sarin,'' on August 20, 2004. In that report, the NAS focused on the long-term health effects from exposure to the nerve agent, sarin. VA published a **Federal Register** Notice announcing the Secretary's determination that it was not necessary to establish new presumptions of

service connection for any diseases based on the updated findings on long-term health effects from sarin. 73 FR 42411 (2008).

The NAS issued its third report, titled ''Gulf War and Health, Volume 3: Fuels, Combustion Products, and Propellants,'' on December 20, 2004. In that report, the NAS focused on the health effects of hydrazines, red fuming nitric acid, hydrogen sulfide, oil-fire byproducts, diesel-heater fumes, and fuels (for example, jet fuel and gasoline). VA published a **Federal Register** Notice announcing the Secretary's determination that the available evidence did not warrant a presumption of service connection for any disease discussed in that report. 73 FR 50856 (2008).

The NAS issued its fourth report, titled ''Gulf War and Health Volume 4. Health Effects of Serving in the Gulf War,'' on September 12, 2006. In that report the NAS focused on the health status of veterans of the 1991 Gulf War. The report was intended to inform VA about illnesses and clinical issues including possible relevant treatments, which might have been overlooked among this population, regardless of the specific underlying cause. VA is drafting a **Federal Register** notice announcing the Secretary's determination that the available evidence does not warrant a presumption of service connection for any disease discussed in that report.

III. Gulf War and Health, Volume 5: Infectious Diseases

The NAS committee issued its fifth report, titled ''Gulf War and Health Volume 5: Infectious Diseases'' on October 16, 2006. The committee reviewed published, peer-reviewed scientific and medical literature on long-term health effects from infectious diseases associated with Southwest Asia. Based on the NAS's report, VA is currently drafting a proposed rule to establish presumptive service connection for nine infectious diseases discussed in the report and providing guidance regarding long-term health effects associated with these diseases.

However, the NAS additionally discussed several infectious diseases and agents that had been identified as possible causes of illnesses in veterans with service in Southwest Asia or that otherwise presented issues of special interest to such veterans. This notice provides the Secretary's determination that the scientific evidence in the report does not warrant a presumption of service connection for any illnesses caused by these diseases and agents. The diseases and agents are Al Eskan disease, idiopathic acute eosinophilic pneumonia, wound and nosocomial infection, mycoplasmas, and biologic-warfare agents.

Al Eskan Disease

Al Eskan disease is named after a village in Saudi Arabia where U.S. military personnel lived during the 1991 Gulf War. These soldiers reported a vague systemic illness causing primarily respiratory symptoms that was termed Al Eskan disease or Desert Storm pneumonitis in three studies: Korenyi-Both *et al.* 1992; Korenyi-Both *et al.* 1997; Korenyi-Both *et al.* 2000. During Operation Desert Shield (ODSh) and Operation Desert Storm (ODSt), approximately 697,000 troops were deployed. Although researchers are unable to determine the exact number of troops affected by Al Eskan disease, data on respiratory illnesses in troops reveal that respiratory symptoms in general were more common in those with a history of lung disease, smoking, and longer deployment; more common in those with less outdoor exposure; more common in those with less outdoor exposure; and were most prominent in personnel who slept in air-conditioned facilities. Al Eskan disease or a similar illness has not been reported in troops deployed to Operation Iraqi Freedom (OIF) or Operation Enduring Freedom (OEF).

Al Eskan disease was first reported in 1992, and was characterized by sudden or insidious onset of chills, fever, sore throat, hoarseness, nausea and vomiting, and generalized malaise followed by respiratory tract complaints which included increasingly severe dry cough or expectoration of tan sputum (Korenyi-Both *et al.* 1992). The disease appears to be self-limited, and physical findings are minimal. Systemic description and precise definition of Al Eskan disease are unavailable.

Korenyi-Both and colleagues have ascribed Al Eskan disease to an immune response to sand-particle exposure, and argued that Al Eskan disease is most likely a form of acute silicosis aggravated by the pulmonary immune response and perhaps other genetic and environmental factors (Korenyi-Both *et al.* 1992; Korenyi-Both *et al.* 1997; Korenyi-Both *et al.* 2000). There are no clinical data to support this hypothesis and no reports of chronic lung disease consistent with silicosis in veterans. The hypotheses and conclusions of these researchers have not been uniformly accepted and have generated considerable debate (Clooman *et al.* 2000; Kilpatrick 2000).

The NAS found that no data link Al Eskan disease to any specific chronic illness. Further, there is no evidence that the syndrome or disease observed in troops in Al Eskan village was caused by a communicable microbial pathogen. Koryeni-Both *et al.* have argued that the disease is caused by exposure to the unique sand dust of the central and eastern Arabian Peninsula and in particular to the silica in the sand. However, more than 13 years have passed since the initial description of Al Eskan disease appeared in the literature, and researchers have been unable to link chronic respiratory diseases in military personnel to exposure to Persian Gulf sand.

Based on the NAS report, the Secretary has determined that there is insufficient evidence to conclude that there is a positive association between the condition described as Al Eskan disease and exposure to an agent, hazard, preventive medicine or vaccine associated with Gulf War service. To the extent the described condition involves respiratory symptoms of unknown etiology, current VA regulations provide a presumption of service connection for chronic disability due to undiagnosed illness manifest by respiratory signs and symptoms. See 38 CFR 3.317.

Idiopathic Acute Eosinophilic Pneumonia

Idiopathic Acute Eosinophilic Pneumonia (IAEP) is a syndrome characterized by a febrile illness, diffuse pulmonary infiltrates, and pulmonary eosinophilia (Allen *et al.* 1989; Badesch *et al.* 1989; Philit *et al.* 2002). Patients with IAEP have no history of asthma, allergy, or chronic lung disease and no discernible infection. Patients with IAEP present with fever, diffuse pulmonary infiltrates, cough, shortness of breath, and, not infrequently, respiratory failure. Most IAEP patients who survive the acute illness make a complete recovery. Eighteen soldiers deployed to Southwest Asia in OIF developed IAEP.

In many cases, IAEP has been associated with cigarette smoking and exposure to dust (Badesch *et al.* 1989; Pope-Harman *et al.* 1996; Rom *et al.* 2002). No causative pathogens were detected or implied by the immune repose of soldiers with IAEP (Allen *et al.* 1989; Shorr *et al.* 2004). Survey results failed to identify a common source of environmental, drug, or toxin exposure (Shorr *et al.* 2004). IAEP would not be expected to have long-term adverse health outcomes.

Based on the NAS report, the Secretary has determined that there is insufficient evidence to conclude that there is a positive association between IAEP and exposure to an agent, hazard,

preventive medicine, or vaccine associated with Gulf War service.

Wound and Nosocomial Infection

Soldiers can experience a wide variety of exposures to pathogens from explosives or combat (wound infections) or in health-care settings (nosocomial infections). One condition that is more prevalent in troops in Southwest Asia than in civilian settings is infection with *Acinetobacter calcoaceticus-baumannii* complex, a well-recognized cause of wound infection in general and among military troops in particular (CDC 2004; Davis *et al.* 2005). The complex is also a cause of nosocomially-acquired infection when wounded, infected soldiers are intermingled with other patients in the intensive care unit, emergency room, or hospital ward.

Research data has also revealed that *A. baumannii bacteremia* was common in OEF and OIF returnees who were hospitalized for injuries, although it was rare before the state of OEF and OIF (CDC 2004; Davis *et al.* 2005; Zapor and Moran 2005), and that nearly any war-theater injury, whether combat-derived or otherwise, may result in infection. The risk of infection is inherent in military service, training, readiness activities, transport, or combat (Zapor and Moran 2005).

Both wound infections and nosocomial infections are hazards for U.S. personnel deployed to Southwest Asia. Given modern medical and surgical treatment and the ability to evacuate injured military personnel rapidly, most infections will be seen within days or weeks of wounds.

The NAS found that both wound infections and nosocomial infections manifest within a short period after injury or exposure, such that making an epiodemiological link between a particular infection and the precipitating wound or exposure is rarely difficult. The NAS further noted that, in rare cases, infections associated with chronic osteomyelitis could go undetected and become manifest after service, although it noted a ''near absence'' of case reports documenting that occurrence. In view of the possibility of infections from other military and civilian sources outside of Gulf War service, the NAS stated that determining whether any infections manifest after service were associated with such service or with other causes would require case-by-case evaluations of the epidemiologic, clinical, and microbiological characteristics of the infection.

Based on the NAS report, the Secretary has determined that there is insufficient evidence to conclude that there is a positive association between wound or nosocomial infections manifest after service and any exposure to an agent, hazard, preventive medicine, or vaccine associated with Gulf War service. Any such infections manifest within service or within a short period following an in-service wound or exposure would be subject to service connection on a direct basis under current law.

Mycoplasmas

Mycoplasmas are ubiquitous microorganisms found as commensal colonizers and as pathogens in plants, insects, and animals. They are pleomorphic and filamentous and have a deformable membrane, which allows them to pass through filters that retain bacteria. They are fastidious and difficult to culture on cell-free media; at the same time, because of their common presence as nonpathogenic colonizers, they are common contaminants of cell cultures. The propensity for contamination of cell cultures can lead to false conclusions about the association of mycoplasmas with a variety of clinical syndromes (Baum 2005).

Culture of *Mycoplasma fermentans* on cell-free media (which decrease the risk of contamination) has been extremely difficult, and this has led to controversy over whether the organisms are true pathogens or merely contaminants.

The NAS noted that mycoplasmas are ubiquitous and did not suggest that they are more prevalent in the Gulf War theater than in other locations. However, it addressed mycoplasmas as a matter of special interest to Gulf War veterans because certain researchers have suggested that many of the symptoms of Gulf War illness could be explained by aggressive mycoplasma infections present as contaminants in vaccines administered to service members before deployment to the Gulf.

Several studies by Nicolson and colleagues report a link between *Mycoplasma fermentans* and health problems in Gulf War veterans (Nicolson *et al.* 2002; Nicolson *et al.* 2003; Nicolson and Rosenberg-Nicolson 1995; Nicolson and Nicolson 1996). Nicolson and colleagues hypothesized that the source of such infections in Gulf War veterans may have been contamination of the multiple vaccines received by troops before and during deployment (Nicolson *et al.* 2003). It was suggested that many of the symptoms of Gulf War illness could be explained by ''aggressive pathogenic mycoplasma infections, and they should be treatable with multiple courses of antibiotics, such as doxycycline or macrolides'' (Nicolson and Rosenberg-Nicolson 1995). However, independent attempts to confirm the results of studies conducted by Nicolson and his colleagues have been unsuccessful (Gray *et al.* 1999; Lo *et al.* 2000). One report noted that the methodology used by Nicolson and colleagues was ''an inappropriate diagnostic method for detection of M. fermentans'' and that neither the specificity nor the sensitivity of the test had been established (Dybvig 1998). Because of the conflicting data related to M. fermentans infections and their possible association with Gulf War illnesses and the suggestion of possible benefits of treatment with doxycycline, VA conducted a randomized placebo-controlled trial to determine whether doxycycline could improve functional status of persons with Gulf War illness (Donta *et al.* 2004). Overall, the results of this study revealed no statistically significant difference between the doxycycline-treated and placebo groups.

Although several studies by Nicolson and colleagues report a link between *Mycoplasma fermentans* and health problems in Gulf War veterans (Nicolson *et al.* 2002; Nicolson *et al.* 2003; Nicolson and Rosenberg-Nicolson 1995; Nicolson and Nicolson 1996), other investigators were not able to duplicate their work and there are concerns about the nuclear gene tracking technique used by Nicolson *et al.* (Dybvig 1998; Gray *et al.* 1999; Lo *et al.* 2000). After reviewing the evidence, mycoplasma infection is not believed to be related to the symptoms reported by Gulf War veterans.

Based on the NAS report, the Secretary has determined that there is insufficient evidence to conclude that there is a positive association between mycoplasma infections and any exposure to an agent, hazard, preventive medicine, or vaccine associated with Gulf War service. The evidence does not show that mycoplasma infections are associated with Gulf War illness or any other chronic health outcome.

Biologic-Warfare Agents

Biologic warfare is defined as the use of microorganisms or toxic products derived from microorganisms to inflict mass casualties in military and civilian populations (Horn 2003). At the time of the 1991 Gulf War, Iraq had an active biologic warfare program. Iraq developed bombs, missile warheads, aerosol generators, and helicopter and jet spray systems for dispersal of biological warfare agents (Leitenberg 2001). Iraqi sources reported that aflatoxin, botulinum toxin, and *Bacillus anthracis* were loaded in missiles and air-delivery bombs in preparation for

the Gulf War (Roffey *et al.* 2002). Of the four biological warfare agents that Iraqi sources reported weaponized: aflatoxin, botulinum toxin, *Bacillus anthracis*, and ricin, only anthrax is a living microorganism and capable of multiplying in infected people. However, no evidence has been found that Iraq deployed any weapons containing biological warfare agents (Roffey *et al.* 2002; Zilinskas 1997).

Based on the NAS report, the Secretary has concluded that a presumption is not warranted for any disease associated with exposure to biological warfare agents because such weapons were not shown to have been deployed in the Gulf War.

IV. Conclusion

After careful review of the findings of the 2006 NAS report, ''Gulf War & Health Volume 5: Infectious Diseases,'' the Secretary has determined that the scientific evidence presented in the report and other information available to the Secretary indicate that no new presumption of service connection is warranted for Al Eskan disease, idiopathic acute eosinophilic pneumonia, wound and nosocomial infection, mycoplasmas, or for any illness based on exposure to biologic-warfare agents.

Approved: March 26, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–7342 Filed 4–1–09; 8:45 am]

BILLING CODE

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Cemeteries and Memorials will be held on May 5–6, 2009, at the El Paso Marriott, 1600 Airway Boulevard, El Paso, Texas. On May 5, the meeting will begin at 8 a.m. and end at 3:45 p.m. and on May 6, the meeting will begin at 8:30 a.m. and end at 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits.

On May 5, the Committee will receive updates on National Cemetery Administration issues. On May 6, the Committee will tour Fort Bliss National Cemetery, located at 5200 Fred Wilson Boulevard, El Paso, Texas, and then reconvene at the hotel for a business session in the afternoon. The May 6 session will include discussions of Committee recommendations, future meeting sites, and potential agenda topics at future meetings.

Time will not be allocated for receiving oral presentations from the public.

Any member of the public wishing to attend the meeting should contact Mr. Michael Nacincik, Designated Federal Officer, at (202) 461–6240. The Committee will accept written comments. Comments may be transmitted electronically to the Committee at *Michael.n@va.gov*, or mailed to the National Cemetery Administration (41C2), 810 Vermont Avenue, NW., Washington, DC 20420. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: March 27, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–7455 Filed 4–1–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on OIF/OEF Veterans and Families; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on OIF/OEF Veterans and Families will meet on April 15–16, 2009, at the St. Regis Hotel, 923 16th Street, NW., Washington, DC, from 8:30 a.m. to 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the full spectrum of health care, benefits delivery and related family support issues that confront servicemembers during their transition from active duty to veteran status and during their post-service years. The Committee focuses on the concerns of all men and women with active military service in Operation Iraqi Freedom and/or Operation Enduring Freedom, but pays particular attention to severely disabled veterans and their families.

The agenda for April 15 and 16 will feature a review of information gathered by the Committee during the past two years. The Committee will also discuss the possibility of transferring records and sharing the results of its various fact-finding initiatives with other VA advisory committees which have complementary jurisdictions and similar areas of interest.

The public may submit written statements for the Committee's review to the Advisory Committee on OIF/OEF Veterans and Families (008), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Laura O'Shea, Designated Federal Officer, at (202) 461–5765.

Dated: March 31, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–7456 Filed 4–1–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Genomic Medicine Program Advisory Committee will meet on April 27, 2009, at the Madison Hotel, 1177 15th St NW., Washington, DC. The meeting will start at 8 a.m. and end at 5 p.m.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on using genetic information to optimize medical care of Veterans and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will meet in an open session from 8 a.m. until 3:30 p.m. to receive updates from the VA program staff; discuss optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans; and receive an overview of the recent Institute of Medicine report on privacy protections in health research and discussions of potential areas of research in diseases/conditions prevalent in Veterans such as diabetes, women's health, specifically breast cancer, and the application of pharmacogenomics in clinical care.

The Committee will meet in a closed session from 3:30 p.m. until 5 p.m. for discussion of confidential and unpublished results of an ongoing pilot study. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with the provisions set forth in sections 552b(c)(6) and (c)(9)(B), Title 5 U.S.C., as amended. The discussions and review of the ongoing pilot study and related documents could disclose confidential information and therefore compromise this ongoing study.

Public comments will be received at 3 p.m. Public comments will be limited to five minutes each. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Any member of the public seeking additional information should contact Dr. Sumitra Muralidhar, Designated Federal Officer, at *sumitra.muralidhar@va.gov.*

Dated: March 27, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–7457 Filed 4–1–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on May 13, 2009, in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. to 2:30 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled Veterans, and other matters pertinent to the Department's Veterans Health Administration.

The agenda for the meeting will include discussions of Operation Enduring Freedom/Operation Iraqi Freedom and Traumatic Brain Injury care and updates on quality and performance initiatives, mental health services and the future of Information Technology in the VA.

Any member of the public wishing to attend should contact Juanita Leslie, Office of Administrative Operations (10B2), Veterans Health Administration, Department of Veterans Affairs at (202) 461–7019 or *j.t.leslie@va.gov.* No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be submitted to Ms. Leslie before the meeting or within 10 days after the meeting.

Dated: March 27, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–7454 Filed 4–1–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
April 2, 2009

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Identify the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment; Final Rule To Identify the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment; and To Revise the List of Endangered and Threatened Wildlife; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R3–ES–2008–0120; 92220–1113–000; ABC Code: C6]

RIN 1018–AW41

Endangered and Threatened Wildlife and Plants; Final Rule To Identify the Western Great Lakes Populations of Gray Wolves as a Distinct Population Segment and To Revise the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS) identify the Western Great Lakes (WGL) Distinct Population Segment (DPS) of the gray wolf (*Canis lupus*). The geographic extent of this DPS includes all of Minnesota, Wisconsin, and Michigan; the eastern half of North Dakota and South Dakota; the northern half of Iowa; the northern portions of Illinois and Indiana; and the northwestern portion of Ohio. We also revise the List of Endangered and Threatened Wildlife established under the Endangered Species Act of 1973, as amended (Act) by removing gray wolves within the WGL DPS. We are taking these actions because available data indicate that this DPS no longer meets the definitions of threatened or endangered under the Act. The threats have been reduced or eliminated, as evidenced by a population that is stable or increasing in Minnesota, Wisconsin, and Michigan, and greatly exceeds the numerical recovery criteria established in its recovery plan. Completed State wolf management plans will provide adequate protection and management of the WGL DPS after this revision of the listing. This final rule removes this DPS from the lists of Threatened and Endangered Wildlife, removes the currently designated critical habitat for the gray wolf in Minnesota and Michigan, and removes the current special regulations for gray wolves in Minnesota.

On April 16, 2007, three parties filed a lawsuit against the U.S. Department of the Interior (Department) and the Service, challenging the Service's February 8, 2007 (72 FR 6052), identification and delisting of the WGL DPS. On September 29, 2008, the U.S. District Court for the District of Columbia ruled in favor of the plaintiffs (*Humane Society of the United States* v. *Kempthorne,* No. 1:07–CV–00677 (D.D.C.). In that ruling the court vacated and remanded the Service's application of the February 8, 2007 (72 FR 6052), final delisting rule for the WGL DPS of the gray wolf. On remand, the Service was directed to provide an explanation as to how simultaneously identifying and delisting a DPS is consistent with the Act's text, structure, policy objectives, legislative history, and any relevant judicial interpretations. This final rule addresses the September 29, 2008, court ruling.

DATES: This rule becomes effective on May 4, 2009.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at our Midwest Regional Office: U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056. Call 612–713–5350 to make arrangements. The comments and materials we received during the comment period on the proposed rule also are available for public inspection and by appointment during normal business hours at this Regional Office and at our Ecological Services Field Offices in Bloomington, Minnesota (612–725–3548); New Frankin, Wisconsin (920–866–1717); and East Lansing, Michigan (517–351–2555). Call those offices to make arrangements.

FOR FURTHER INFORMATION CONTACT: Laura Ragan, 612–713–5350. Direct all questions or requests for additional information to: GRAY WOLF QUESTIONS, U.S. Fish and Wildlife Service, Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056. Additional information is also available on our World Wide Web site at *http://www.fws.gov/midwest/wolf*. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Biology and Ecology of Gray Wolves

For a discussion of the biology and ecology of gray wolves and general recovery planning efforts, see the proposed WGL wolf rule published on March 27, 2006, (71 FR 15266–15305) and available on our World Wide Web site.

Recovery Criteria

The 1978 Recovery Plan for the Eastern Timber Wolf (Recovery Plan) and the 1992 revised Recovery Plan (Revised Plan) contain the same two delisting criteria. The first delisting criterion states that the survival of the wolf in Minnesota must be assured. We, and the Eastern Timber Wolf Recovery Team (Peterson in litt. 1997, 1998, 1999a, 1999b), have concluded that this first delisting criterion remains valid. It addresses a need for reasonable assurances that future State, Tribal, and Federal wolf management and protection will maintain a viable recovered population of gray wolves within the borders of Minnesota for the foreseeable future.

Although the Recovery Plan's recovery criteria predate the scientific field of conservation biology, the conservation principles of representation (conserving the genetic diversity of a taxon), resilience (the ability to withstand demographic and environmental variation), and redundancy (sufficient populations to provide a margin of safety) were incorporated into these criteria. Maintenance of the Minnesota wolf population is vital because the remaining genetic diversity of gray wolves in the eastern United States was carried by the several hundred wolves that survived in the State into the early 1970s. The Recovery Team insisted that the remnant Minnesota wolf population be maintained and protected to achieve wolf recovery in the eastern United States. The successful growth of that remnant population has maintained and maximized the representation of that genetic diversity among gray wolves in the WGL DPS. Furthermore, the Recovery Plan established a planning goal of 1,250–1,400 animals for the Minnesota wolf population (USFWS 1992, p. 28), which would increase the likelihood of maintaining its genetic diversity over the long term. This large Minnesota wolf population also provides resiliency to reduce the adverse impacts of unpredictable demographic and environmental events. Furthermore, the Recovery Plan specifies a wolf population that is spread across about 40 percent of the State (Zones 1 through 4) (USFWS 1992, p. 28), adding a geographic component to the resiliency of the Minnesota wolf population.

The second delisting criterion in the Recovery Plan states that at least one viable wolf population should be reestablished within the historical range of the eastern timber wolf outside of Minnesota and Isle Royale, Michigan. The second population enhances both the resiliency and redundancy of the recovery program. The Recovery Plan provides two options for reestablishing this second population. If it is an isolated population, that is, located

more than 100 miles (160 km) from the Minnesota wolf population, the second population should consist of at least 200 wolves for at least 5 years (based upon late-winter population estimates) to be considered viable. Alternatively, if the second population is located within 100 miles (160 km) of a self-sustaining wolf population (for example, the Minnesota wolf population), it would be considered viable if it maintained a minimum of 100 wolves for at least 5 years. Such a nearby second population would be viable at a smaller size, because it would exchange wolves with the Minnesota population (that is, they would function as a metapopulation), thereby bolstering the smaller second population genetically and numerically.

The Recovery Plan does not specify where in the eastern United States the second population should be reestablished. Therefore, the second population could be located anywhere within the triangular Minnesota–Maine–Florida area covered by the 1978 Recovery Plan and the 1992 Revised Recovery Plan, except on Isle Royale (Michigan) or within Minnesota. The 1992 Revised Recovery Plan retained potential gray wolf re-establishment areas in northern Wisconsin, the upper peninsula (UP) of Michigan, the Adirondack Forest Preserve of New York, a small area in eastern Maine, and a larger area of northwestern Maine and adjacent northern New Hampshire (USFWS 1992, pp. 56–58). Neither the 1978 nor the 1992 recovery criteria suggest that the restoration of the gray wolf throughout all or most of its historical range in the eastern United States, or to all of these potential re-establishment areas, is necessary to achieve recovery under the Act.

In 1998, the Eastern Timber Wolf Recovery Team clarified the application of the delisting criterion for the second population to the wolf population that had developed in northern Wisconsin and the adjacent UP. The Recovery Team recommended that the numerical delisting criterion for the Wisconsin–Michigan population will be achieved when 6 consecutive late-winter wolf surveys document that the population equals or exceeds 100 wolves (excluding Isle Royale wolves) for the 5 consecutive years between the 6 surveys (Peterson in litt. 1998). This second population is less than 200 miles from the Minnesota wolf population.

Recovery of the Gray Wolf in the Western Great Lakes Area

Minnesota Recovery

During the pre-1965 period of wolf bounties and legal public trapping, wolves persisted in the remote northeastern portion of Minnesota, but were eliminated from the rest of the State. Estimated numbers of Minnesota wolves before their listing under the Act in 1974 include 450 to 700 in 1950–53 (Fuller *et al.* 1992, p. 43, based on data in Stenlund 1955, p. 19), 350 to 700 in 1963 (Cahalane 1964, p. 10), 750 in 1970 (Leirfallom 1970, p. 11), 736 to 950 in 1971–72 (Fuller *et al.* 1992, p. 44), and 500 to 1,000 in 1973 (Mech and Rausch 1975, p 85). Although these estimates were based upon different methodologies and are not directly comparable, each puts the pre-listing abundance of wolves in Minnesota at 1,000 or less. This was the only significant wolf population in the United States outside Alaska during those time-periods.

After the wolf was listed as endangered under the Act, the Minnesota population estimates increased (see Table 1 below). Mech estimated the population to be 1,000 to 1,200 in 1976 (USFWS 1978, pp. 4, 50–52), and Berg and Kuehn (1982, p. 11) estimated that there were 1,235 wolves in 138 packs in the winter of 1978–79. In 1988–89, the Minnesota Department of Natural Resources (MN DNR) repeated the 1978–79 survey and also used a second method to estimate wolf numbers in the State. The resulting independent estimates were 1,500 and 1,750 wolves in at least 233 packs; the lower number was derived by a method comparable to the 1978–79 survey (Fuller *et al.* 1992, pp. 50–51).

During the winter of 1997–98, a statewide wolf population and distribution survey was repeated by MN DNR, using methods similar to those of the two previous surveys. Field staff of Federal, State, Tribal, and county land management agencies and wood products companies were queried to identify occupied wolf range in Minnesota. Data from 5 concurrent radio telemetry studies tracking 36 packs, representative of the entire Minnesota wolf range, were used to determine average pack size and territory area. Those figures were then used to calculate a statewide estimate of wolf and pack numbers in the occupied range, with single (non-pack) wolves factored into the estimate (Berg and Benson 1999, pp. 1–2).

TABLE 1—GRAY WOLF WINTER POPULATIONS IN MINNESOTA, WISCONSIN, AND MICHIGAN (EXCLUDING ISLE ROYALE) FROM 1976 THROUGH 2006

[Note that there are several years between the first three estimates]

Year	Minnesota	Wisconsin	Michigan	WI & MI Total
1976	1,000–1,200			
1978–79	1,235			
1988–89	1,500–1,750	31	3	34
1989–90		34	10	44
1990–91		40	17	57
1991–92		45	21	66
1992–93		40	30	70
1993–94		57	57	114
1994–95		83	80	163
1995–96		99	116	215
1996–97		148	113	261
1997–98	2,445	180	139	319
1998–99		205	169	374
1999–2000		248	216	464
2000–01		257	249	506
2001–02		327	278	604
2002–03		335	321	656
2003–04	3,020	373	360	733
2004–05		*435	405	840

TABLE 1—GRAY WOLF WINTER POPULATIONS IN MINNESOTA, WISCONSIN, AND MICHIGAN (EXCLUDING ISLE ROYALE) FROM 1976 THROUGH 2006—Continued

[Note that there are several years between the first three estimates]

Year	Minnesota	Wisconsin	Michigan	WI & MI Total
2005–06	.....	465	434	899

* Previous estimate of 425 has been corrected, based on subsequent location of 5 packs missed during survey period (Wydeven *et al.* 2006, pp. 9–10).

The 1997–98 survey concluded that approximately 2,445 wolves existed in about 385 packs in Minnesota during that winter period (90 percent confidence interval from 1,995 to 2,905 wolves) (Berg and Benson 1999, p. 4). This figure indicated the continued growth of the Minnesota wolf population at an average rate of about 3.7 percent annually from 1970 through 1997–98. Between 1979 and 1989 the annual growth rate was about 3 percent, and it increased to between 4 and 5 percent in the next decade (Berg and Benson 1999, 5, Fuller *et al.* 1992, p. 51). As of the 1998 survey, the number of Minnesota wolves was approximately twice the planning goal for Minnesota, as specified in the Eastern Recovery Plan (USFWS 1992, p. 28).

Minnesota DNR conducted another survey of the State's wolf population and range during the winter of 2003–04, again using similar methodology. That survey concluded that an estimated 3,020 wolves in 485 packs occurred in Minnesota at that time (90 percent confidence interval for this estimate is 2,301 to 3,708 wolves). Due to the wide overlap in the confidence intervals for the 1997–98 and 2003–04 surveys, the authors conclude that, although the population point estimate increased by about 24 percent over the 6 years between the surveys (about 3.5 percent annually), there was no statistically significant change in the State's wolf population during that period (Erb and Benson 2004, pp. 7 and 9).

As wolves increased in abundance in Minnesota, they also expanded their distribution. During 1948–53, the major wolf range was estimated to be about 11,954 sq mi (31,080 sq km) (Stenlund 1955, p. 19). A 1970 questionnaire survey resulted in an estimated wolf range of 14,769 sq mi (38,400 sq km) (calculated by Fuller *et al.* 1992, p. 43, from Leirfallom 1970). Fuller *et al.* (1992, p. 44), using data from Berg and Kuehn (1982), estimated that Minnesota primary wolf range included 14,038 sq mi (36,500 sq km) during winter 1978–79. By 1982–83, pairs or breeding packs of wolves were estimated to occupy an area of 22,000 sq mi (57,050 sq km) in northern Minnesota (Mech *et al.* 1988, p. 86). That study also identified an additional 15,577 sq mi (40,500 sq km) of peripheral range, where habitat appeared suitable but no wolves or only lone wolves existed. The 1988–89 study produced an estimate of 23,165 sq mi (60,200 sq km) as the contiguous wolf range at that time in Minnesota (Fuller *et al.* 1992, pp. 48–49; Berg and Benson 1999, p. 3, 5), an increase of 65 percent over the primary range calculated for 1978–79. The 1997–98 study concluded that the contiguous wolf range had expanded to 33,971 sq mi (88,325 sq km), a 47 percent increase in 9 years (Berg and Benson 1999, p. 5). By that time the Minnesota wolf population was using most of the occupied and peripheral range identified by Mech *et al.* (1988, p. 86). The wolf population in Minnesota had recovered to the point that its contiguous range covered approximately 40 percent of the State during 1997–98. In contrast, the 2003–04 survey failed to show a continuing expansion of wolf range in Minnesota, and any actual increase in wolf numbers since 1997–98 was attributed to increased wolf density within a stabilized range (Erb and Benson 2004, p. 7).

Although Minnesota DNR does not conduct a formal wolf population survey annually, it includes the species in its annual carnivore track survey. This survey, standardized and operational since 1994, provides an annual index of abundance for several species of large carnivores by counting their tracks along 51 standardized survey routes in the northern portion of Minnesota. Based on these surveys, the wolf track indices for winter 2004–05 showed little change from the previous winter, and no statistically significant trends are apparent since 1994. However, the data show some indication of an increase in wolf density (Erb 2005, p. 2, 5). Thus, the winter track survey results are consistent with a stable or slowly increasing wolf population in northern Minnesota over this 11-year period.

Wisconsin Recovery

Wolves were considered to have been extirpated from Wisconsin by 1960. No formal attempts were made to monitor the State's wolf population from 1960 until 1979. From 1960 through 1975, individual wolves and an occasional wolf pair were reported. There is no documentation, however, of any wolf reproduction occurring in Wisconsin, and the wolves that were reported may have been dispersing animals from Minnesota.

Wolves are believed to have returned to Wisconsin in more substantial numbers around 1975, and the Wisconsin Department of Natural Resources (WI DNR) began wolf population monitoring in 1979–80 and estimated a statewide population of 25 wolves at that time (Wydeven and Wiedenhoeft 2000, pp. 151, 159). This population remained relatively stable for several years, then declined slightly to approximately 15 to 19 wolves in the mid-1980s. In the late 1980s, the Wisconsin wolf population began an increase that has continued into 2006 (Wydeven *et al.* 2006, p. 35).

Wisconsin DNR intensively surveys its wolf population annually using a combination of aerial, ground, and satellite radio telemetry, complemented by snow tracking and wolf sign surveys (Wydeven *et al.* 2006, pp. 4–5). Wolves are trapped from May through September and fitted with radio collars, with a goal of having at least one radio-collared wolf in about half of the wolf packs in Wisconsin. Aerial locations are obtained from each functioning radio-collar about once per week, and pack territories are estimated and mapped from the movements of the individuals who exhibit localized patterns. From December through March, the pilots make special efforts to visually locate and count the individual wolves in each radio-tracked pack. Snow tracking is used to supplement the information gained from aerial sightings and to provide pack size estimates for packs lacking a radio-collared wolf. Tracking is done by assigning survey blocks to trained trackers who then drive snow-covered roads in their blocks and follow all wolf tracks they encounter. Snowmobiles are used to locate wolf tracks in more remote areas with few roads. The results of the aerial and

ground surveys are carefully compared to properly separate packs and to avoid over-counting (Wydeven *et al.* 2006a, pp. 4–5). The number of wolves in each pack is estimated based on the aerial and ground observations made of the individual wolves in each pack over the winter.

Because the monitoring methods focus on wolf packs, lone wolves are likely undercounted in Wisconsin. As a result, the annual population estimates are probably slight underestimates of the actual wolf population within the State during the late-winter period. Fuller (1989, p. 19) noted that lone wolves are estimated to compose from 2 to 29 percent of the total population in the area. Also, these estimates are made at the low point of the annual wolf population cycle; the late-winter surveys produce an estimate of the wolf population at a time when most winter mortality has already occurred and before the birth of pups. Thus, Wisconsin wolf population estimates are conservative in two respects: They undercount lone wolves and the count is made at the annual low point of the population. This methodology is consistent with the recovery criteria established in the 1992 Recovery Plan, which established numerical criteria to be measured with data obtained by late-winter surveys.

From mid-September 2005 through mid-April 2006, 43 radio collars were active on Wisconsin wolves, including 38 packs. An estimated 465 to 502 wolves in 115 packs, including 16 to 17 wolves on Native American reservations, were in the State in early 2006, representing a 7 percent increase from 2005 (Wydeven *et al.* 2006, pp. 1, 6).

Wisconsin population estimates for 1985 through 2006 increased from 15 to 465–502 wolves (see Table 1 above) and from 4 to 115 packs (Wydeven *et al.* 2006, pp. 1, 35). This represents an annual increase of 21 percent through 2000, and an average annual increase of 11 percent for the most recent 6 years.

In 1995, wolves were first documented in Jackson County, Wisconsin, well to the south of the northern Wisconsin area occupied by other Wisconsin wolf packs. The number of wolves in this central Wisconsin area has dramatically increased since that time. During the winter of 2004–05, there were 53–56 wolves in 14 packs in the central forest wolf range (Zone 2 in the Wisconsin Wolf Management Plan; WI DNR 1999, p. 18) and an additional 17–19 wolves in 7 packs in the marginal habitat in Zone 3, located between Zone 1 (northern forest wolf range) and Zones 2 and 4 (Wydeven *et al.* 2006, pp. 6, 33).

During the winter of 2002–03, 7 wolves were believed to be primarily occupying Native American reservation lands in Wisconsin (Wydeven *et al.* 2003, p. 9); this increased to 11 to 13 wolves in the winter of 2004–05 (Wydeven in litt. 2005) and 16–17 in 2005–06. The 2005–06 animals consisted of 2 packs totaling 7 to 8 wolves on the Bad River Chippewa Reservation and a pack of 4 wolves on the Lac Courtes Oreilles Chippewa Reservation, both in northwestern Wisconsin. There also was a single pack of three wolves on the Lac du Flambeau Reservation and a two-wolf pack on the Menominee Reservation, in north-central and northeastern Wisconsin, respectively (Wydeven *et al.* 2006, pp. 27, 28, 33). Additional wolves have spent some time on the Red Cliff Chippewa Reservation, the St. Croix Chippewa Reservation, and the Ho Chunk Reservation in the last few years. It is likely that the Potowatomi Reservation lands will also host wolves in the near future (Wydeven in litt. 2005). Of these reservations the Ho-Chunk, St. Croix Chippewa, and Potowatomi are composed mostly of scattered parcels of land, and are not likely to provide significant amounts of wolf habitat.

In 2002, wolf numbers in Wisconsin alone surpassed the Federal criterion for a second population, as identified in the 1992 Recovery Plan (i.e., 100 wolves for a minimum of 5 consecutive years, as measured by 6 consecutive late-winter counts). Furthermore, in 2004 Wisconsin wolf numbers exceeded the Recovery Plan criterion of 200 animals for 6 successive late-winter surveys for an isolated wolf population. The Wisconsin wolf population continues to increase, although the slower rates of increase seen since 2000 may be the first indications that the State's wolf population growth and geographic expansion are beginning to level off. Mladenoff *et al.* (1997, p. 47) and Wydeven *et al.* (1999, p. 49) estimated that occupancy of primary wolf habitat in Wisconsin would produce a wolf population of about 380 animals in the northern forest area of the State plus an additional 20–40 wolves in the central forest area. If wolves occupy secondary habitat (areas with a 10–50 percent probability of supporting a wolf pack) in the State, their estimated population could be 50 percent higher or more (Wydeven *et al.* 1999, p. 49) resulting in a statewide population of 600 or more wolves.

Michigan Recovery

Wolves were extirpated from Michigan as a reproducing species long before they were listed as endangered in 1974. Prior to 1991, and excluding Isle Royale, the last known breeding population of wild Michigan wolves occurred in the mid-1950s. However, as wolves began to reoccupy northern Wisconsin, the Michigan Department of Natural Resources (MI DNR) began noting single wolves at various locations in the UP of Michigan. In 1989, a wolf pair was verified in the central UP, and it produced pups in 1991. Since that time, wolf packs have spread throughout the UP, with immigration occurring from Wisconsin on the west and possibly from Ontario on the east. They now are found in every county of the UP, with the possible exception of Keweenaw County (Huntzinger *et al.* 2005, p. 6).

The MI DNR annually monitors the wolf population in the UP by intensive late-winter tracking surveys that focus on each pack. The UP is divided into seven monitoring zones, and specific surveyors are assigned to each zone. Pack locations are derived from previous surveys, citizen reports, and extensive ground and aerial tracking of radio-collared wolves. During the winter of 2004–05 at least 87 wolf packs were resident in the UP (Huntzinger *et al.* 2005, p. 6). A minimum of 40 percent of these packs had members with active radio-tracking collars during the winter of 2004–05 (Huntzinger *et al.* 2005, p. 6–7). Care is taken to avoid double-counting packs and individual wolves, and a variety of evidence is used to distinguish adjacent packs and accurately count their members. Surveys along the border of adjacent monitoring zones are coordinated to avoid double-counting of wolves and packs occupying those border areas. In areas with a high density of wolves, ground surveys by 4 to 6 surveyors with concurrent aerial tracking are used to accurately delineate territories of adjacent packs and count their members (Beyer *et al.* 2004, pp. 2–3, Huntzinger *et al.* 2005, pp. 3–6; Potvin *et al.* 2005, p. 1661). As with Wisconsin, the Michigan surveys likely miss many lone wolves, thus underestimating the actual population.

Annual surveys have documented minimum late-winter estimates of wolves occurring in the UP as increasing from 57 wolves in 1994 to 434 in 91 packs in 2006 (see Table 1 above). Over the last 10 years the annualized rate of increase has been about 18 percent (Beyer *et al.* 2006, p. 35; Huntzinger *et al.* 2005, p. 6; MI DNR

2006a; Roell in litt. 2006a). The rate of annual increase has varied from year to year during this period, but there appears to be two distinct phases of population growth, with relatively rapid growth (24.3 to 25.9 percent per year) from 1997 through 2000 and slower growth (11.6 to 15.5 percent from 2000 through 2005 and 7.2 percent in 2006) since then. As with the Wisconsin wolves, the number of wolves in the Michigan UP wolf population by itself has surpassed the recovery criterion for a second population in the eastern United States (i.e., 100 wolves for a minimum of 5 consecutive years, based on 6 late-winter estimates), as specified in the Federal Recovery Plan, since 2001. In addition, the UP numbers have now surpassed the Federal criterion for an isolated wolf population of 200 animals for 6 successive late-winter surveys (USFWS 1992, pp. 24–26).

To date, no wolf packs are known to be primarily using tribal-owned lands in Michigan (Roell in litt. 2006b). Native American tribes in the UP of Michigan own small, scattered parcels of land. As such, no one tribal property would likely support a wolf pack. However, as wolves occur in all counties in the UP and range widely, tribal land is likely utilized periodically by wolves.

The wolf population of Isle Royale National Park, Michigan, is not considered to be an important factor in the recovery or long-term survival of wolves in the WGL DPS. This is a small and isolated wolf population that probably has not had any contact with mainland wolf populations since its founding pair crossed the Lake Superior ice in the late 1940s (Peterson *et al.* 1998, p. 828). This wolf population lacks sufficient genetic uniqueness (Wayne *et al.* 1991, pp. 47–49), and due to the island's small size, cannot satisfy the discreteness criterion for a separate DPS. For these same reasons it will not make a significant numerical contribution to gray wolf recovery, although long-term research on this wolf population has added a great deal to our knowledge of the species. The wolf population on Isle Royale has ranged from 12 to 50 wolves since 1959, and was 30 wolves in the winter of 2005–06 (Peterson and Vucetich 2006, p. 6).

Although there have been verified reports of wolf sightings in the Lower Peninsula of Michigan, resident breeding packs have not been confirmed there. In October 2004 the first gray wolf since 1910 was documented in the Lower Peninsula (LP). This wolf had been trapped and radio-collared by the MI DNR while it was a member of a central UP pack in late 2003. At some point it had moved to the LP and ultimately was killed by a trapper who believed it was a coyote (MI DNR 2004). Shortly after that, MI DNR biologists and conservation officers confirmed that two additional wolves were traveling together in Presque Isle County in the northern Lower Peninsula (NLP). A subsequent two-week survey was conducted in that area, but no additional evidence of wolf presence was found (Huntzinger *et al.* 2005, p. 35). Recognizing the likelihood that small numbers of gray wolves will eventually move into the Lower Peninsula and form persistent packs (Potvin 2003, pp. 29–30, Gehring and Potter 2005, p. 1242; Beyer *et at.* 2006, p. 35), MI DNR has begun a revision of its Wolf Management Plan in part to incorporate provisions for wolf management there.

Summary for Wisconsin and Michigan

The two-State wolf population, excluding Isle Royale wolves, has exceeded 100 wolves since late-winter 1993–94 and has exceeded 200 wolves since late-winter 1995–96. Therefore, the combined wolf population for Wisconsin and Michigan has exceeded the second population recovery goal of the 1992 Recovery Plan for a non-isolated wolf population since 1999. Furthermore, the two-State population has exceeded the recovery goal for an isolated second population since 2001.

Other Areas in and Near the Western Great Lakes DPS

As described earlier, the increasing wolf population in Minnesota and the accompanying expansion of wolf range westward and southwestward in the State have led to an increase in dispersing wolves that have been documented in North and South Dakota in recent years. No surveys have been conducted to document the number of wolves present in North Dakota or South Dakota. However, biologists who are familiar with wolves there generally agree that there are only occasional lone dispersers that appear primarily in the eastern portion of these States. There were reports of pups being seen in the Turtle Mountains of North Dakota, in 1994 (Collins in litt. 1998), an adult male wolf was shot near Devil's Lake, North Dakota in 2002, another adult male shot in Richland County in extreme southeastern North Dakota in 2003 (Fain in litt. 2006), and a vehicle-killed adult male found near Sturgis, South Dakota, in 2006 (Larson in litt. 2006a). In contrast to the other South Dakota wolves of the last twenty-five years, this animal has been genetically identified as having come from the Greater Yellowstone area (Fain in litt. 2006). See the Delineating the WGL Gray Wolf DPS for a detailed discussion of movement of wolves.

Wolf dispersal is expected to continue as wolves travel away from the more saturated habitats in the core recovery areas into areas where wolves are extremely sparse or absent. Unless they return to a core recovery population and join or start a pack there, they are unlikely to contribute to long-term maintenance of recovered wolf populations. Although it is possible for them to encounter a mature wolf of the opposite sex, to mate, and to reproduce outside the core wolf areas, the lack of large expanses of unfragmented public land make it unlikely that any wolf packs will persist in these areas, and this is a bottleneck that seriously impedes further expansion. The only exception is the NLP of Michigan, where several studies indicate that a persistent wolf population may develop (Gehring and Potter 2005, p. 1242; Potvin 2003, 29–30), perhaps dependent on occasional to frequent immigration of UP wolves. However, currently existing wolf populations in Minnesota, Wisconsin, and the UP of Michigan have already greatly exceeded the Federal recovery criteria and are not dependent on wolves or wolf populations from other areas of the WGL DPS to maintain these recovered numbers.

Previous Federal Action

On April 1, 2003, we published a final rule revising the listing status of the gray wolf across most of the conterminous United States (68 FR 15804). Within that rule, we identified three distinct population segments (DPS) for the gray wolf. Gray wolves in the Western DPS and the Eastern DPS were reclassified from endangered to threatened, except where already classified as threatened or as an experimental population. Gray wolves in the Southwestern DPS retained their previous endangered or experimental population status. Three existing gray wolf experimental population designations were not affected by the April 1, 2003, final rule. We removed gray wolves from the lists of threatened and endangered wildlife in all or parts of 16 southern and eastern States where the species historically did not occur. We also established a new special rule under section 4(d) of the Act for the threatened Western DPS to increase our ability to effectively manage wolf-human conflicts outside the two experimental population areas in the Western DPS. In addition, we established a second section 4(d) rule that applied provisions similar to those

previously in effect in Minnesota to most of the Eastern DPS. These two special rules were codified in 50 CFR 17.40(n) and (o), respectively.

On January 31, 2005, and August 19, 2005, U.S. District Courts in Oregon and Vermont, respectively, ruled that the April 1, 2003, final rule violated the Act (*Defenders of Wildlife* v. *Norton*, 03–1348–JO, D. OR 2005; *National Wildlife Federation* v. *Norton*, 1:03–CV–340, D. VT. 2005). The Courts' rulings invalidated the revisions to the gray wolf listing. Therefore, the status of gray wolves outside of Minnesota and outside of areas designated as nonessential experimental populations reverted back to endangered (as had been the case prior to the 2003 reclassification). The courts also invalidated the three DPSs identified in the April 1, 2003, rule as well as the associated special regulations.

On March 27, 2006, we published a proposal (71 FR 15266–15305) to identify a WGL DPS of the gray wolf, to remove the WGL DPS from the protections of the Act, to remove designated critical habitat for the gray wolf in Minnesota and Michigan, and to remove special regulations for the gray wolf in Minnesota. The proposal was followed by a 90-day comment period, during which we held four public hearings on the proposal.

On February 8, 2007, we published a final rule identifying a WGL DPS of the gray wolf, removing the WGL DPS from the protections of the Act, removing designated critical habitat for the gray wolf in Minnesota and Michigan, and removing special regulations for the gray wolf in Minnesota (72 FR 6052).

On April 16, 2007, three parties filed a lawsuit against the U.S. Department of the Interior (Department) and the Service, challenging the Service's February 8, 2007 (72 FR 6052), identification and delisting of the WGL DPS. The plaintiffs argued that the Service may not identify a DPS within a broader pre-existing listed entity for the purpose of delisting the DPS. Based on this argument, the U.S. District Court for the District of Columbia remanded and vacated the February 7, 2008, WGL DPS final rule (72 FR 6052). The court found that the Service had made that decision based on its interpretation that the plain meaning of the ESA authorizes the Service to identify and delist a DPS within an already-listed entity. The court disagreed, and concluded that the Act is ambiguous as to whether the Service has this authority. The court accordingly remanded the final rule so that the Service can provide a reasoned explanation of how its interpretation is consistent with the text, structure, legislative history, judicial interpretations, and policy objectives of the Act (*Humane Society of the United States* v. *Kempthorne*, Civ. No. 07–0677, 2008 U.S. Dist. LEXIS 74495 (D.D.C. Sept. 29, 2008) (J. Friedman).

On December 11, 2008, we published a notice reinstating protections for the gray wolf in the western Great Lakes and northern Rocky Mountains pursuant to court-orders (73 FR 75356).

Please refer to the March 27, 2006, (71 FR 15266–15305) proposed rule for further information on previous Federal actions.

Issues on Remand

In an Opinion dated September 29, 2008, the United States District Court for the District of Columbia vacated the final rule (72 FR 6052) (Feb. 8, 2007) identifying the Western Great Lakes Distinct Population Segment of gray wolf and delisting that DPS. *The Humane Society of the United States* v. *Kempthorne*, Civ. No. 07–0677, 2008 U.S. Dist. LEXIS 74495 (D.D.C. Sept. 29, 2008) (J. Friedman). Judge Friedman remanded the matter to the Secretary to allow the agency to ''bring its expertise and experience to bear on the question of whether the Act permits it to use the DPS tool in the fashion it has proposed.'' *Id.* at *40. Judge Friedman instructed that the agency must explain how the agency's interpretation of the statute conforms to the text, structure, and legislative history of the ESA; how the agency's interpretation is consistent with judicial interpretations of the Act, if any; and how the agency's interpretation serves the Act's policy objectives. *Id.* In so doing, Judge Friedman did not find that the Service could not utilize the DPS tool to simultaneously identify and delist a DPS. Instead, Judge Friedman found that the record lacked an explanation on this point to which he could defer under *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and afforded the agency an opportunity to respond.

While the Service acknowledges that the ESA is arguably ambiguous on the ''precise question'' posed by the court, it notes that the court's question does not accurately describe what we did in the Final Rule. What we actually did, under the precise language of the Act, was to determine, pursuant to section 4(a)(1), that gray wolves in the Western Great Lakes area constituted a DPS and that the DPS was neither endangered nor threatened, and then revised the List of Endangered and Threatened Wildlife, pursuant to section 4(c)(1), to reflect those determinations. Our conclusion is that we had clear authority to make the determinations and the revisions. We did not delist a previously unlisted species; rather, we revised the existing listing of a species (the gray wolf in the lower 48 States) to reflect a determination that a sub-part of that species (the Western Great Lakes DPS) was healthy enough that it no longer needed the ESA's protections. Our authority to make these determinations and to revise the list accordingly is found in the precise language of the ESA. Moreover, even if that authority was not clear, our interpretation of this authority to make determinations under section 4(a)(1) and to revise the endangered and threatened species list to reflect those determinations under section 4(c)(1) is reasonable and fully consistent with the ESA's text structure, legislative history, relevant judicial interpretations, and policy objectives.

By vacating the previous final rule and remanding the rulemaking to the Service, the court required the Service to make a new final determination on the March 27, 2006 proposed rule (71 FR 15266) on which the vacated final rule was based. In that proposed rule, the Service provided public notice of its consideration of identifying the Western Great Lakes Distinct Population Segment of gray wolves and to remove that DPS from the List of Endangered and Threatened Wildlife. At that time, the Service requested public comments on the proposal and received 360 comments addressing a wide range of issues, including but not limited to the Service's use of the DPS tool in the manner proposed. Comments were received from 40 identifiable states, 5 foreign countries, 19 preservation and conservation organizations, 16 agricultural and livestock organizations, 249 private individuals, and 6 Native American governments or organizations. All of these comments were given meaningful consideration in the course of the Secretary promulgating this final rule.

This final rule constitutes a new final determination on the March 27, 2006 proposed rule. It is also substantially similar to the vacated final rule in form and substance, including the biological and ecological basis for its conclusions. This final rule differs in that it contains a section entitled ''Issues on Remand'' that represents the Secretary's response to the issues raised by the Court, in consultation with the Department of the Interior's Solicitor's Office. This section of the final rule merely addresses the narrow legal issue within the agency's expertise and experience—namely, whether the Secretary may simultaneously identify and delist a currently listed species. The section

entitled Distinct Vertebrate Population Segment Policy Overview responds to the court's question regarding the agency's past practice and use of DPSs.

Before issuing this final rule, we verified that no new scientific data exist that would alter our previous analysis of the relevant facts that serve as the basis for the Secretary's decision to identify the Western Great Lakes DPS and the Secretary's conclusion that the Western Great Lakes DPS should be removed from the list of threatened and endangered species because it has recovered and no longer meets the criteria for remaining on the list. Note that we did examine updated monitoring data and the final Michigan plan and determined that this new data merely supplements our existing record. The Service is simply responding to the narrow legal issues raised by the Court. Consequently, Section 553(b)(3)(B) of the Administrative Procedure Act (APA) does not require an additional period of public notice and comment.

We consulted with the Solicitor of the Department of the Interior to address the issue in Judge Friedman's opinion that the agency must explain how our interpretation of the statute conforms to the text, structure, and legislative history of the ESA; is consistent with judicial interpretations of the Act, if any; and serves the Act's policy objectives. On December 12, 2008, a formal opinion was issued by the Solicitor, ''U.S. Fish and Wildlife Service Authority Under Section 4(c)(1) of the Endangered Species Act to Revise Lists of Endangered and Threatened Species to 'Reflect Recent Determinations' '' (U.S. DOI 2008), which fully addresses these issues. The Service fully agrees with the analysis and conclusions set out in the Solicitor's opinion. This action is consistent with the opinion. The complete text of the Solicitor's opinion can be found at *http://www.fws.gov/midwest/wolf/.*

Geographical Area of the Western Great Lakes Distinct Population Segment

The geographical area of the WGL DPS is shown in Figure 1, below, and is described as all of Minnesota, Wisconsin, and Michigan; the portion of North Dakota north and east of the Missouri River upstream to Lake Sakakawea and east of the centerline of Highway 83 from Lake Sakakawea to the Canadian border; the portion of South Dakota north and east of the Missouri River; the portions of Iowa, Illinois, and Indiana north of the centerline of Interstate Highway 80; and the portion of Ohio north of the centerline of Interstate Highway 80 and west of the Maumee River at Toledo.

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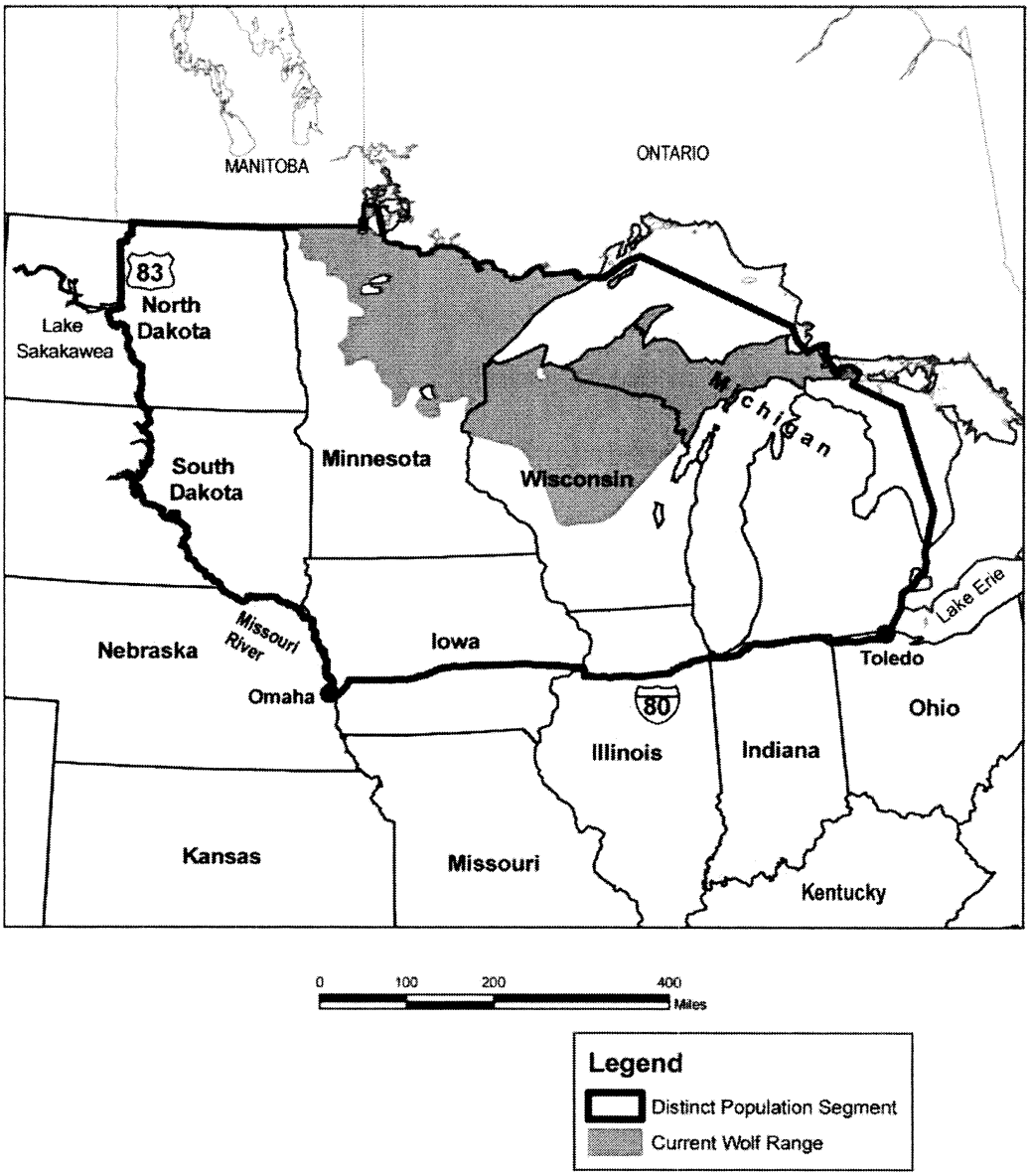
Figure 1. Western Great Lakes Distinct Population Segment



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Distinct Vertebrate Population Segment Policy Overview

Pursuant to the Act, we consider if information is sufficient to indicate that listing, reclassifying, or delisting any species, subspecies, or, for vertebrates, any DPS of these taxa may be warranted. To interpret and implement the DPS provision of the Act and congressional guidance, the Service and the National Marine Fisheries Service (NMFS) published a policy regarding the identification of distinct vertebrate population segments under the Act (61 FR 4722, February 7, 1996). Under this policy, two factors are considered in a decision regarding the potential identification of a DPS and then a final factor is considered regarding the listing, reclassification, or delisting of the DPS. The first two factors determine whether the population segment is a valid DPS—(1) discreteness of the population segment in relation to the remainder of the taxon, and (2) the significance of the population segment to the taxon to which it belongs. If a population meets both tests, it can be identified as a DPS. Then the third factor, the population segment's conservation status, is evaluated in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the DPS endangered or threatened).

Agency's Past Practice and History of Using DPSs

Of the over 370 native vertebrate ''species'' listed under the Act, 77 are listed as less than an entire taxonomic species or subspecies (henceforth referred to as populations) under one of several authorities including the DPS language in the definition of ''species''. Of these 77 listed populations, 32 predate the 1996 DPS policy (61 FR 4722); therefore, the final listing determinations for these populations did not include formal DPS analyses per the 1996 DPS policy. Specifically, the 77 populations encompass 51 different species or subspecies. During the history of the Act, the Service and NMFS have taken actions with respect

to populations in 98 listing, reclassification, and delisting actions. The majority of those actions identified a classification other than a taxonomically recognized species or subspecies at the time of listing. In several instances, however, the agencies have identified a DPS and, as appropriate, revised the list of Threatened and Endangered Wildlife in a single action. For example, we (1) established a DPS of the grizzly bear (*Ursus arctos horribilis*) for the Greater Yellowstone Area and surrounding area, within the existing listing of the grizzly bear in the lower 48 States, and removed this DPS from the List of Threatened and Endangered Wildlife (March 29, 2007; 72 FR 14865); (2) established two DPSs of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*): the Douglas County DPS and the Columbia River DPS; and removed the Douglas County DPS from the List of Threatened and Endangered Wildlife (July 24, 2003; 68 FR 43647); (3) removed the brown pelican (*Pelecanus occidentalis*) in the Southeastern United States from the List of Endangered and Threatened Wildlife and continued to identify the brown pelican as endangered throughout the remainder of its range (February 4, 1985; 50 FR 4938); (4) identified the American crocodile (Crocodylus acutus) in Florida as a DPS within the existing endangered listing of the American crocodile in the United States and reclassified the Florida DPS from endangered to threatened (March 20, 2007; 71 FR 13027); and (5) amended the List of Endangered and Threatened Wildlife and Plants by revising the entry for the gray whale (Eschrichtius robustus) to remove the eastern North Pacific population from the List while retaining the western North Pacific population as endangered (June 16, 1994; 59 FR 31094)). We also proposed in 2000 to identify four DPSs within the existing listing of the gray wolf in the lower 48 States and to reclassify three of the DPSs from endangered to threatened (July 13, 2000; 65 FR 43450). As described above under ''Previous Federal Action,'' the final rule we issued in 2003 identified three gray wolf DPSs and reclassified two of the DPSs from endangered to threatened (April 1, 2003; 68 FR 15804). Although courts subsequently invalidated these DPSs, they did not question the Service's authority to identify and reclassify DPSs within a larger pre-existing listing. Identifying and delisting the Western Great Lakes DPS of gray wolves is consistent with the Service's past practice and does not represent a change in agency position.

Analysis for Discreteness

Under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, a population segment of a vertebrate taxon may be considered discrete if it satisfies either of the following conditions—(1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Markedly Separated From Other Populations of the Taxon—The western boundary of the WGL DPS is approximately 400 mi (644 km) from the nearest known wolf packs in Wyoming and Montana. The distance between those western packs and the nearest packs within the WGL DPS is nearly 600 miles (966 km). The area between Minnesota packs and Northern Rocky Mountain packs largely consists of unsuitable habitat, with only scattered islands of possibly suitable habitat, such as the Black Hills of eastern Wyoming and western South Dakota. There are no known gray wolf populations to the south or east of the WGL DPS.

As discussed in the previous section, gray wolves are known to disperse over vast distances, but straight line documented dispersals of 400 mi (644 km) or more are very rare. While we cannot rule out the possibility of a Midwest wolf traveling 600 miles or more and joining or establishing a pack in the Northern Rockies, such a movement has not been documented and is expected to happen very infrequently, if at all. Similar movements from the NRM wolf population into the WGL DPS are unknown and are expected to happen infrequently. The 2006 Sturgis, South Dakota, wolf is the closest that an NRM wolf has come to entering the WGL DPS (Fain in litt. 2006). However, the Sturgis wolf still had over 300 mi (500 km) to travel before it would encounter the nearest WGL DPS wolf pack. As the discreteness criterion requires that the DPS be ''markedly separated'' from other populations of the taxon rather than requiring complete isolation, this high degree of physical separation between the Western Great Lakes and the Northern Rocky Mountains satisfies the discreteness criterion. Similarly, we feel it is unlikely for wolves to cross the eastern boundary into the Laurentian Mixed Habitat Province of New York, Pennsylvania, and New England due to inhospitable conditions.

Delimited by International Boundaries with Significant Management Differences Between the U.S. and Canada—This border has been used as the northern boundary of the listed entity since gray wolves were reclassified in the 48 States and Mexico in 1978. There remain significant cross-border differences in exploitation, management, conservation status, and regulatory mechanisms. More than 50,000 wolves exist in Canada, where suitable habitat is abundant, human harvest of wolves is common, Federal protection is absent, and provincial regulations provide widely varying levels of protection. In general, Canadian wolf populations are sufficiently large and healthy so that harvest and population regulation, rather than protection and close monitoring, is the management focus. There are an estimated 4,000 wolves in Manitoba (Manitoba Conservation undated). Hunting is allowed nearly province-wide, including in those provincial hunting zones adjoining northwestern Minnesota, with a current season that runs from August 28, 2006, through March 31, 2007 (Manitoba Conservation 2006a). Trapping wolves is allowed province-wide except in and immediately around Riding Mountain National Park (southwestern Manitoba), with a current season running from October 14, 2006, through February 28 or March 31, 2007 (varies with trapping zone) (Manitoba Conservation 2006b). The Ontario Ministry of Natural Resources estimates there are 8,850 wolves in the province, based on prey composition and abundance, topography, and climate. Wolf numbers in most parts of the province are believed to be stable or increasing since about 1993 (Ontario MNR 2005a, pp. 7–9). In 2005 Ontario limited hunting and trapping of wolves by closing the season from April 1 through September 14 in central and northern Ontario (Ontario MNR 2005b). In southern Ontario (the portion of the province that is adjacent to the WGL DPS), wolf hunting and trapping is permitted year around except within, and immediately around, Algonquin Provincial Park in southeastern Ontario (north of Lake Ontario) where seasons are closed all year (Ontario MNR 2005c).

We, therefore, conclude that the above-described WGL DPS boundary satisfies both conditions that can be used to demonstrate discreteness of a potential DPS.

Analysis for Significance

If we determine that a population segment is discrete, we next consider available scientific evidence of its significance to the taxon to which it belongs. Our DPS policy states that this consideration may include, but is not limited to, the following—(1) persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and/or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. Below we address Factors 1 and 2. Factors 3 and 4 do not apply to the WGL wolf DPS and thus are not included in our analysis for significance.

Unusual or Unique Ecological Setting—Wolves within the WGL DPS occupy the Laurentian Mixed Forest Province, a biotic province that is transitional between the boreal forest and the broadleaf deciduous forest. Laurentian Mixed Forest consists of mixed conifer-deciduous stands, pure deciduous forest on favorable sites, and pure coniferous forest on less favorable sites. Within the United States this biotic province occurs across northeastern Minnesota, northern Wisconsin, the UP, and the NLP, as well as the eastern half of Maine, and portions of New York and Pennsylvania (Bailey 1995). In the Midwest, current wolf distribution closely matches this province, except for the NLP and the Door Peninsula of Wisconsin, where wolf packs currently are absent. To the best of our knowledge, wolf packs currently do not inhabit the New England portions of the Laurentian Mixed Forest Province, nor do we expect wolves from the WGL DPS to move into them due to the vast distance between these two areas and inhospitable terrain they would need to traverse. Therefore, WGL wolves represent the only wolf packs in the United States occupying this province. Furthermore, WGL wolves represent the only use by gray wolf packs of any form of eastern coniferous or eastern mixed coniferous-broadleaf forest in the United States.

Significant Gap in the Range of the Taxon—This factor may be primarily of value when considering the initial listing of a taxon under the Act to prevent the development of a major gap in a taxon's range (''the loss of the discrete population segment would result in a significant gap in the range of the taxon'' (61 FR 4725)). However, this successful restoration of a viable wolf metapopulation to large parts of Minnesota, Wisconsin, and Michigan has filled a significant gap in the historical range of the wolf in the United States, and it provides an important extension of the range of the North American gray wolf population. The recovered Western Great Lakes wolf metapopulation is the only wolf population in the conterminous States east of the Rocky Mountains except for the red wolves being restored along the Atlantic Coast and currently holds about 80 percent of North American gray wolves that occur south of Canada.

Discrete Vertebrate Population Segment Conclusion

We conclude, based on our review of the best available scientific data, that the WGL DPS is discrete from other wolf populations as a result of physical separation and the international border with Canada. The DPS is significant to the taxon to which it belongs because it contains the only populations of the species in the Laurentian Mixed Forest Biotic Province in the United States, it contains a wolf metapopulation that fills a large gap in the historical range of the taxon; and it contains the majority of gray wolves in the conterminous States. Therefore, we have determined that this population segment of wolves satisfies the discreteness and significance criteria required to identify it as a DPS. The evaluation of the appropriate conservation status for the WGL DPS is found below.

Delineating the WGL Gray Wolf DPS

In contrast to a species or a subspecies, a DPS is a biological population that is delineated by a boundary that is based on something other than established taxonomic distinctions. Therefore, the starting point for delineating a DPS is the biological population or metapopulation, and a geographical delineation of the DPS must reasonably represent the population/metapopulation and its biological characteristics.

To delineate the boundary of the WGL DPS, we considered the current distribution of wolves in the Midwest and the characteristic movements of those wolves and of gray wolves elsewhere. We examined the available scientific data on long-distance movements, including long-distance movements followed by return movements to the vicinity of the natal pack. We concluded that wolf behavior and the nature of wolf populations require that we include within the area of the DPS some subset of known long-distance movement locations. However, as described below, wolf biology and common sense argue against the inclusion within the DPS boundary of all known or potential long-distance movements.

This analysis resulted in a WGL DPS boundary that is shown in Figure 1. As discussed below, this DPS has been delineated to include the core recovered wolf population plus a wolf movement zone around the core wolf populations. This geographic delineation is not intended to include all areas to which wolves have moved from the Great Lakes population. Rather, it includes the area currently occupied by wolf packs in Minnesota, Wisconsin, and Michigan; the nearby areas in these States, including the Northern Lower Peninsula of Michigan, in which wolf packs may become established in the foreseeable future; and a surrounding area into which Minnesota, Wisconsin, and Michigan wolves occasionally move but where persistent packs are not expected to be established because suitable habitat is rare and exists only as small patches. The area surrounding the core wolf populations includes the locations of most known dispersers from the core populations, especially the shorter and medium-distance movements from which wolves are most likely to return to the core areas and contribute to the recovered wolf population.

The WGL areas that are regularly occupied by wolf packs are well documented in Minnesota (Erb and Benson 2004, p. 12, fig. 3), Wisconsin (Wydeven *et al.* 2006, p. 33, fig. 1), and the UP of Michigan (Huntzinger *et al.* 2005, pp. 25–27, figs. 4–6). Wolves have successfully colonized most, perhaps all, suitable habitat in Minnesota. Minnesota data from the winter of 2003–04 indicate that wolf numbers and density either have continued to increase slowly or have stabilized since 1997–98, and there was no expansion of occupied range in the State (Erb and Benson 2004, p. 7). Wisconsin wolves now occupy most habitat areas believed to have a high probability of wolf occurrence except for some areas of northeastern Wisconsin, and the State's wolf population continues to annually increase in numbers and, to a lesser degree, in area (Wydeven *et al.* 2006, p. 33). The UP of Michigan has wolf packs throughout, although the current population remains well below the estimated biological carrying capacity (Mladenoff *et al.* 1997, pp. 25–27, and

figs. 5 & 7) and will likely continue to increase in numbers in the UP for at least several more years.

When delineating the WGL DPS, we had to consider the high degree of mobility shown by wolves. The dispersal of wolves from their natal packs and territories is a normal and important behavioral attribute of the species that facilitates the formation of new packs, the occupancy of vacant territories, and the expansion of occupied range by the ''colonization'' of vacant habitat. Data on wolf dispersal rates from numerous North American studies (summarized in Fuller *et al.* 2003, p. 179, Table. 6.6; Boyd and Pletscher 1999, p. 1102, Table 6) show dispersal rates of 13 to 48 percent of the individuals in a pack. Sometimes the movements are temporary, and the wolf returns to a location in or near its natal territory. In some cases a wolf may continue its movement for scores or even hundreds of miles until it locates suitable habitat, where it may establish a territory or join an existing pack. In other cases, a wolf is found dead at a distance from its original territory, leaving unanswered the questions of how far it would have gone and whether it eventually would have returned to its natal area or population.

Minnesota—The current record for a documented extra-territorial movement by a gray wolf in North America is held by a Minnesota wolf that moved a minimum (that is, the straight line distance from known starting point to most distant point) of at least 550 mi (886 km) northwest into Saskatchewan (Fritts 1983, p. 166–167). Nineteen other primarily Minnesota movements summarized by Mech (in litt. 2005) averaged 154 mi (248 km). Their minimum distance of travel ranged from 32–532 mi (53–886 km) with the minimum dispersal distance shown by known returning wolves ranging from 54 mi (90 km) to 307 mi (494 km).

Wisconsin—In 2004, a wolf tagged in Michigan was killed by a vehicle in Rusk County in northwestern Wisconsin, 295 miles (475 km) west of his original capture location in the eastern UP (Wydeven *et al.* 2005b, p. 4). A similar distance (298 mi, 480 km) was traveled by a north-central Wisconsin yearling female wolf that moved to the Rainy Lake region of Ontario during 1988–89 (Wydeven *et al.* 1995, p. 149).

Michigan—Drummer *et al.* (2002, pp. 14–15) reported 10 long-distance dispersal events involving UP wolves. One of these wolves moved to north-central Missouri and another to southeastern Wisconsin, both beyond the core wolf areas in the WGL. The average straight-line distance traveled by those two wolves was 377 mi (608 km), while the average straight-line distance for all 10 of these wolves was 232 mi (373 km). Their straight-line distances ranged from 41 to 468 mi (66 to 753 km).

Illinois and Indiana—The December 2002, Marshall County, Illinois, wolf likely dispersed from the Wisconsin wolf population, nearly 200 miles (322 km) to the north (Great Lakes Directory 2003). The Randolph County, Indiana wolf had traveled a minimum distance of at least 420 miles (676 km) to get around Lake Michigan from its central Wisconsin birthplace; it likely traveled much farther than that unless it went through the city or suburbs of Chicago (Wydeven *et al.* 2004, pp. 10–11). The Pike County, Illinois, wolf that was shot in late 2005 was about 300 mi (180 km) from the nearest wolf packs in central Wisconsin.

North Dakota, South Dakota, and Nebraska—Licht and Fritts (1994, p. 77) tabulated seven gray wolves found dead in North Dakota and South Dakota from 1981 through 1992 that are believed to have originated from Minnesota, based on skull morphometrics. Although none of these wolves were marked or radio-tracked, making it impossible to determine the point of initiation of their journey, a minimum travel distance for the seven of Minnesota origin can be determined from the nearest wolf breeding range in Minnesota. For the seven, the average distance to the nearest wolf breeding range was 160 mi (257 km) and ranged from 29 to 329 mi (46 to 530 km). One of these seven wolves moved west of the Missouri River before it died.

Genetic analysis of a wolf killed in Harding County, in extreme northwestern South Dakota, in 2001 indicated that it originated from the Minnesota—Wisconsin—Michigan wolf populations (Fain in litt. 2006). The straight-line travel distance to the nearest Minnesota wolf pack is nearly 400 miles (644 km).

The wolf from the Greater Yellowstone area that was killed by a vehicle on Interstate 90 near Sturgis, SD, in March of 2006 traveled a minimum straight-line distance of about 270 mi (435 km) from the nearest known Greater Yellowstone pack before it died (USFWS *et al.* 2006, in USFWS Program Report, Figure 1).

A large canid was shot by a Boyd County, Nebraska, rancher in late 1994 or early 1995, likely after crossing the frozen Missouri River from South Dakota (Anschutz in litt. 2006, Jobman in litt. 1995). It was determined to be a wolf that originated from the Great Lakes wolf populations (Fain in litt. 2006), whose nearest pack would have been about 300 mi (480 km) away. A wolf illegally killed near Spalding, Nebraska, in December of 2002 also originated from the Minnesota—Wisconsin—Michigan wolf population, as determined by genetic analysis (Anschutz in litt. 2003, Fain in litt. 2006). The nearest Minnesota wolf pack is nearly 350 miles (563 km) from this location.

Other notable extra-territorial movements—Notable are several wolves whose extra-territorial movements were radio-tracked in sufficient detail to provide insight into their actual travel routes and total travel distances for each trek, rather than only documenting straight-line distance from beginning to end-point. Merrill and Mech (2000, pp. 429–431) reported on four such Minnesota wolves with documented travel distances ranging from 305 to 2,641 mi (490 to 4,251 km) and an average travel route length of 988 mi (1590 km). Wydeven (1994, pp. 20–22) described a Wisconsin wolf that moved from northwestern Wisconsin to the northern suburbs of St. Paul, Minnesota, for 2 weeks (apparently not seen or reported to authorities by the local residents), then moved back to north-central Wisconsin. The total travel distance was 278 mi (447km) from her natal pack into Minnesota and on to the north-central Wisconsin location where she settled down.

While investigating the origins of Scandinavian wolf populations, Linnell *et al.* (2005, p. 387) compiled gray wolf dispersal data from 21 published studies, including many cited separately here. Twenty-two of 298 compiled dispersals (7.4 percent) were over 300 km (186 mi). Eleven dispersals (3.7 percent) were over 500 km (311 mi). Because of the likelihood that many long-distance dispersers are never reported, they conclude that the proportion of long-distance dispersers is probably severely underestimated.

From these extra-territorial movement records we conclude that gray wolf movements of over 200 miles (320 km) straight-line distance have been documented on numerous occasions, while shorter distance movements are more frequent. Movements of 300 miles (480 km) straight-line distance or more are less common, but include one Minnesota wolf that journeyed a straight-line distance of 300 mi (480 km) and a known minimum travel distance of 2,550 mi (4,251 km) before it reversed direction, as determined by its satellite-tracked collar. This wolf returned to a spot only 24 mi (40 km) from its natal territory (Merrill and Mech 2000, p. 430). While much longer movements

have been documented, including some by midwestern wolves, return movements to the vicinity of natal territories have not been documented for extra-territorial movements beyond 300 mi (480 km).

Based on these extra-territorial movement data, we conclude that affiliation with the midwestern wolf population has diminished and is essentially lost when dispersal takes a Midwest wolf a distance of 250 to 300 miles (400 to 480 km) beyond the outer edge of the areas that are largely continuously occupied by wolf packs. Although some WGL wolves will move beyond this distance, available data indicate that longer distance dispersers are unlikely to return to their natal population. Therefore, they have lost their functional connection with and potential conservation value to, the WGL wolf population.

Wolves moving substantial distances outward from the core areas of Minnesota, Wisconsin, and Michigan will encounter landscape features that are at least partial barriers to further wolf movement, and that may—if crossed—impede attempts of wolves to return toward the WGL core areas. If such partial barriers are in a location that has separate utility in delineating the biological extent of a wolf population, they can and should be used to delineate the DPS boundary. Such landscape features are the Missouri River in North Dakota and downstream to Omaha, Nebraska, and Interstate Highway 80 from Omaha eastward through Illinois, Indiana, and into Ohio, ending where this highway crosses the Maumee River in Toledo, Ohio. We do not believe these are absolute barriers to wolf movement. There is evidence that several Minnesota-origin wolves have crossed the Missouri River (Licht and Fritts 1994, pp. 75 & 77, Fig. 1 and Table 1; Anschutz in litt. 2003, 2006) and some Midwest wolves have crossed interstate highways (Merrill and Mech 2000, p. 430). There is also evidence that some wolves are hesitant to cross highways, (Whittington *et al.* 2004, pp. 7, 9; Wydeven *et al.* 2005b, p. 5; but see Blanco *et al.* 2005, pp. 315–316, 319–320 and Kohn *et al.* 2000, p. 22). Interstate highways and smaller roads are a known mortality factor for wolves and, therefore, are a partial barrier to wolf movements (Blanco *et al.* 2005, p. 320).

The recent death of a NRM wolf near Sturgis in western South Dakota (Fain in litt. 2006) suggests that the area of the Dakotas west of the Missouri River may be traversed by a small number of wolves coming from both the NRM and Great Lakes wolf populations, as well as wolves from Canada (Licht and Fritts 1994, pp. 75–77). Wolves in this area cannot be assumed to belong to the Great Lakes wolf population, supporting our belief that the DPS boundary should not be designed to include the locations of all known dispersers. As this record shows, an additional weakness of basing a DPS boundary on the location of the most distant dispersal is that it results in a boundary that is valid only until a more distant dispersal event is documented.

Peer Review

In accordance with the December 16, 2004, Office of Management and Budget's ''Final Information Quality Bulletin for Peer Review'', we have obtained comments from at least three independent scientific reviewers regarding the scientific data and interpretations contained in the March 27, 2006, proposed rule (71 FR 15266). The purpose of such review is to ensure that our delisting proposal provided to the public and our delisting decision is based on scientifically sound data, assumptions, and analyses. Peer reviewer comments were received during the public comment period from ten individuals and were considered as we made our final decision on the proposal. Substantive peer reviewer comments are summarized in the remaining paragraphs of this section as well as discussed in greater detail in the appropriate Issue/Response sections which follow.

All ten peer reviewers have extensive biological experience with gray wolves. Most are currently involved in wolf research for the Federal Government (three individuals in two agencies), Canadian Government (one reviewer), or universities (two individuals). One reviewer is a biologist for a tribe with extensive involvement in wolf recovery and management, one leads a long-term Federal wolf depredation control program, another directs an endangered species conservation organization, and the tenth is a retired State wolf biologist. None of the peer reviewers are employed by the Service or by State agencies within the WGL DPS.

All eight peer reviewers who expressed a clear opinion supported the biological approach we used to identify the DPS and its boundaries, and they agreed that the delisting criteria have been achieved by the DPS. Three of these eight had previously opposed the proposed 2003 identification and 2004 delisting of the much larger Eastern DPS. None of the peer reviewers stated that the currently proposed DPS boundary or delisting was inappropriate. One peer reviewer's expertise is limited to wolf diseases and causes of wolf mortality. This reviewer limited her comments to those areas. The remaining peer reviewer was unclear regarding support for, or opposition to, our biological basis for the proposed boundary of the DPS, but agreed that wolves in the Great Lakes have met the federally established delisting criteria.

In general, the peer reviewers judged the delisting proposal to be well researched, thorough, and adequate to support delisting of the WGL DPS. Except for one reviewer who stated that the State plans need greater emphasis on educating and informing the public, all comments related to State plans and our analysis of the plans indicated that the reviewers believed the State population goals were adequate and the protection and management actions contained in the plans would ensure viable wolf populations following delisting.

None of the peer reviewers expressed concerns with the expanded use of wolf control measures by the States following delisting. Several specifically stated that they were confident that the States would not allow human-caused mortality to threaten the security of viable populations within the three States. One reviewer, who has several decades of experience with wolf depredation control measures, expressed a belief that wolf control or harvest by the public will not result in excessive take of wolves.

There were no criticisms of, or recommendations to improve, the current population monitoring done by the three States. One reviewer, while noting that the Minnesota population estimate ''is probably much less accurate than [those developed by] MI or WI'' and likely overestimates the State's wolf population, went on to state that this is not a critical point and may not matter, because the Minnesota wolf population is well over the minimum number needed to delist. He also stated that ''managers have as good a dataset on wolves as just about any other species they manage, even white-tailed deer * * *.'' Another reviewer stated that the three States are using ''adequate and consistent techniques'' to develop their wolf population estimates.

There were no suggestions that other States within the DPS should be developing wolf management plans or wolf monitoring programs. However, one reviewer recommended that all States in the DPS cooperate in the documenting and reporting of wolves dispersing from the northern Minnesota,

Wisconsin, and Michigan recovery areas.

Several reviewers pointed out that, while there currently is sufficient habitat that is likely to remain secure for the foreseeable future, this should be monitored by the States after delisting. The fragmentation of private industrial forests for second homes and other developments was identified as a potential future threat to occupied wolf habitat. Most reviewers pointed to the need for effective and timely monitoring of wolf numbers and wolf health following delisting.

None of the peer reviewers expressed concern that the Wisconsin and Michigan Plans—being updated and revised, respectively, at the time the delisting proposal was published—would be weakened and substantially reduce protections for the wolves in the State. However, one of the reviewers urged that the two plans be finalized prior to delisting. Two peer reviewers specifically recommended that the Service complete the post-delisting monitoring plan prior to delisting.

One reviewer supported the identification of the DPS and its delisting and said its boundaries ''do not extend delisting beyond an area that is reasonably affected by the DPS.'' However, this reviewer cautioned that in delineating a DPS the Service should avoid over-emphasizing ''the importance of the biological (or population viability) aspect of 'significant portion of the range' '' within the Act's definitions of endangered and threatened. He provided a recent co-authored scientific publication that seems to argue for a primarily quantitative approach to determining what part of a species' range is significant. This same reviewer objected to the Service's interpretation of ''range'' to mean current range, when used in the context of ''significant portion of the range.''

Regarding the Northern Lower Peninsula of Michigan, one peer reviewer indicated his belief that wolves are likely to move into habitat there and the State should allow that to happen. Another reviewer agreed with the Service that the currently unoccupied habitat in the NLP is not a significant portion of their range in the WGL DPS.

One peer reviewer supported the delisting but criticized the ''bizarre aspect'' of it that would result in wolves in areas beyond the DPS retaining the Act's protection as endangered, when ''[t]he area outside the proposed DPS is precisely the area that the Eastern Timber Wolf recovery Team believed should not harbor wolves * * *.'' The reviewer recommends delisting gray wolves in the unsuitable habitat areas beyond the WGL DPS, as well.

Summary of Comments and Recommendations

We received 360 total comments, including 310 original letters and 50 form responses based on 2 form letters. These comments included 10 that we solicited from peer reviewers, as well as verbal and written comments received at public hearings. We received comments from 40 identifiable states and the District of Columbia, as well as 5 foreign countries. Private individuals submitted 249 of the comments. Nineteen came from preservation, conservation, or animal welfare organizations, and 16 were submitted by agriculture or livestock organizations. State agency representatives or elected officials provided 12 comments, and 6 were received from Native American government agencies or organizations.

Issue 1—One commenter requested the Service double the length of the public comment period and hold additional public hearings in all ''recipient states.''

Response—The Act and implementing regulations for adding or removing species from the list of threatened and endangered species require a public comment period of at least 60 days and holding one public hearing if requested within 45 days of the publication of the proposal (50 CFR 424.16). We opened a 90-day public comment period and held four public hearings in the States that would be most affected by the proposed changes. Additionally, we facilitated public involvement in this process by providing a great deal of information on our web site regarding wolf biology and behavior; wolf identification and wolf-dog hybrids; threats to human safety; depredation control programs; and our summaries of State wolf management plans and copies of those plans. We mailed summaries of the proposal to approximately 1,600 individuals and organizations that had previously expressed interest in wolf recovery and delisting issues, and we provided ways to submit comments via the web, e-mail, fax, and mail, as well as at the four hearings. We provided ample opportunities for interested individuals and organizations to learn about the proposal and to provide comments within the 90-day comment period and at the four hearings; therefore, we did not extend the comment period nor schedule additional hearings.

Issue 2—A number of comments expressed opposition to delisting, making statements such as ''wolves should always be protected'' by the Act, the Service ''should abandon its goal of delisting wolves in the US,'' and wolves should not be delisted until ''their numbers reach exorbitant levels,'' they have reached biological carrying capacity, or wolves have overpopulated and are damaging the natural ecosystem. Other commenters wanted the critical habitat designations to remain in place after delisting to keep the Service involved in preserving habitat for a delisted species.

Response—The Act provides the Federal Government with authority to protect and recover threatened and endangered species. When a species has been recovered to the extent that it no longer meets the definition of ''threatened'' or ''endangered'' the Act provides that it be removed from the Federal List of Endangered and Threatened Wildlife and Plants and its management be returned to the appropriate States and tribes (in cases where treaties identify such authorities for tribes). The goal of the Act is to recover and delist species that have been listed as threatened or endangered.

The gray wolf WGL DPS no longer meets the definition of threatened or endangered, because it has achieved long-standing recovery criteria by greatly expanding in numbers and geographic range and threats to its long-term viability have been reduced or eliminated. Therefore, the Act authorizes delisting the taxon, but it also requires that we continue to monitor the status of the species for a minimum of five years after delisting, and we can list it again if the monitoring results show that to be necessary.

''Critical habitat'' is a legal designation under the Act that is given to geographical areas that are essential to the conservation of a listed species. Critical habitat is designated only for endangered or threatened species, and any critical habitat designations must be removed if the taxon is removed from the Federal List of Endangered and Threatened Wildlife and Plants.

Issue 3—Numerous commenters indicated that our delisting proposal was based on unspecified political considerations, pressure from the livestock industry, exaggerated fears for human safety, pressure from deer hunters and furbearer trappers, and pressure from States. We were asked by other commenters to consider the value of wolves as an umbrella or keystone species, for keeping deer numbers in check, to maintaining healthy ungulate populations, in balancing nature, and providing a legal mechanism to protect habitat needed by other species. Others thought we should consider the economic benefits provided by a large

wolf population and recognize that protecting ''the entire ecology of Minnesota'' requires that we keep wolves listed under the Act.

Response—The Act requires that listing and delisting decisions be based entirely on whether a species is endangered or threatened due to one or more categories of threats (section 4(a)(1)) and that we make this determination ''solely on the basis of the best scientific and commercial data available.'' In compliance with the Act, the other considerations and factors described above have not been used in making this decision.

Issue 4—Several commenters stated that wolf recovery should include repopulating suitable habitat in the Lower Peninsula of Michigan, or that a larger geographical area needs to be reoccupied before recovery is achieved. One comment stated that population numbers alone cannot be used ''as the sole proof of long-term recovery.'' Other commenters pointed to scientific publications that advocate larger populations with more individuals to ensure long-term viability of species, in general.

Response—The Act states that the Service will develop recovery plans and, within these recovery plans, to the maximum extent practicable, establish ''objective, measurable criteria which, when met, would result in a determination * * * that the species be removed from the list * * *.'' (section 4(f)(1)(B)(ii)). Therefore, while a delisting decision must include an evaluation of the threats to a species, we must also establish and utilize measurable criteria to assess progress towards recovery. Our delisting decision is not based on population numbers alone, but also on population distribution and threats to that population and its habitat, as required by the Act.

Issue 5—We received several comments that stated that the recovery criteria have not been achieved because either the wolf population data are wrong, and/or because the Wisconsin-Upper Peninsula wolf population is not a second population as is required by the recovery criteria found in the 1992 Recovery Plan.

Response—We, and the peer reviewers of the delisting proposal, are fully satisfied that the wolf population estimates provided by the DNRs of Minnesota, Wisconsin, and Michigan demonstrate that the numerical recovery criteria have been achieved for far longer than the five years recommended in the Federal Recovery Plan. The methods used by WI and MI DNRs result in a conservative count of the wolves that are alive at the late-winter annual low point of the wolf population. The method used by the Minnesota DNR for its much larger wolf population is less precise, but even the lower bound of its 90 percent confidence interval (CI) exceeded the Federal Recovery Plan's Minnesota goal of 1,250–1,440 wolves back as far as the 1988–89 survey (Fuller *et al.* 1992, p. 50) and the CI lower bound has been well above that goal since then (Erb and Benson 2004, table 1). Therefore, we see no problem with using these Minnesota population estimates. The Recovery Team has also expressed confidence in the population estimates of all three States (Peterson in litt. 1999a, in litt. 1999b).

The 1992 Federal Recovery Plan describes two scenarios that would satisfy its requirement for a second viable wolf population. One scenario deals with the development of an isolated wolf population; such a population must be composed of at least 200 wolves over five successive years. The second scenario is a population that is located within 100 miles of another viable wolf population; such a population must consist of only 100 wolves for five consecutive years (USFWS 1992, pp 25–26). The Recovery Plan discusses the conservation tradeoffs of completely separate populations versus adjacent populations, and it specifically states that a wolf population larger than 100 wolves ''closely tied to the Minnesota population'' will be considered a viable population despite its small size, because of immigration of wolves from Minnesota (USFWS 1992, pp. 24–25). Although this Recovery Plan was written prior to the common acceptance and use of the conservation biology term ''metapopulation,'' this clearly was the concept being discussed and advocated in the Federal Recovery Plan. The second scenario describes what has occurred in the WGL DPS and therefore the wolves in Wisconsin and Michigan qualify as a second population.

Issue 6—Several comments stated that a DPS cannot be used for delisting a species; DPSs can only be identified for listing species as threatened or endangered.

Response—DPSs can be utilized for both listing and delisting species. Section 4(a)(1) of the Act directs the Secretary of the Interior to determine whether ''any species'' is endangered or threatened. Numerous sections of the Act refer to adding and removing ''species'' from the list of threatened or endangered plants and animals. Section 3(15) defines ''species'' to include any subspecies ''and any distinct population segment of any species of vertebrate fish or wildlife * * *.'' Therefore, the Act authorizes us to list, reclassify, and delist species, subspecies, and DPSs of vertebrate species. Furthermore, our ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act'' states that the policy is intended for ''the purposes of listing, delisting, and reclassifying species under the Endangered Species Act * * *.'' (61 FR 4722, Feb. 7, 1996), and that it ''guides the evaluation of distinct vertebrate population segments for the purposes of listing, delisting, and reclassifying under the Act.'' (61 FR 4725).

Most recently, on December 12, 2008, the Solicitor of the Department of the Interior issued a formal opinion, ''U.S. Fish and Wildlife Service Authority Under Section 4(c)(1) of the Endangered Species Act to Revise Lists of Endangered and Threatened Species to 'Reflect Recent Determinations' '' (U.S. DOI 2008). This opinion represents the views of the Service and fully supports the Service's position that it is authorized in a single action to identify a DPS within a larger listed entity, determine that the DPS is neither endangered nor threatened, and then revise the List of Endangered and Threatened Wildlife to reflect those determinations. The opinion also notes that, although the term ''delist'' is not used in the Act, it is used extensively in the regulations implementing the section 4 listing provisions of the Act, such as 50 CFR 424.11(d). As explained in footnote 8 to the Solicitor's opinion, ''As used by FWS, delisting applies broadly to *any* action that revises the lists either to remove an already-listed entity from the appropriate list in its entirety, or to reduce the geographic or taxonomic scope of a listing to exclude a group of organisms previously included as part of an already-listed entity (as was the case with the Western Great Lakes DPS of gray wolves).'' The complete text of the Solicitor's formal opinion can be found at *http://www.fws.gov/midwest/wolf/*.

Issue 7—Several commenters, including State natural resource agencies, stated that the proposed DPS is too small and should be expanded to include all of their State (North Dakota, South Dakota, Iowa), and for Missouri, should include the northern two-thirds of the State. They expressed concerns that some gray wolves will disperse beyond the boundaries of the proposed WGL DPS, where they would have endangered status under the Act. If those wolves subsequently cause conflicts with livestock or other human activities, the States would be limited in

the management or control actions that they could undertake to address the conflict.

Response—We have delineated this DPS boundary to be based solely on the wolf population in the Western Great Lakes. Suggestions to enlarge the DPS to include the locations of all known dispersers from this recovered population are not practical for several reasons. It is not possible to predict where additional long-distance dispersers will turn up. Attempting to lay out the DPS boundary so that it circumscribes all future Midwest dispersers would require either an unacceptably large DPS, or making a series of future outward boundary adjustments to reflect new dispersal locations as they occur.

Upon request we will work with the States where the gray wolf retains endangered status to identify and pursue options to deal with wolf-human conflicts that may arise there. We also point out that the Act's implementing regulations for endangered wildlife specifically allow a person to take an endangered wolf ''in defense of his own life or the lives of others'' (50 CFR 17.21(c)(3)) and provide that employees or agents of the Service, other Federal land management agencies, and State conservation agencies may take an endangered wolf that is ''a demonstrable but nonimmediate threat to human safety.'' (50 CFR 17.21(c)(3)(iv)).

Issue 8—One comment stated that the DPS should not include small areas of northern Indiana and Ohio and instead the DPS should end at the southern border of Michigan.

Response—We believe the use of I–80 is preferable to the State line for several reasons. First, the interstate highway more clearly identifies the terminus of the DPS on the ground, making it easier for an individual or for law enforcement agents to determine the legal status of a wolf in the field. Second, this major interstate highway will serve as a partial barrier to wolf dispersal out of the DPS. Therefore, this boundary makes it less likely that these two States will have to deal with dispersing gray wolves that are protected as endangered within their state. Neither State has requested the proposed boundary be modified.

Issue 9—The DPS should not include areas of suitable habitat that lack wolf packs. The DPS should not include any areas that lack wolf packs.

Response—We have identified the DPS to be closely tied to the biological wolf population that has been recovered, and to be consistent with the two relevant court rulings (*Defenders of Wildlife* v. *Norton*, 03–1348–JO, D. OR. 2005; *National Wildlife Federation* v. *Norton*, 1:03–CV–340, D. VT. 2005). Wolf biology makes it unreasonable to define a wolf population, and hence a wolf DPS, solely as the area where wolf packs are present at viable levels. Any area that hosts wolf packs also is producing a substantial number of dispersing wolves, some of which return after short absences, while others travel farther and some never return. Delineation of a wolf population must recognize and account for this dispersal behavior to some degree. We believe our DPS delineation is appropriately based on the biological features of the species and the nature of a wolf population by being centered around the focal areas of the recovery program, but also including a reasonable portion of those wolves making longer distance movements from their natal areas.

We have included nearby areas that are likely to be visited by wolves that have dispersed from the core recovery areas because we believe these wolves should be considered part of that biological population while they are within a reasonable distance from the core areas. The areas of potentially suitable habitat that are currently unoccupied are relatively small, and even if occupied in the future, will not make a significant contribution to the long-term viability of the gray wolf population in the DPS or in the United States. Additionally, wolves that ultimately occupy the NLP will have dispersed from the UP, so we believe the NLP should be included within the WGL DPS.

Issue 10—One comment stated that other gray wolf DPSs should be proposed and identified simultaneously. Piecemeal identification of DPSs and de-listing thwarts the intent of both the vertebrate population policy and the Act.

Response—While in some situations it may be appropriate to identify multiple DPSs simultaneously, there is no requirement in the Act or the DPS Policy to do so. The Service lists or delists species when data are available that supports a decision that best serves the conservation of the taxon. As mentioned above, on December 12, 2008, a formal opinion was issued by the Solicitor for the Department of the Interior, ''U.S. Fish and Wildlife Service Authority Under Section 4(c)(1) of the ESA to Revise Lists of Endangered and Threatened Species to 'Reflect Recent Determinations' '' (U.S. DOI 2008) and fully supports the Secretary's actions in this final rule. The complete text of the Solicitor's formal opinion can be found at *http://www.fws.gov/midwest/wolf/*.

Issue 11—Several commenters expressed the concern that delisting the WGL DPS will eliminate the possibility of wolf recovery in the northeastern United States.

Response—Following this delisting, gray wolves in the northeastern states will retain their classification as endangered under the Act, thereby preserving the possibility of efforts to restore the gray wolf to that region. It also preserves the Federal protections of the Act that would aid gray wolf restoration actions in the northeastern United States if undertaken by State or tribal agencies, and it protects gray wolves immigrating from Canada.

Issue 12—The Service must consider gray wolf subspecies when constructing DPS boundaries, and a DPS cannot include portions of the historical range of two subspecies (*C. lupus lycaon* and *C. l. nubilus*) within its boundary.

Response—The gray wolf entity that has been protected by the Act since 1978 is the species *C. lupus* in the United States and Mexico, rather than a subspecies of the gray wolf. This DPS creates a subunit of the species listing, thereby indicating that the population of the species within this geographical boundary has been recovered. It makes no reference to any gray wolf subspecies. Because the listed entity is the gray wolf, creating a DPS from a portion of the listed entity does not create or require a nexus with subspecies taxonomy.

Issue 13—Several comments suggested that a separate species of wolf may be present in the Upper Peninsula and should be recognized and protected by the Service.

Response—There are several scientific hypotheses regarding the identity of large canids in the eastern United States and adjacent Canada. One of these hypotheses suggests that the wolves in southeastern Ontario are a separate wolf species being referred to as the ''eastern wolf'' and tentatively given the scientific name *Canis lycaon*. If southeastern Ontario wolves are this separate species, those wolves may have contributed their genetic material to the wolf population in the UP via movement westward across the St. Mary's River. However, we believe the UP wolf population primarily developed from Minnesota and Wisconsin wolves that made overland movements into the UP from the west, and that wolf immigration across the St. Mary's River from the east was of much smaller magnitude. At this point there have been no published or peer-reviewed studies of the genetic makeup of UP wolves. Therefore, we will continue to consider WGL wolves to be *C. lupus*.

Issue 14—One comment applied the meaning of significance (using examples of unique ecological setting and differences in genetic characteristics) as used in our 1996 DPS Policy (61 FR 4725, Feb. 7, 1996) to the usage of ''significant'' in ''significant portion of its range'' as the phrase is used in the definitions of endangered and threatened in paragraphs 3(6) and 3(19), respectively. As a result, the comment concludes that we have not applied the DPS Policy's examples of significance during our analysis of whether wolves have been recovered to a sufficient area of the DPS.

Response—These two uses of significant/significance are context-specific, do not have the same meaning, and should not be used interchangeably. When applying the DPS policy, we are required to evaluate whether the discrete group of animals under consideration is sufficiently important to the overall taxon so that it warrants a separate listing under the Act—that is, is the population *significant* to the overall taxon. In contrast, when applying the definitions of endangered and threatened to a taxon, we are considering whether a certain area is important to that same taxon. Another way of explaining the difference is that in one case we are evaluating the importance of a group of organisms; in the other case we are assessing the value of a portion of geographic range. The evaluations are not comparable and are dependent on different factors. Therefore, we believe we are correct in our usage of these terms in this rule.

Issue 15—Wolves remain extirpated in approximately 60 percent of the DPS. This is a significant portion of the range (SPR) within the DPS; therefore, wolves remain endangered in the DPS.

Response—The determination of whether a portion of a species' range is ''significant'' is based on the biological needs of the species and the threats to the species. In making this determination we consider the quality, quantity, and distribution of suitable habitat, the use, uniqueness, and importance of the habitat, and other biological factors appropriate to the species and area under consideration. We do not focus solely, or even primarily, on a quantitative assessment, because quantity of range might have no relationship to the biological needs of the species. In the case of the gray wolf, the portions of North Dakota, South Dakota, Iowa, Illinois, Indiana, and Ohio within the WGL DPS are not significant portions of the range even though they may be sizeable pieces of historical range. These areas contain wolf habitat that is severely degraded at best, and even if they remained listed as endangered, they would not be likely to develop viable wolf populations in the foreseeable future. These areas thus are not important to the gray wolf metapopulation in Minnesota, Wisconsin, and the Upper Peninsula of Michigan. Similarly, the areas of Minnesota, Wisconsin, and Michigan that currently are unoccupied by wolves contain only small areas of potentially suitable habitat, mostly in the NLP of Michigan, and eventual wolf pack occupancy of these areas will have minimal influence on the viability of the current recovered wolf populations in the three States. Consequently, these areas have minimal biological significance to the conservation status of gray wolves in the DPS, and they are not an SPR within the DPS.

Issue 16—The Service must consider the historical range of the gray wolf, rather than the currently occupied range, when assessing what is a ''significant part of the range'' as that phrase is used in the definitions of endangered and threatened species.

Response—For the purposes of this rule, and for determining the significant portion of the range of the gray wolf in the DPS, the Service considers the range of the gray wolf to be the entire geographical area delineated by the WGL DPS. We have clarified this in the final rule.

Issue 17—One comment stated that a rangewide recovery plan is required by the Act before any wolf delisting actions can occur.

Response—The Service has developed, implemented, and revised, as needed, three geographically based recovery plans for the gray wolf. The Act requires that we develop and implement recovery plans for listed species unless they ''will not promote the conservation of the species * * *'' (section 4(f)(1)). In its 2005 ruling, the Vermont District Court specifically commented on this issue, finding that the Service's use of ''three recovery plans for the gray wolf rather than one comprehensive plan must be afforded *Chevron* deference, and is therefore an appropriate agency course of action'' (*National Wildlife Federation* v. *Norton*, 1:03–CV–340, D. VT. 2005, p. 28).

Issue 18—A comment letter stated that the Act does not permit the creation of a WGL DPS (and Northern Rocky Mountain DPS) while maintaining the pre-existing species listing across the remaining 48 States.

Response—We believe this approach of creating a small DPS reflects the recovered status of wolves in the DPS and is consistent with the 2005 rulings (*Defenders of Wildlife* v. *Norton,* 03–1348–JO, D. OR 2005; *National Wildlife Federation* v. *Norton,* 1:03–CV–340, D. VT. 2005). The Vermont ruling stated ''Nowhere in the ESA is the Secretary prevented from creating a 'non-DPS remnant', especially when the remnant area was already listed as endangered'' (*National Wildlife Federation* v. *Norton,* 1:03–CV–340, D. VT. 2005, p. 20). Our current identification of a WGL DPS, while retaining the remaining 48-state and Mexico gray wolf listing intact as endangered, is consistent with this aspect of the District Court's ruling.

Issue 19—The Service cannot delist the DPS because the gray wolf remains extirpated from 95 percent of its historical range.

Response—We have clarified in this final rule that we are only delisting the gray wolf in the WGL DPS; we are not delisting the gray wolf across its historical range in the 48 coterminous States and Mexico. We have considered only whether the gray wolf is threatened or endangered within this DPS.

Issue 20—The DPS can only delist wolves in the core recovery areas, rather than include and delist dispersing animals from those areas.

Response—A critical component of delineating the boundaries of a DPS is gaining an understanding of the population/metapopulation that is being identified as a DPS. Wolf biology clearly shows that temporary and permanent movements beyond the pack's territory are a key element of wolf population dynamics, and as such, these movements must be considered when delineating a boundary for a DPS. Furthermore, a biologically based DPS boundary cannot follow the edge of the fully occupied core areas, as this comment seems to advocate. Individual wolves would be constantly moving back and forth across such a boundary, and pack territories may form on both sides of the line in some years, and might disappear from one or both sides in subsequent years, depending on a number of physical, biological, and societal factors. We determined that the DPS boundary should recognize and accommodate the normal behavior of the population/metapopulation members.

Issue 21—The Service did not use wolf dispersal data as claimed, because wolves disperse outside of the proposed DPS boundary.

Response—In the proposed rule we did not attempt to include the locations of all known dispersing MN/WI/MI wolves within the proposed DPS, or to use the maximum known gray wolf dispersal distance to delineate the DPS boundary. We have provided further

clarification in this final rule on the biological method we have used.

Issue 22—The DPS must contain a uniform biotype (the Laurentian Mixed Forest Province), or the DPS boundaries must be based on biotype or habitat boundaries, because this is what makes the WGL wolves ''significant.''

Response—A number of factors contributed to our determination that the WGL DPS was significant, only one of which included occupancy of these in the Laurentian Mixed Forest Province. However, even if the only factor contributing to ''significance'' was the Laurentian Mixed Forest Province, the DPS boundaries would not use (nor is there a requirement to use) that habitat or biotype as the boundary. As discussed in the rule, many factors concerning wolf biology were considered in identifying the WGL DPS. Limiting the DPS to one habitat type would not make sense biologically for this species.

Issue 23—Highways I–80 and the Missouri River cannot be used for DPS boundaries, because wolves cross them, making them arbitrary choices.

Response—In our proposal we described Interstate 80 and the Missouri River as being ''partial barriers,'' and we cited data showing they have been crossed by a small number of wolves (p. 15277). We did not use these features to identify the discreteness of the wolf population within the WGL DPS. Rather, we use them as readily identifiable features on the landscape that are in a biologically appropriate location for use in delineating the DPS, and they are also partial barriers to wolf movements.

Issue 24—The 1992 Service Recovery Plan is outdated, and its recovery criteria cannot be used to justify delisting.

Response—When wolf numbers in the Midwest appeared to be approaching the recovery criteria specified in the 1992 Plan, we reconvened the Recovery Team in 1997 to query them regarding the appropriateness of those criteria. The Team expressed confidence that the recovery criteria remained ''necessary and sufficient'' (Peterson in litt. 1997, in litt. 1998). Furthermore, the peer reviewers overwhelmingly supported our conclusion that the WGL DPS wolves have recovered, and they expressed no concern with the 1992 recovery criteria that were used as part of our determination.

The population goals in the 1992 Recovery Plan are not the sole determinants of whether delisting is appropriate. While the Act states that recovery plans shall contain ''objective, measurable criteria'' (sec. 4(f)(1)(B)(ii)) when practicable, achieving these criteria alone cannot result in a delisting. Rather, recovery criteria are important indicators that identify the need for consideration of delisting. The consideration of delisting is a broad review of the past, current, and likely future threats to the species, as required by the Act. The delisting decision is made based on the threats assessment, and the resulting determination of whether the species meets the Act's definition of threatened or endangered.

Issue 25—One commenter stated that increasing use of off-highway vehicles (OHV) in Minnesota and growing human populations pose serious threats to wolves, especially in the core of Minnesota's wolf range. The commenter pointed out that most of primary wolf range (e.g., Management Zone A) (MN DNR 2001, Appendix III) is north of Highway 2 and that trails in these forests may be subject to few limitations to motorized use.

Response—As discussed in ''Suitable Habitat in the Western Great Lakes Gray Wolf DPS'' road density has largely been accepted as the best single predictor of habitat suitability in the Midwest due to the connection between roads and human-related wolf mortality. Off-highway vehicle trails introduce only a portion of the impacts and risk factors associated with roads, such as increased human access to areas occupied by wolves and increased likelihood of unauthorized shooting or trapping. Off-highway vehicle trails do not introduce significant levels of the other risk factors, such as more farms and residences, more domestic animals, a greater likelihood of mortality due to livestock-depredation control or vehicle collisions, and increased likelihood of disease transmission from domestic dogs. Therefore, we believe wolf populations are more sensitive to normal road infrastructure density than to OHV trail density.

MN DNR is developing recommendations for motorized use of State forest lands. In preparation for this analysis, it completed an inventory in 2004 of all State forest roads and access routes on State, county, and Federal lands within State forest boundaries—a total of 5.7 million acres. (MN DNR 2005). This inventory found an overall route density of 0.8 km per km^2, but did not differentiate between motorized and non-motorized trails (routes). MN DNR is now conducting a forest-by-forest review and proposing which roads and trails will be available for motor vehicle use. As of September 2006, MN DNR had completed reviews on 16 State forests and had closed approximately 57 percent of routes to motorized use. If this trend continues, the density of routes open to motorized use in Minnesota State forests (State forest roads and OHV trails) may approximate 0.5 km per km^2. Only 3 of the 16 forests reviewed thus far, however, are north of Highway 2 and all were either completely closed to motorized use or given a ''Limited'' use designation. As the department begins to evaluate larger, more remote northern forests, however, this trend (i.e., about 50 percent closure) may change and some forests may retain the ''managed'' classification (i.e., open unless posted closed, *OHV trail designation questions and answers,* MN DNR Division of Trails and Waterways, St. Paul, MN; *http://www.dnr.state.mn.us/input/mgmtplans/ohv/designation/index.html.*

According to the commenter, registered ATVs in Minnesota increased from 32,501 in 1990 to 266,283 in 2004. Although this is a sharp increase, the wolf population in Minnesota grew and, more recently, may have stabilized at about 3,020 wolves (Erb and Benson 2004, Table 1) during this time. Therefore, there is no clear relationship between OHV use and wolf abundance statewide. Nevertheless, we agree that the combination of growing human populations and extensive use of OHV's warrants careful monitoring and regulation to ensure that wolf populations are not adversely affected. Minnesota's wolf management plan states that ''in areas of sufficient size to sustain one or more wolf packs, land managers should be cautious about adding new road access that could exceed a density of one mile of road per square mile of land, without considering the potential effect on wolves'' (MN DNR 2001, p. 29). We expect MN DNR to continue to also consider human densities when monitoring the extent and distribution of suitable wolf habitat in the State and to take necessary actions (e.g., decreasing road density in State forests) to maintain a population of at least 1,600 gray wolves if increases in human density erode the extent of suitable habitat such that the population falls below this level.

Issue 26—A commenter pointed out that increasing volume of automobile traffic in Minnesota's wolf range will fragment habitat, increase wolf mortality, destroy habitat, displace wolves, and contribute to urban sprawl. Four examples were provided.

Response—It is clear that automobiles kill wolves on roads and highways and that wolves tend to avoid these features relative to road-free areas (Whittington *et al.* 2004, pp. 9-11; Whittington *et al.* 2005, pp. 549-551), but highways are far from absolute barriers to dispersal. For

example, in a study of U.S. Highway 53 in northwest Wisconsin (4,700 vehicles per day) in the late 1990's, Kohn *et al.* (2000, p. 2) found that 12 of 13 radio-collared wolves that encountered the highway successfully crossed it, some of them multiple times, and that each of these dispersing wolves subsequently became dominant members of packs in newly established territories. In addition, the successful reestablishment of wolves in Wisconsin and Michigan depended on a sufficient number of Minnesota wolves crossing Interstate Highway 35 where current average traffic volumes are greater than 15,000 vehicles per day (*http://www.dot.state.mn.us/tda/maps/trunkhighway/2004/state_and_metro/stateflo.pdf*. Wolf crossing of roads, however, is dependent on adjacent human development and habitat fragmentation, and land managers can likely influence the ability of wolves to disperse across highways in Minnesota's wolf range by ensuring that sufficient road reaches occur in areas with high crossing potential (i.e., low fragmentation of adjacent habitat due to open or developed areas; Frair 1999, pp. 19–20).

Issue 27—Disease remains a serious threat and post-delisting disease monitoring is inadequate or unfunded. One comment states that the Michigan Plan only commits the DNR to monitor wolf health until the State wolf population reaches 200 wolves.

Response—The expectation in the 1997 Michigan Wolf Plan was that Federal wolf delisting would occur before the State reached its own minimum goal of 200 wolves. As a result, the plan states that wolf monitoring, including health and disease monitoring, would continue ''at least until the minimum population sustainable population goal [of 200] is met.'' (MI DNR 1997, p. 21.) However, the 1997 Michigan Plan also states that wolf health and disease monitoring will occur ''for a minimum of five years after Federal delisting'' (MI DNR 1997 p. 21–22, 45). In fact, wolf health and disease monitoring has continued well beyond the attainment of the 200-wolf threshold, which occurred in early 1996. We believe the commenters' fear that wolf health and disease monitoring will cease upon delisting is unwarranted by the facts or by the State Plan.

Issue 28 —The delisting should be delayed, or should be done in a manner to promote wolf expansion into the NLP.

Response—We believe the gray wolf has achieved recovery in the DPS and is no longer threatened or endangered. Therefore, it should be delisted with management returning to the States and tribes. Those governments and their constituents will determine if additional wolf recovery will be promoted. We will consider providing technical assistance to further State or tribal wolf recovery efforts if requested.

Issue 29 —Human predation poses too high a risk to delist the wolf. The wolf cannot be delisted ''until this threat has been adequately controlled.''

Response—Our detailed review of the past, current, and likely future threats to wolves within the WGL DPS identified human-caused mortality of all forms to constitute the majority of documented wolf deaths. However, the wolf populations in Wisconsin and Michigan have continued to expand in numbers and the Minnesota wolf population is at least maintaining itself at well over the population goal recommended in the 1992 Recovery Plan and at about twice the minimum level established in the 2001 Minnesota Wolf Plan. Healthy wolf populations clearly can withstand a high level of mortality, from human and other causes, and remain viable. Although the commenters do not provide any clarification on what is meant by ''adequately controlled'' we believe that for purposes of this delisting decision, the numerical growth and range expansion shown by WGL DPS wolves indicates that ''adequate control'' already exists since the species is being maintained at healthy levels.

Issue 30—WGL DPS wolves should be reclassified to threatened instead of delisted. Another comment stated that only Minnesota wolves should be delisted now.

Response—Minnesota wolves were classified as threatened in 1978. The Act does not require endangered species to first be moved to threatened status before delisting, but for some species that intermediate step is appropriate. The WGL DPS wolf metapopulation has continued to increase to the extent that it greatly exceeds our recovery criteria, and it has exceeded our numerical delisting criteria since 1999. Therefore, we believe delisting is appropriate for this DPS.

Issue 31—It will be difficult to relist these wolves if it becomes necessary following delisting.

Response—The Act requires that we monitor the status of a delisted species for at least five years after delisting. Section 4(g) of the Act authorizes the Service to make prompt use of our emergency listing authority under section 4(b)(7) to prevent a significant risk to the well-being of any recovered species. Therefore, we believe the Act provides the authority and the requirement to relist midwestern gray wolves if necessary.

Issue 32—A large number of comments recommended that specific changes be made to the three State wolf management plans.

Response—We have reviewed the 2001 Minnesota Plan, the 1999 and 2006 Updated Wisconsin Plan, and the 1997 Michigan Plan. We reviewed these plans to determine if they will provide sufficient protection and reduce threats. We are primarily concerned with the outcome of the plan's implementation. Once a species is delisted, the details of its management are a State or tribal responsibility; the Federal responsibility is to monitor the plan's implementation and the species' response for at least five years to ensure that the plan's outcome is as expected. We have concluded that each plan provides adequate protection for wolves, and will keep threats at a sufficiently low level, so that the WGL DPS wolves will not become threatened or endangered in the foreseeable future. Suggestions for changes to the State wolf management plans should be directed to the respective State management agency for consideration.

Issue 33 —Wisconsin and Michigan DNR have not completed their wolf management plans, so delisting should be delayed until after those plans are completed and they are shown to be adequate.

Response—The Wisconsin DNR did not revise its 1997 Wolf Management Plan. Instead, the plan has had some portions of the text updated, and several appendices have been added to deal with new public opinion data and a 2004 DNR questionnaire. The Plan's management goal of 350 wolves and the vast majority of management practices remain unchanged. We received the updated Wisconsin Wolf Management Plan Addendum 2006 in time to evaluate it as part of our delisting decision.

The 1997 Michigan Wolf Management Plan is in the midst of revision. The process for its revision includes obtaining recommendations in the form of ''guiding principles'' from a roundtable group composed of diverse stakeholders, and it will not be completed until late in 2007. In the meantime, the 1997 Michigan Plan will remain in effect, as supplemented by additional guidance developed since 1997 to deal with aspects of wolf management and recovery not adequately covered in the 1997 Plan, such as ''Guidelines for Management and Lethal Control of Wolves Following Confirmed Depredation Events'' (MI DNR 2005a).

Issue 34—The delisting decision is based on the assumption that the State wolf management plans will be fully implemented after Federal delisting.

Response—We are required to evaluate the likely future threats that a delisted wolf population will experience. We rely heavily on the State wolf management plans for our assessment of the degree of protection and monitoring that will occur after Federal delisting. Because these plans have received the necessary approvals within the State governments, we believe it is reasonable to assume the plans will be funded and implemented largely as written. Wisconsin and Michigan DNRs have led the efforts to restore wolves to their States for several decades, including a 1974 reintroduction effort initiated by Michigan DNR (Weise *et al.* 1975). Based on their proven leadership in Midwest wolf recovery, we see no reason to doubt the continuing commitment of these State agencies to wolf conservation.

We recognize that State wolf plans can be changed by the respective DNR or State legislature, creating some uncertainty regarding plan implementation. However, given the high public visibility of wolf management, the extent of public interest and involvement in the development and updating of the States' plans, the vast amount of scientific data available regarding wolf management, and the status monitoring that we will be maintaining for the next five years, we believe it is reasonable and proper to assume that the three State wolf plans will not be significantly changed, nor will their implementation be critically underfunded, in a manner that would jeopardize the viability of any State's wolf population. If this assumption turns out to be incorrect, we have the ability to relist the species, including an emergency relisting, if necessary.

Issue 35—Many comments expressed distrust for State wolf protection, based on past State programs aimed at wolf eradication.

Response—We acknowledge the past involvement of State and Federal government agencies in intensive, and largely successful, programs to eradicate wolves. However, we believe that public sentiment and agency mandates have changed dramatically since the 1960s and earlier. While wolf eradication might still be the wish of a small number of individuals, we believe there is broad support among the public and within governmental agencies to allow wolves to occupy our landscape, with some degree of management imposed to maintain control of the level of wolf-human conflicts. Based on existing State laws and State management plans, we will rely upon the States to provide sufficient protection to wolves until and unless it is shown they are unwilling or unable to do so.

Issue 36—The Post-Delisting Monitoring (PDM) Plan should be completed before delisting occurs.

Response—The Act requires a minimum of five years of PDM. There is no requirement that a PDM plan be completed before delisting. We are working on a PDM plan, utilizing the expertise of the Recovery Team, and we expect to complete the plan shortly. Because past wolf monitoring by the States has been successful and adequate to document progress toward recovery, we expect that PDM will be similar to recovery monitoring. The PDM plan will organize data-gathering more than has been done in the past, and it will identify the Service office that will be responsible for initiating the data gathering and coordinating the data review.

Issue 37—Several commenters stated that the Service must ensure that State wolf management strategies accommodate tribal interests within reservation boundaries as well as honor the tribal role and authority in wolf management in the ceded territories. Furthermore, the Federal trust responsibility, as it pertains to wolf management, must be continued after delisting. They asked how, and by whom, that Federal trust responsibility will be continued after the Act no longer provides the authority for the Service to protect wolves.

Response—The Service and the Department of the Interior recognize the unique status of the federally recognized tribes, their right to self-governance, and their inherent sovereign powers over their members and territory. The Department, the Service, the Bureau of Indian Affairs (BIA), and other Federal agencies, as appropriate, will take the needed steps to ensure that tribal authority and sovereignty within reservation boundaries are respected as the States implement their wolf management plans and revise those plans in the future. Furthermore, there may be tribal activities or interests associated with the wolf encompassed within the tribes' retained rights to hunt, fish, and gather in treaty-ceded territories. The Department will assist in the exercise of those rights. If biological assistance is needed, the Service may provide it via our field offices. The Service will remain involved in the post-delisting monitoring of the gray wolf, but all Service management and protection authority under the Act will end with this delisting. Legal assistance will be provided to the tribes by the Department of the Interior, and the BIA will be involved, when needed.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for listing, reclassifying, and delisting species. A species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the Act threaten its continued existence. A species may be delisted, according to 50 CFR 424.11(d), if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data used for classification of the species.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1). 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 after its delisting and the consequent removal of the Act's protections.

Foreseeable future is defined by the Services on a case-by-case basis, taking into consideration a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat projection timeframes, and environmental variability. ''Foreseeable'' is commonly viewed as ''such as reasonably can or should be anticipated: such that a person of ordinary prudence would expect it to occur or exist under the circumstances'' (Merriam-Webster's Dictionary of Law 1996: *Western Watershed Project* v. *Foss* (D. Idaho 2005; CV 04–168–MHW). For the WGL DPS, the foreseeable future differs for each factor potentially affecting the DPS. It took a considerable length of time for public attitudes and regulations to result in a social climate that promoted and allowed for wolf recovery in the WGL DPS and NRM DPS. The length of time over which this shift occurred, and the ensuing stability in those attitudes, give us confidence that this social climate will persist. Also, the States have had a solid history of cooperating and assisting in wolf recovery and have made a commitment, through legislative actions, to continue these activities. We believe this

commitment will continue. When evaluating the available information, with respect to the foreseeable future, we take into account reduced confidence as we forecast further into the future.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The following describes how we interpret the terms ''range'' and ''significant'' as used in the phrase ''significant portion of its range,'' and explains the bases for our use of those terms in this rule. On March 16, 2007, a formal opinion was 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' '' (U.S. DOI 2007). Our explanation below is consistent with that opinion.

''Range''

The word ''range'' in the phrase ''significant portion of its range'' refers to the range in which a species currently exists, not to the historical range of the species where it once existed. The context in which the phrase is used is crucial. Under the Act's definitions, a species is ''endangered'' only if it ''is in danger of extinction'' in the relevant portion of its range. The phrase ''is in danger'' denotes a present-tense condition of being at risk of a future, undesired event. To say that a species ''is in danger'' in an area that is currently unoccupied, such as unoccupied historical range, would be inconsistent with common usage. Thus, ''range'' must mean ''currently-occupied range,'' not ''historical range.'' This interpretation of ''range'' is further supported by the fact that section 4(a)(1)(A) of the Act requires us to consider the ''present'' or ''threatened'' (i.e., future), rather than the past, ''destruction, modification, or curtailment'' of a species' habitat or range in determining whether a species is endangered or threatened.

However, the Ninth Circuit Court of Appeals appeared to conclude, without any analysis or explanation that the ''range'' referred to in the SPR phrase includes the historical range of the species. The court stated that a species ''can be *extinct* 'throughout * * * a significant portion of its range' if there are major geographical areas in which it is no longer viable but once was,'' and then faults the Secretary for not ''at least explain[ing] her conclusion that the area in which the species can no longer live is not a significant portion of its range.'' *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136, 1145 (emphasis added). This would suggest that the range we must analyze in assessing endangerment includes unoccupied historical range—i.e., the places where the species was once viable but no longer exists.

The statute does not support this interpretation. This interpretation is based on what appears to be an inadvertent misquote of the relevant statutory language. In addressing this issue, the Ninth Circuit states that we must determine whether a species is ''extinct throughout * * * a significant portion of its range.'' *Id.* If that were true, we would have to study the historical range. But that is not what the statute says, and the Ninth Circuit quotes the statute correctly elsewhere in its opinion. Under the Act, we are not to determine if a species is ''extinct throughout * * * a significant portion of its range,'' but are to determine if it ''is in danger of extinction throughout * * * a significant portion of its range.'' A species cannot presently be ''in danger of extinction'' in that portion of its range where it ''was once viable but no longer is''—if by the latter phrase the court meant lost historical habitat. In that portion of its range, the species has by definition ceased to exist. In such a situation, it is not ''in danger of extinction''; it is extinct.

Although we must focus on the range in which the species currently exists, data about the species' historical range and how the species came to be extinct in that location may be relevant in understanding or predicting whether a species is ''in danger of extinction'' in its current range and therefore relevant to our 5 factor analysis. But the fact that it has ceased to exist in what may have been portions of its historical range does not necessarily mean that it is ''in danger of extinction'' in a significant portion of the range where it currently exists.

For the purposes of this notice, we consider the range of the gray wolf to be the entire geographical area delineated by the boundaries of the WGL DPS.

''Significant''

The Act does not clearly indicate what portion(s) of a species' range should be considered ''significant.'' Most dictionaries list several definitions of ''significant.'' For example, one standard dictionary defines ''significant'' as ''important,'' ''meaningful,'' ''a noticeably or measurably large amount,'' or ''suggestive'' (Merriam-Webster's Collegiate Dictionary 1088 10th ed. 2000). If it means a ''noticeably or measurably large amount,'' then we would have to focus on the size of the range in question, either in relation to the rest of the range or perhaps even in absolute terms. If it means ''important,'' then we would have to consider factors in addition to size in determining a portion of a species' range is ''significant.'' For example, would a key breeding ground of a species be ''significant,'' even if it was only a small part of the species' entire range?

One district court interpreted the term to mean ''a noticeably or measurably large amount'' without analysis or any reference to other alternate meanings, including ''important'' or ''meaningful.'' *Defenders of Wildlife* v. *Norton,* 239 F. Supp. 2d 9, 19 (D.D.C. 2002). We consider the court's interpretation to be unpersuasive, because the court did not explain why we could not employ another, equally plausible definition of ''significant.'' It is impossible to determine from the word itself, even when read in the context of the entire statute, which meaning of ''significant'' Congress intended. Moreover, even if it were clear which meaning was intended, ''significant'' would still require interpretation. For example, if it were meant to refer to size, what size would be ''significant'': 30 percent, 60 percent, 90 percent? Should the percentage be the same in every case or for each species? Moreover, what factors, if any, would be appropriate to consider in making a size determination? Is size all by itself ''significant,'' or does size only become ''significant'' when considered in combination with other factors? On the other hand, if ''significant'' were meant to refer to importance, what factors would need to be considered in deciding that a particular portion of a species' range is ''important'' enough to trigger the protections of the Act?

Where there is ambiguity in a statute, as with the meaning of ''significant,'' the agency charged with administering the statute, in this case the Service, has broad discretion to resolve the ambiguity and give meaning to the term. As the Supreme Court has stated:

> In *Chevron,* this Court held that ambiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion. Filling these gaps, the Court explained, involves difficult policy choices that agencies are better equipped to make than courts. If a statute is ambiguous, and if the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation.

Nat'l Cable & Telecomms. Ass'n v. *Brand X Internet Servs.,* 545 U.S. 967, 980 (2005) (internal citations omitted).

We have broad discretion in defining what portion of a species' range is ''significant.'' No ''bright line'' or ''predetermined'' percentage of historical range loss is considered ''significant'' in all cases, and we may consider factors other than simply the size of the range portion in defining what is ''significant.'' In light of the general ecosystems conservation purposes and findings in section 2 of the Act, our goal is to define ''significant'' in such a way as to insure the conservation of the species protected by the Act. In determining whether a range portion is significant, we consider the ecosystems on which the species that use that range depend as well as the values listed in the Act that would be impaired or lost if the species were to become extinct in that portion of the range or in the range as a whole.

However, our discretion in defining ''significant'' is not unlimited. The Ninth Circuit Court of Appeals, while acknowledging that we have ''a wide degree of discretion in delineating'' what portion of a range is ''significant,'' appeared to set outer limits of that discretion. *See Defenders of Wildlife* v. *Norton,* 258 F.3d 1136. On the one hand, it rejected what it called a quantitative approach to defining ''significant,'' where a ''bright line'' or ''predetermined'' percentage of historical range loss is considered ''significant'' in all cases. 258 F.3d. at 1143. As the court explained:

> First, it simply does not make sense to assume that the loss of a predetermined percentage of habitat or range would necessarily qualify a species for listing. A species with an exceptionally large historical range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat. Similarly, a species with an exceptionally small historical range may quickly become endangered after the loss of even a very small percentage of habitat.

The Ninth Circuit concluded that what is ''significant'' must ''necessarily be determined on a case by case basis,'' and must take into account not just the size of the range but also the biological importance of the range to the species. 258 F.3d. at 1143. At the other end of the spectrum, the Ninth Circuit rejected what it called ''the faulty definition offered by the Secretary,'' a definition that holds that a portion of a species' range is ''significant'' only if the threats faced by the species in that area are so severe as to threaten the viability of the species as a whole. 258 F.3d. at 1143, 1146. It thus appears that within the two outer boundaries set by the Ninth Circuit, we have wide discretion to give the definitive interpretation of the word ''significant'' in the phrase significant ''portion of its range.''

Based on these principles, we consider the following factors in determining whether a portion of a range is ''significant''—quality, quantity, and distribution of habitat relative to the biological requirements of the species; the historical value of the habitat to the species; the frequency of use of the habitat; the uniqueness or importance of the habitat for other reasons, such as breeding, feeding, migration, wintering, or suitability for population expansion; genetic diversity; and other biological factors. We focus on portions of a species' range that are important to the conservation of the species, such as ''recovery units'' identified in approved Section 4 recovery plans; unique habitat or other ecological features that provide adaptive opportunities that are of conservation importance to the species; and ''core'' populations that generate additional individuals of a species that can, over time, replenish depleted populations or stocks at the periphery of the species' range. We do not apply the term ''significant'' to portions of the species' range that constitute less-productive peripheral habitat, artificially-created habitat, or areas where wildlife species have established themselves in urban or suburban settings—such portions of the species' range are not ''significant,'' in our view, to the conservation of the species in the wild.

Determining the SPR for the WGL DPS of the gray wolf is based on the biological needs of the species in the DPS. As discussed previously in our proposed WGL wolf rule (71 FR 15266–15305; March 27, 2006), wolves are highly adaptable habitat generalists, and their primary biological need is an adequate natural prey base of large ungulates. The primary current and likely future threats to wolves are excessive human-caused mortality and increased mortality from diseases and parasites. Therefore, our determination of the SPR for the WGL DPS of the gray wolf is primarily based on the portion of the DPS that provides an adequate wild prey base, suitably low levels of human-caused mortality, and sufficient representation, resiliency, and redundancy to buffer the impacts of disease and parasite-induced mortality.

These biological needs, and the threats to gray wolves in the WGL DPS, are discussed in the following paragraphs addressing the five factors specified in section 4(a)(1) of the Act. We describe the necessary characteristics of suitable habitat and the necessary size and distribution of such habitat for it to constitute a SPR in the WGL DPS. Areas of habitat within the range of the gray wolf that are not suitable, or are not of sufficient size or appropriate geographic distribution, are not an SPR of the DPS.

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

A common misperception is that wolves inhabit only remote portions of pristine forests or mountainous areas, where human developments and other activities have produced negligible change to the natural landscape. Their extirpation south of Canada and Alaska, except for the heavily forested portions of northeastern Minnesota, reinforced this popular belief. Wolves, however, survived in those areas not because those were the only places with the necessary habitat conditions, but because only in those remote areas were they sufficiently free of the human persecution that elsewhere killed wolves faster than the species could reproduce (Mech 1995a, p. 271).

In the western Great Lakes region, wolves in the densely forested northeastern corner of Minnesota have expanded into the more agricultural portions of central and northwestern Minnesota, northern and central Wisconsin, and the entire UP of Michigan. Habitats currently being used by wolves span the broad range from the mixed hardwood-coniferous forest wilderness area of northern Minnesota, through sparsely settled, but similar habitats in Michigan's UP and northern Wisconsin, and into more intensively cultivated and livestock-producing portions of central and northwestern Minnesota and central Wisconsin.

Wolf research and the expansion of wolf range over the last three decades have shown that wolves can successfully occupy a wide range of habitats, and they are not dependent on wilderness areas for their survival. In the past, gray wolf populations occupied nearly every type of habitat north of mid-Mexico that contained large ungulate prey species, including bison, elk, white-tailed deer, mule deer, moose, and woodland caribou; thus, wolves historically occupied the entire Midwest. Inadequate prey density or high levels of human-caused mortality appear to be the only factors that limit wolf distribution (Mech 1995a, p. 271; 1995b, p. 544).

Suitable Habitat Within the Western Great Lakes Gray Wolf DPS

Various researchers have investigated habitat suitability for wolves in the central and eastern portions of the United States. In recent years, most of these efforts have focused on using a combination of human density, deer density or deer biomass, and road density, or have used road density alone to identify areas where wolf populations are likely to persist or become established. (Mladenoff *et al.* 1995, pp. 284–285, 1997, pp. 23–27, 1998, pp. 1–8, 1999, pp. 39–43; Harrison and Chapin 1997, p. 3, 1998, pp. 769–770; Wydeven *et al.* 2001a, pp. 110–113; Erb and Benson 2004, p. 2; Potvin *et al.* 2005, pp. 1661–1668).

Road density has largely been adopted as the best predictor of habitat suitability in the Midwest due to the connection between roads and human-related wolf mortality. Several studies demonstrated that wolves generally did not maintain breeding packs in areas with a road density greater than about 0.9 to 1.1 linear miles per sq mi (0.6 to 0.7 km per sq km) (Thiel 1985, pp. 404–406; Jensen *et al.* 1986, pp. 364–366; Mech *et al.* 1988, pp. 85–87; Fuller *et al.* 1992, pp. 48–51). Work by Mladenoff and associates indicated that colonizing wolves in Wisconsin preferred areas where road densities were less than 0.7 mi per sq mi (0.45 km per sq km) (Mladenoff et al 1995, p. 289). However, recent work in the UP of Michigan indicates that in some areas with low road densities, low deer density appears to separately limit wolf occupancy (Potvin *et al.* 2005, pp. 1667–1668) and may prevent recolonization of portions of the UP. In Minnesota a combination of road density and human density is used by MN DNR to model suitable habitat. Areas with a human density up to 8 per sq km are suitable if they also have a road density less than 0.5 km per sq km. Areas with a human density of less than 4 per sq km are suitable if they have road densities up to 0.7 km per sq km (Erb and Benson 2004, p. 2).

Road density is a useful parameter because it is easily measured and mapped, and because it correlates directly and indirectly with various forms of other human-related wolf mortality factors. A rural area with more roads generally has a greater human density, more vehicular traffic, greater access by hunters and trappers, more farms and residences, and more domestic animals. As a result, there is a greater likelihood that wolves in such an area will encounter humans, domestic animals, and various human activities. These encounters may result in wolves being hit by motor vehicles, being controlled by government agents after becoming involved in depredations on domestic animals, being shot intentionally by unauthorized individuals, being trapped or shot accidentally, or contracting diseases from domestic dogs (Mech *et al.* 1988, pp. 86–87; Mech and Goyal 1993, p. 332; Mladenoff *et al.* 1995, p. 282, 291). Based on mortality data from radio-collared Wisconsin wolves from 1979 to 1999, natural causes of death predominate (57 percent of mortalities) in areas with road densities below 1.35 mi per sq mi (0.84 km per sq km), but human-related factors produced 71 percent of the wolf deaths in areas with higher road densities (Wydeven *et al.* 2001a, pp. 112–113).

Some researchers have used a road density of 1 mi per sq mi (0.6 km per sq km) of land area as an upper threshold for suitable wolf habitat. However, the common practice in more recent studies is to use road density to predict probabilities of persistent wolf pack presence in an area. Areas with road densities less than 0.7 mi per sq mi (0.45 km per sq km) are estimated to have a greater than 50 percent probability of wolf pack colonization and persistent presence, and areas where road density exceeded 1 mi per sq mi (0.6 km per sq km) have less than a 10 percent probability of occupancy (Mladenoff *et al.* 1995. pp. 288–289; Mladenoff and Sickley 1998, p. 5; Mladenoff *et al.* 1999, pp. 40–41). Wisconsin researchers view areas with greater than 50 percent probability ''primary wolf habitat,'' areas with 10 to 50 percent probability as ''secondary wolf habitat,'' and areas with less than 10 percent probability as unsuitable habitat (WI DNR 1997, pp. 47–48). The territories of packs that do occur in areas of high road density, and hence with low expected probabilities of occupancy, are generally near broad areas of more suitable habitat that are likely serving as a source of wolves, thereby assisting in maintaining wolf presence in the higher road density, less suitable, areas (Mech 1989, pp. 387–388; Wydeven *et al.* 2001a, p.112). We note that the predictive ability of this model has recently been questioned (Mech 2006a, 2006b) and responded to (Mladenoff *et al.* 2006), and that an updated analysis of Wisconsin pack locations and habitat has been completed and is being prepared for publication (Mladenoff *et al.*, to be submitted).

It appears that essentially all suitable habitat in Minnesota is now occupied, and the wolf population within the State may have slowed its increase or has stabilized (Erb and Benson 2004, p. 7). This suitable habitat closely matches the areas designated as Wolf Management Zones 1 through 4 in the Federal Recovery Plan (USFWS 1992, p. 72), which are identical in area to Minnesota Wolf Management Zone A (*see* Figure 2, below; MN DNR 2001, Appendix III).

Recent surveys for Wisconsin wolves and wolf packs show that wolves have now recolonized the areas predicted by habitat models to have high and moderate probability of occupancy (primary and secondary wolf habitat). The late winter 2005–06 Wisconsin wolf survey identified packs occurring throughout the central Wisconsin forest area (Wolf Management Zone 2, Figure 3) and across the northern forest zone (Zone 1, Figure 3), with highest pack densities in the northwest and north central forest; pack densities are lower, but increasing, in the northeastern corner of the State (Wydeven *et al.* 2006, p. 33).

Michigan wolf surveys in winter 2003–04 and 2004–05 continue to show wolf pairs or packs (defined by Michigan DNR as three or more wolves traveling together) in every UP county except Keweenaw County (Huntzinger *et al.* 2005, p. 6), which probably lacks a suitable ungulate prey base during winter months (Potvin *et al.* 2005, p. 1665).

Such habitat suitability studies in the Upper Midwest indicate that the only large areas of suitable or potentially suitable habitat areas that are currently unoccupied by wolves are located in the NLP of Michigan (Mladenoff *et al.* 1997, p. 23; Mladenoff *et al.* 1999, p. 39; Potvin 2003, pp. 44–45; Gehring and Potter 2005, p. 1239). One published Michigan study (Gehring and Potter 2005, p. 1239) estimates that these areas could host 46 to 89 wolves, while a masters degree thesis investigation estimates that 110–480 wolves could exist in the NLP (Potvin 2003, p. 39). The NLP is separated from the UP by the Straits of Mackinac, whose 4-mile (6.4 km) width freezes during mid- and late-winter in some years. In recent years there have been two documented occurrences of wolves in the NLP (the last recorded wolf in the LP was in 1910), but no indication of persistence beyond several months. In the first instance a radio-collared female wolf from the central UP was trapped and killed by a coyote trapper in Presque Isle County in late October 2004. In late November 2004, tracks from two wolves were verified in the same NLP county. Follow-up winter surveys by the DNR in early 2005 failed to find additional wolf tracks in the NLP (Huntzinger *et al.*

2005, p. 7); additional surveys conducted in February and March 2006 also failed to find evidence of continued NLP wolf presence (Beyer *et al.* 2006, p. 35).

These NLP patches of potentially suitable habitat contain a great deal of private land, are small in comparison to the occupied habitat on the UP and in Minnesota and Wisconsin, and are intermixed with agricultural and higher road density areas (Gehring and Potter 2005, p. 1240). Therefore, continuing wolf immigration from the UP may be necessary to maintain a future NLP population. The Gehring and Potter study (p. 1239) concludes that NLP suitable habitat (i.e., areas with greater than a 50 percent probability of wolf occupancy) amounts to 850 sq mi (2,198 sq km). Potvin, using deer density in addition to road density, believes there are about 3,090 sq mi (8,000 sq km) of suitable habitat in the NLP (Potvin 2003, p. 21). Gehring and Potter exclude from their calculations those NLP low-road-density patches that are less than 19 sq mi (50 sq km), while Potvin does not limit habitat patch size in his calculations (Gehring and Potter 2005, p. 1239; Potvin 2003, pp. 10–15). Both of these area estimates are well below the minimum area described in the Federal Recovery Plan, which states that 10,000 sq mi (25,600 sq km) of contiguous suitable habitat is needed for a viable isolated gray wolf population, and half that area (5,000 sq mi or 12,800 sq km) is needed to maintain a viable wolf population that is subject to wolf immigration from a nearby population (USFWS 1992, pp. 25–26).

Based on the above-described studies and the guidance of the 1992 Recovery Plan, the Service has concluded that suitable habitat for wolves in the WGL DPS can be determined by considering four factors—road density, human density, prey base, and size. An adequate prey base is an absolute requirement, but in much of the WGL DPS the white-tailed deer density is well above adequate levels, causing the other factors to become the determinants of suitable habitat. Prey base is primarily of concern in the UP where severe winter conditions cause deer to move away from some lakeshore areas, making otherwise suitable areas locally and seasonally unsuitable. Road density and human density frequently are highly correlated; therefore, road density is the best single predictor of habitat suitability. However, areas with higher road density may still be suitable if the human density is very low, so a consideration of both factors is sometimes useful (Erb and Benson 2004, p. 2). Finally, although the territory of individual wolf packs can be relatively small, a single, or several, packs are not likely to persist as a viable population if they occupy a small isolated island of otherwise suitable habitat. The 1992 Recovery Plan indicates that a wolf population needs to occupy at least 10,000 contiguous sq mi (25,600 sq km) to be considered viable if it is isolated from other wolf populations, and must occupy at least half that area if it is not isolated from another self-sustaining population (USFWS 1992, pp. 25–26).

In summary, Minnesota Wolf Management Zone A (Federal Wolf Management Zones 1–4, Figure 2), Wisconsin Wolf Zones 1 and 2 (Figure 3), and the Upper Peninsula of Michigan contain suitable wolf habitat. The other areas within the DPS are unsuitable habitat, or are potentially habitat that is too small or too fragmented to be suitable for maintaining a viable wolf population.

Determining the Significant Portion of the Range Within the WGL DPS

The biological values of the various portions of the suitable habitat in the DPS are the important considerations for determining what constitutes SPR. Portions of the range that contribute minimally to the long-term viability of a species are likely to be insignificant, even if those areas constitute geographically large portions of the species' range. On the other hand, a small portion of the range that is necessary for a species' survival (e.g., the nesting areas of a wide-ranging colonially nesting bird) is a significant portion of its range regardless of its size. Significance of portions of the range must be evaluated in a case-by-case context, and not only in a quantitative or theoretical context.

Therefore, in determining the SPR within the WGL DPS we considered the factors listed above. These include the quality, quantity, and distribution of the habitat relative to the biological needs of the species, the need to maintain the remaining genetic diversity, the importance of geographic distribution in coping with catastrophes such as disease, the ability of the habitat to provide adequate wild prey, and the need to otherwise meet the conservation needs of the species.

It is generally recognized that Minnesota, Wisconsin, and Michigan provide the only sufficiently large areas in the Midwest having an adequate wild ungulate prey base and low road and human density for this DPS (USFWS 1992, pp. 56–58). Based on the biology of the gray wolf, threats to its continued existence, and conservation biology principles, the federal Recovery Plan specifies that two populations (or what equates to a single metapopulation) are needed to ensure long-term viability (*see* Recovery Criteria, above). The Recovery Plan states the importance of a large wolf population throughout Minnesota Wolf Management Zones 1 through 4 (geographically identical to Zone A in the 2001 Minnesota Wolf Management Plan, *see* Figure 2 in this rule) and the need for a second viable wolf population occupying 10,000 sq mi or 5,000 sq mi elsewhere in the eastern United States (depending on its isolation from the Minnesota wolf population) (USFWS 1992, pp. 24–29). These portions of Minnesota (Management Zones 1 through 4) and the portions of the range that support the second viable wolf population (Wisconsin Zones 1 and 2 and the entire Upper Peninsula of Michigan) are a SPR in the WGL DPS.

The Recovery Plan also discusses the importance of low-road-density areas, the importance of minimizing wolf-human conflicts, and the maintenance of an adequate natural prey base in the areas hosting these two necessary wolf populations. The Recovery Plan, along with numerous other scientific publications, supports the need to manage and reduce wolf-human conflicts. The Recovery Plan specifically recommends against managing wolves in large areas of unsuitable habitat, stating that Minnesota Zone 5 should be managed with a goal of zero wolves there, because ''Zone 5 is not suitable for wolves. Wolves found there should be eliminated by any legal means'' (USFWS 1992, p. 20). Therefore, the Recovery Plan views Zone 5 (identical to Minnesota Wolf Management Zone B, Figure 2), which is roughly 60 percent of the State, as not an important part of the range of the gray wolf. This portion of the State is predominantly agricultural land, with high road densities, and high potential for wolves to depredate on livestock. Although individual wolves and some wolf packs occupy parts of Zone 5, these wolves are using habitat islands or are existing in other situations where conditions generally are not conducive to their long-term persistence. Therefore, Minnesota Wolf Management Zone B (Recovery Plan Zone 5) is not a significant portion of the range within the DPS.

The second population, necessary to enhance both the resiliency and redundancy of the WGL DPR, has developed by naturally recolonizing suitable habitat areas in Wisconsin and the UP (*see* Recovery of the Gray Wolf in the Western Great Lakes Area, above). In Wisconsin, suitable habitat

(delineated as Zones 1 and 2 in Figure 3) is now largely occupied by wolf packs, but there are some gaps in the northeastern part of the State in Zone 1 where there appears to be room for additional packs to occupy areas between existing packs (Wydeven *et al.* 2006, p. 33). Similarly, in the UP of Michigan, wolf pairs or packs occur throughout the area identified as suitable (i.e., a high probability of wolf pack occupancy; Mladenoff *et al.* 1995, p. 287, Potvin *et al.* 2005, p. 1666), including every county of the UP except possibly Keweenaw County. Wolf density is lower in the northern and eastern portions of the UP where lower deer numbers may prevent establishment of packs in some localities (Potvin *et al.* 2005, pp. 1665–1666), but over the next several years packs may be able to fill in some of the currently unoccupied areas. Based on the suitability of the habitat in these areas and the importance of this second population to long-term wolf population viability, Wisconsin Zones 1 and 2 (*see* Figure 3) and the entire UP of Michigan are a SPR of the gray wolf WGL DPS.

The NLP of Michigan appears to have the only unoccupied potentially suitable wolf habitat in the Midwest that is of sufficient size to maintain wolf packs (Gehring and Potter 2005, p. 1239; Potvin 2003, pp. 44–45), although its small size and fragmented nature may mean that NLP wolf population viability would be dependent upon continuing immigration from the UP. The only part of Michigan's Lower Peninsula that warrants any consideration for inclusion as suitable habitat for the WGL DPS is composed of those areas of fragmented habitat studied by Potvin (2003, pp. 44–45) and Gehring and Potter (2005, p. 1239). However, these areas amount to less than half of the minimum area identified by the Recovery Plan as needed for the establishment of viable populations. These Lower Peninsula areas therefore might have difficulty maintaining wolf populations even with the help of occasional immigration of wolves from the UP (see *Suitable Habitat Within the Western Great Lakes Gray Wolf DPS* for additional discussion). While the UP wolves may be significant to any Lower Peninsula wolf population that may develop (occasional UP to Lower Peninsula movements may provide important genetic and demographic augmentation crucial to a small population founded by only a few individuals), the reverse will not be true—Lower Peninsula wolves would not be important to the wolf population in the UP. Thus, we conclude that the Northern Lower Peninsula is not a significant portion of the range of the gray wolf in the WGL DPS.

The only area outside these three states and within the WGL DPS that potentially might hold wolves on a frequent or possibly constant basis is the Turtle Mountain region that straddles the international border in north central North Dakota in the northwestern corner of the DPS. Road densities within the Turtle Mountains are below the thresholds believed to limit colonization by wolves. However, this area is only about 579 sq mi (1,500 sq km), with approximately 394 sq mi (1,020 sq km) in North Dakota, and roughly 185 sq mi (480 sq km) in Manitoba (Licht and Huffman 1996, p. 172). This area is far smaller that the 10,000 sq mi of habitat considered minimally necessary to support an isolated wolf population (USFWS 1992, pp. 25–26). Furthermore, the Manitoba portion of the Turtle Mountains is outside the currently listed area for the gray wolf and outside this WGL DPS. While this area may provide a small area of marginal wolf habitat and may support limited and occasional wolf reproduction, the Turtle Mountain area within the United States is not a SPR of gray wolves within the WGL DPS, because of its very small area and its setting as an island of forest surrounded by a landscape largely modified for agriculture and grazing (Licht and Huffman 1996, p. 173).

Similarly, other portions of the WGL DPS that lack suitable habitat, or only have areas of suitable habitat that are below the area thresholds specified in the Recovery Plan and/or are highly fragmented, cannot be considered a SPR of the gray wolf in the WGL DPS. These areas include the rest of eastern North Dakota, South Dakota, Iowa, Illinois, Indiana, Ohio, Wisconsin Wolf Management Zones 3 and 4 (see Figure 3), and most of the LP of Michigan. While large areas of historical range within the DPS boundary are either unoccupied by the species or occupied only on a transient basis, these areas are almost completely lacking suitable habitat, and there is little likelihood that they could ever support viable wolf populations. For example, of the five States partially included in the WGL DPS, the eastern halves of North Dakota and South Dakota arguably contain the best potential area for wolf recovery because of their low human population densities. Yet even there, the landscape is predominantly cropland and grazing land, the result of massive conversion from the native prairies where gray wolves once hunted bison, and it is covered with a network of public roads. Road density in eastern South Dakota is approximately 1.68 mi per sq mi, and the South Dakota Department of Transportation states that figure likely does not include the many section line roads that are open to public travel but are not on a regular maintenance schedule (Larson in litt. 2006b). The landscape of North Dakota is similar, with merely two percent of the State forested, resulting in a cropland-dominated landscape in eastern North Dakota that provides negligible cover for wolf use in denning and escape, except in the Turtle Mountains. The road density across the portion of North Dakota within the WGL DPS is 1.01 mi per sq mi (Barnhardt in litt. 2006). A finer-grained analysis (Moffett 1997, p. 31) shows that only small and scattered areas are below the 1 mi per sq mi threshold established by Great Lakes area researchers (Mladenoff *et al.*, 1995, pp. 288–289) as needed for the maintenance of viable wolf populations, and none of these areas of lower road density come close to the minimum size identified by the Recovery Plan (USFWS 1992, pp. 25–26) for a viable wolf population. In the open grazing and cropland-dominated landscape of the eastern Dakotas, it is likely that viable wolf populations would require even lower road densities than the threshold established by researchers in the much more wooded landscapes of Minnesota, Wisconsin, and the UP. Therefore, the eastern portions of South Dakota and North Dakota do not provide suitable gray wolf habitat and these areas cannot be considered to be significant portions of gray wolf range in the WGL DPS.

In summary, the areas that we determine to be a significant portion of the range of the WGL DPS are Minnesota Wolf Management Zone A (Figure 2), Wisconsin Zones 1 and 2 (Figure 3), and the entire Upper Peninsula of Michigan. These areas constitute the SPR in the DPS, because they fully meet the biological needs of the species and provide the conditions and land base to counter the threats to the wolf population within the DPS. The other areas of the WGL DPS do not constitute significant portions of the range of the gray wolf.

Wolf Populations on Federal Lands

National forests, and the prey species found in their various habitats, have been important to wolf conservation and recovery in the core areas of the WGL DPS. There are five national forests with resident wolves (Superior, Chippewa, Chequamegon-Nicolet, Ottawa, and Hiawatha National Forests) in Minnesota, Wisconsin and Michigan. Their wolf populations range from approximately 20 on the Nicolet portion

of the Chequamegon-Nicolet National Forest in northeastern Wisconsin, to 160–170 on the UP's Ottawa National Forest, to an estimated 465 (in winter of 2003–04) on the Superior National Forest in northeastern Minnesota (Lindquist in litt. 2005). Nearly half of the wolves in Wisconsin currently use the Chequamegon portion of the Chequamegon-Nicolet National Forest.

Voyageurs National Park, along Minnesota's northern border, has a land base of nearly 882 km^2 (340 mi^2). There are 40 to 55 wolves within 7 to 11 packs that exclusively or partially reside within the park, and at least 4 packs are located wholly inside the Park boundaries (Holbeck in litt. 2005, based on 2000–2001 data).

Within the boundaries of the WGL DPS, we currently manage seven units within the National Wildlife Refuge System with significant wolf activity. Primary among these are Agassiz National Wildlife Refuge (NWR), Tamarac NWR, and Rice Lake NWR in Minnesota; Seney NWR in the UP of Michigan; and Necedah NWR in central Wisconsin. Agassiz NWR has had as many as 20 wolves in 2 to 3 packs in recent years. In 1999, mange and illegal shootings reduced them to a single pack of five wolves and a separate lone wolf. Since 2001, however, two packs with a total of 10 to 12 wolves have been using the Refuge. About 60 percent of the packs' territories are located on the Refuge or on adjacent State-owned wildlife management area (Huschle in litt. 2005). Tamarac NWR has 2 packs, with a 15-year average of 12 wolves in one pack; adults and an unknown number of pups comprise the second pack Boyle, in litt. 2005). Rice Lake NWR, in Minnesota, has one pack of nine animals using the Refuge in 2004; in 2005, the pack had at least 6 individuals. Other single or paired wolves pass through the Refuge frequently (Stefanski pers. comm. 2004; McDowell in litt. 2005). In 2003, Seney NWR had one pack with two adults and two pups; in 2005 there were two pairs of wolves and several lone individuals using the Refuge (Olson in litt. 2005). Necedah NWR currently has 2 packs with at least 13 wolves in the packs (Trick in litt. 2005). Over the past ten years, Sherburne and Crane Meadows NWRs in central Minnesota have had intermittent, but reliable, observations and signs of individual wolves each year. To date, no established packs have been documented on either of those Refuges. The closest established packs are within 15 miles of Crane Meadows NWR at Camp Ripley Military Installation and 30 miles north of Sherburne NWR at Mille Lacs State Wildlife Management Area (Holler in litt. 2005).

Suitable Habitat Ownership and Protection

In Minnesota, public lands, including national forests, a national park, national wildlife refuges, tax-forfeit lands (managed mostly by counties), State forests, State wildlife management areas, and State parks, encompass approximately 42 percent of current wolf range. American Indians and Tribes own 3 percent, an additional 1,535 square miles (2,470 sq km), in Minnesota's wolf range (*see* Erb and Benson 2004, table 1). In its 2001 *Minnesota Wolf Management Plan*, MN DNR states that it ''will continue to identify and manage currently occupied and potential wolf habitat areas to benefit wolves and their prey on public and private land, in cooperation with landowners and other management agencies'' (MN DNR 2001, p. 25). MN DNR will monitor deer and moose habitat and, when necessary and appropriate, improve habitat for these species. MN DNR maintains that several large public land units of State parks and State forests along the Wisconsin border will likely ensure that the connection between the two States' wolf populations will remain open to wolf movements. Nevertheless, MN DNR stated that it would cooperate with Wisconsin Department of Natural Resources to incorporate the effects of future development ''into long-term viability analyses of wolf populations and dispersal in the interstate area'' (MN DNR 2001, p. 27).

The MN DNR Divisions of Forestry and Wildlife directly administer approximately 5,330 square miles of land in Minnesota's wolf range. DNR has set goals of enlarging and protecting its forested land base by, in part, ''minimizing the loss and fragmentation of private forest lands'' (MN DNR 2000, p. 20) and by connecting forest habitats with natural corridors (MN DNR 2000, p. 21). It plans to achieve these goals and objectives via several strategies, including the development of (Ecological) Subsection Forest Resource Management Plans (SFRMP) and to expand its focus on corridor management and planning.

In 2005 the Forest Stewardship Council (FSC) certified that 4.84 million acres of State-administered forest land are ''well managed'' (FSC 2005); the Sustainable Forestry Initiative (SFI) also certified that MN DNR was managing these lands to meet its standards. For the FSC certification, independent certifiers assessed forest management against FSC's Lakes States Regional Standard, which includes a requirement to maximize habitat connectivity to the extent possible at the landscape level (FSC 2005, p. 22).

Efforts to maximize habitat connectivity in the range of gray wolves would complement measures the MN DNR described in its State wolf plan (MN DNR 2001, pp. 26–27). As part of its post-delisting monitoring, the Service will review certification evaluation reports issued by FSC to assess MN DNR's ongoing efforts in this area.

Counties manage approximately 3,860 square miles of tax forfeit land in Minnesota's wolf range (MN DNR unpublished data). We are aware of no specific measures that any county in Minnesota takes to conserve wolves. If most of the tax-forfeit lands are maintained for use as timber lands or natural areas, however, and if regional prey levels are maintained, management specifically for wolves on these lands will not be necessary. MN DNR manages ungulate populations ''on a regional basis to ensure sustainable harvests for hunters, sufficient numbers for aesthetic and nonconsumptive use, and to minimize damage to natural communities and conflicts with humans such as depredation of agricultural crops'' (MN DNR 2001, p. 17). Moreover, although counties may sell tax-forfeit lands subject to Minnesota State law, they generally manage these lands to ensure that they will retain their productivity as forests into the future. For example, Crow Wing County's mission for its forest lands includes the commitment to ''sustain a healthy, diverse, and productive forest for future generations to come.'' In addition, at least four counties in Minnesota's wolf range—Beltrami, Carlton, Koochiching, and St. Louis—are certified by SFI, and four others (Aitkin, Cass, Itasca, and Lake) have been certified by FSC. About ten private companies with industrial forest lands in Minnesota's wolf range have also been certified by FSC.

There are no legal or regulatory requirements for the protection of wolf habitat, per se, on private lands in Minnesota. Land management activities such as timber harvest and prescribed burning carried out by public agencies and by private land owners in Minnesota's wolf range incidentally and significantly improves habitat for deer, the primary prey for wolves in the State. The impact of these measures is apparent from the continuing high deer densities in Minnesota's wolf range. The State's three largest deer harvests have occurred in the last three years (2003–05), and approximately one-half of the

Minnesota deer harvest is in the Forest Zone, which encompasses most of the occupied wolf range in the State (Lennarz 2005, p. 93, 98).

Given the extensive public ownership and management of land within Minnesota's wolf range, as well as the beneficial habitat management expected from tribal lands, we believe suitable habitat, and especially an adequate wild prey base, will remain available to the State's wolf population for the foreseeable future. Management of private lands for timber production will provide additional habitat suitable for wolves and white-tailed deer.

Similarly, current lands in northern and central Wisconsin that are judged to be primary and secondary wolf habitat are well protected from significant adverse development and habitat degradation due to public ownership and/or protective management that preserves the habitat and wolf prey base. Primary habitat (that is, areas with greater than 50 percent probability of wolf pack occupancy, Wydeven *et al.* 1999, pp. 47–48) totals 5,743 sq mi (14,874 sq km) and is 62 percent in Federal, State, Tribal, or county ownership. County lands, mostly county forests, comprise 29 percent of the primary habitat and Federal lands, mostly the Chequamegon-Nicolet National Forest, total another 17 percent. Most tribal land (7 percent of primary habitat), while not public land, is also very likely to remain as suitable deer and wolf habitat for the foreseeable future. State forest ownership protects 8 percent. Private industrial forest management practices will protect another 10 percent of the primary habitat, although unpredictable timber markets and the demand for second or vacation home sites may reduce this acreage over the next several decades. The remaining 29 percent is in other forms of private ownership and is vulnerable to loss from the primary habitat category to an unknown extent (Sickley in litt. 2006, unpublished data updating Table C2 of WI DNR 1999, p. 48).

Areas judged to be secondary wolf habitat by Wisconsin DNR (10 to 50 percent probability of occupancy by wolf packs, Wydeven *et al.* 1999, pp. 47–48) are somewhat more developed or fragmented habitats and are less well protected overall, because only slightly over half is in public ownership or under management that protects the habitat and prey base. Public and tribal ownership protects 48 percent of the secondary habitat, with county (17 percent) and national (18 percent) forests ownership again protecting the largest segments. Tribal ownership covers 5 percent, and state ownership, 7 percent. Private industrial forest ownership provides protection to 5 percent, and the remaining 47 percent is in other forms of private ownership (Sickley in litt. 2006).

County forest lands represent the single largest category of primary wolf habitat in Wisconsin. Wisconsin Statute 28.11 guides the administration of county forests, and directs management for production of forest products together with recreational opportunities, wildlife, watershed protection and stabilization of stream flow. This Statute also provides a significant disincentive to conversion for other uses. Any proposed withdrawal of county forest lands for other uses must meet a standard of a higher and better use for the citizens of Wisconsin, and be approved by two-thirds of the County Board. As a result of this requirement, withdrawals are infrequent, and the county forest land base is actually increasing.

This analysis shows that nearly three-quarters of the primary habitat in Wisconsin receives substantial protection due to ownership and/or management for sustainable timber production. Over half of the secondary habitat is similarly protected. Given that portions of the primary habitat in northeastern Wisconsin remain sparsely populated with wolf packs (Wydeven *et al.* 2006, p. 33), thereby allowing for continuing wolf population expansion in that area, we believe this degree of habitat protection is more than adequate to support a viable wolf population in Wisconsin for the foreseeable future.

In the UP of Michigan, State and Federal ownership comprises 2.0 and 2.1 million acres respectively, representing 19.3 percent and 20.1 percent of the land surface of the UP. The Federal ownership is composed of 87 percent national forest, 8 percent national park, and 5 percent national wildlife refuge. The management of these three categories of Federal land is discussed elsewhere, but clearly will benefit gray wolves and their prey.

State lands on the UP are 94 percent State forest land, 6 percent State park, and less than 1 percent in fishing and boating access areas and State game areas. Part 525, Sustainable Forestry on State Forestlands, of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, directs State forestland management in Michigan. It requires the MI DNR to manage the State forests in a manner consistent with sustainable forestry, to prepare and implement a management plan, and to seek and maintain a third party certification that the lands are managed in a sustainable fashion (MI DNR 2005c, p. 1).

Much of the private land on the UP is managed or protected in a manner that will maintain forest cover and provide suitable habitat for wolves and white-tailed deer. Nearly 1.9 million acres of large-tract industrial forest lands and another 1.9 million acres of smaller private forest land are enrolled in the Commercial Forest Act (CFA). These 3.7 million acres are managed for long-term sustainable timber production under forest management plans written by certified foresters; in return, the landowners benefit from a reduction in property taxes. In addition, nearly 37,000 acres on the UP are owned by The Nature Conservancy, and continue to be managed to restore and preserve native plant and animal communities. Therefore, these private land management practices currently are preserving an additional 36 percent of the UP as suitable habitat for wolves and their prey species.

In total, 39 percent of the UP is federally- and State-owned land whose management will benefit wolf conservation for the foreseeable future, and another 36 percent is private forest land that is being managed, largely under the incentives of the CFA, in a way that provided provides suitable habitat and prey for wolf populations. Therefore, a minimum of nearly three-quarters of the UP should continue to be suitable for gray wolf conservation, and we do not envision UP habitat loss or degradation as a problem for wolf population viability in the foreseeable future.

Hearne *et al.* (2003), determined that a viable wolf population (one having less than 10 percent chance of extinction over 100 years), should consist of at least 175 to 225 wolves (p. 170), and they modeled various likely scenarios of habitat conditions in the UP of Michigan and northern Wisconsin through the year 2020 to determine whether future conditions would support a wolf population of that size. Most scenarios of future habitat conditions resulted in viable wolf populations in each State through 2020. When the model analyzed the future conditions in the two States combined, all scenarios produced a viable wolf population through 2020. Their scenarios included increases in human population density, changes in land ownership that may result in decreased habitat suitability, and increased road density (pp. 101–151).

The large areas of unsuitable habitat in the eastern Dakotas; the northern portions of Iowa, Illinois, Indiana, and Ohio; and the southern areas of

Minnesota, Wisconsin, and Michigan; as well as the relatively small areas of unoccupied potentially suitable habitat, do not constitute a SPR for the WGL DPS. Therefore, we have determined that the existing and likely future threats to wolves outside the currently occupied areas, and especially to wolves outside of Minnesota, Wisconsin, and the UP, do not rise to the level that they threaten the long-term viability of wolf populations in Minnesota, Wisconsin, and the UP of Michigan.

In summary, wolves currently occupy the vast majority of the suitable habitat in the WGL DPS, which constitutes the SPR within the WGL DPS, and that habitat is adequately protected for the foreseeable future. Unoccupied areas that have the characteristics of suitable habitat exist in small and fragmented parcels and are not likely to develop viable wolf populations. Threats to those habitat areas, which are not a SPR within the WGL SPR, will not adversely impact the recovered wolf metapopulation in the DPS.

Prey

Wolf density is heavily dependent on prey availability (e.g., expressed as ungulate biomass, Fuller *et al.* 2003, pp. 170–171), but prey availability is not likely to threaten wolves in the WGL DPS. Conservation of primary wolf prey in the WGL DPS, white-tailed deer and moose, is clearly a high priority for State conservation agencies. As Minnesota DNR points out in its wolf management plan (MN DNR 2001, p. 25), it manages ungulates to ensure a harvestable surplus for hunters, nonconsumptive users, and to minimize conflicts with humans. To ensure a harvestable surplus for hunters, MN DNR must account for all sources of natural mortality, including loss to wolves, and adjust hunter harvest levels when necessary. For example, after severe winters in the 1990's, MN DNR modified hunter harvest levels to allow for the recovery of the local deer population (MN DNR 2001, p. 25). In addition to regulation of human harvest of deer and moose, MN DNR also plans to continue to monitor and improve habitat for these species. Land management carried out by other public agencies and by private land owners in Minnesota's wolf range, including timber harvest and prescribed fire, incidentally and significantly improves habitat for deer, the primary prey for wolves in the State. The success of these measures is apparent from the continuing high deer densities in the Forest Zone of Minnesota, and the fact that the State's three largest deer harvests have occurred in the last three years. Approximately one-half of the Minnesota deer harvest is in the Forest Zone, which encompasses most of the occupied wolf range in the State (Lennarz 2005, p. 93). There is no indication that harvest of deer and moose or management of their habitat will significantly depress abundance of these species in Minnesota's core wolf range. Therefore, prey availability is not likely to endanger gray wolves in the foreseeable future in the State.

Similarly, the deer populations in Wisconsin and the UP of Michigan are at historically high levels. Wisconsin's pre-season deer population has exceeded 1 million animals since 1984 (WI DNR undated a), and hunter harvest has exceeded 400,000 deer in 9 of the last 11 years (WI DNR undated b). Michigan's 2005 pre-season deer population was approximately 1.7 million deer, with about 336,000 residing in the UP, and the 2006 estimates projects slightly higher UP deer populations (MI DNR 2006b, pp. 2–4). Currently MI DNR is proposing revised deer management goals to guide management of the deer population through 2010. The proposed UP 2006–2010 goal range is 323,000 to 411,000 (MI DNR 2005d), which would maintain, or possibly increase, the current ungulate prey base for UP wolves. Short of a major, and unlikely, shift in deer management and harvest strategies, there will be no shortage of prey for Wisconsin and Michigan wolves for the foreseeable future.

Summary of Factor A—The wolf population in the WGL DPS currently occupies all the suitable habitat area identified for recovery in the Midwest in the 1978 and 1992 Recovery Plans, which are the SPR within the DPS, and most of the potentially suitable habitat in the WGL DPS. Unsuitable habitat, and the small fragmented areas of suitable habitat away from these core areas, are areas where viable wolf populations are unlikely to develop and persist. Although they may have been historical habitat, many of these areas are no longer suitable for wolves, and none of them are important to meet the biological needs of the species. They therefore are not a SPR of the WGL DPS.

The WGL DPS wolf population exceeds its numerical, temporal, and distributional goals for recovery. A delisted wolf population would be safely maintained above recovery levels for the foreseeable future within the SPR of the DPS. Because much important wolf habitat in the SPR is in public ownership, the States will continue to manage for high ungulate populations, and the States, Tribes, and Federal land management agencies will adequately regulate human-caused mortality of wolves and wolf prey. This will allow these three States to easily support a recovered and viable wolf metapopulation into the foreseeable future. We conclude that gray wolves within the SPR in this DPS are not in danger of extinction now, or likely to be in danger of extinction in the foreseeable future, as a result of destruction, modification, or curtailment of the species' habitat or range.

B. Overutilization for commercial, recreational, scientific, or educational purposes.

Threats to wolves resulting from scientific or educational purposes are not likely to increase substantially following delisting of the DPS, and any increased use for these purposes will be regulated and monitored by the States and Tribes in the core recovery areas. Since their listing under the Act, no gray wolves have been legally killed or removed from the wild in any of the nine States included in the WGL DPS for either commercial or recreational purposes. Some wolves may have been illegally killed for commercial use of the pelts and other parts, but we think that illegal commercial trafficking in wolf pelts or parts and illegal capture of wolves for commercial breeding purposes is rare. State wolf management plans for Minnesota, Wisconsin, and Michigan ensure that wolves will not be killed for these purposes for many years following Federal delisting, so these forms of mortality will not emerge as new threats upon delisting. See Factor D for a detailed discussion of State wolf management plans, and for applicable regulations in States lacking wolf management plans.

We do not expect the use of wolves for scientific purposes to increase in proportion to total wolf numbers in the WGL DPS after delisting. Prior to delisting, the intentional or incidental killing, or capture and permanent confinement, of endangered or threatened gray wolves for scientific purposes has only legally occurred under permits or subpermits issued by the Service (under section 10(a)(1)(A)) or by a State agency operating under a cooperative agreement with the Service pursuant to section 6 of the Act (50 CFR 17.21(c)(5) and 17.31(b)). Although exact figures are not available, throughout the conterminous 48 States, such permanent removals of wolves from the wild have been very limited and probably comprise an average of not more than two animals per year since the species was first listed as endangered. In the WGL DPS, these animals were either taken from the

Minnesota wolf population during long-term research activities (about 15 gray wolves) or were accidental takings as a result of research activities in Wisconsin (4 to 5 mortalities and 1 long-term confinement) and in Michigan (2 mortalities) (Berg in litt. 1998; Mech in litt. 1998; Roell in litt. 2004, in litt. 2005a).

The Minnesota DNR plans to encourage the study of wolves with radio-telemetry after delisting, with an emphasis on areas where they expect wolf-human conflicts and where wolves are expanding their range (MN DNR 2001, p. 19). Similarly, Wisconsin and Michigan DNRs will continue to trap wolves for radio-collaring, examination, and health monitoring for the foreseeable future (WI DNR 1999, pp. 19–21; MI DNR 1997, p. 22; WI DNR 2006a, p. 14). The continued handling of wild wolves for research, including the administration of drugs, may result in some accidental deaths of wolves. We believe that capture and radio-telemetry-related injuries or mortalities will not increase significantly above the level observed before delisting in proportion to wolf abundance; adverse effects to wolves associated with such activities have been minimal and would not constitute a threat to the WGL DPS.

No wolves have been legally removed from the wild for educational purposes in recent years. Wolves that have been used for such purposes are the captive-reared offspring of wolves that were already in captivity for other reasons, and this is not likely to change as a result of Federal delisting. We do not expect taking for educational purposes to constitute any threat to Midwest wolf populations for the foreseeable future.

See Factor E for a discussion of taking of gray wolves by Native Americans for religious, spiritual, or traditional cultural purposes. See the Depredation Control Programs sections under Factor D for discussion of other past, current, and potential future forms of intentional and accidental take by humans, including depredation control, public safety, and under public harvest. While public harvest may include recreational harvest, it is likely that public harvest will also serve as a management tool, so it is discussed in Factor D.

Summary of Factor B—Taking wolves for scientific or educational purposes in the other WGL DPS States may not be regulated or closely monitored in the future, but the threat to wolves in those States will not be significant to the long-term viability of the wolf population in the WGL DPS. The potential limited commercial and recreational harvest that may occur in the DPS will be regulated by State and/or Tribal conservation agencies and is discussed under Factor D. Therefore, we conclude that overutilization for commercial, recreational, scientific, or educational purposes will not be a threat sufficient to cause the WGL DPS gray wolves to be in danger of extinction in the foreseeable future in all or a significant portion of the range within the WGL DPS.

C. Disease or predation.

Disease

Many diseases and parasites have been reported for the gray wolf, and several of them have had significant impacts during the recovery of the species in the 48 conterminous States (Brand *et al.* 1995, p. 419; WI DNR 1999, p. 61). If not monitored and controlled by States, these diseases and parasites, and perhaps others, may threaten gray wolf populations in the future. Thus, to avoid a future decline caused by diseases or parasites, States and their partners will have to diligently monitor the prevalence of these pathogens in order to effectively respond to significant outbreaks.

Canine parvovirus (CPV) is a relatively new disease that infects wolves, domestic dogs, foxes, coyotes, skunks, and raccoons. Recognized in the United States in 1977 in domestic dogs, it appeared in Minnesota wolves (based upon retrospective serologic evidence) live-trapped as early as 1977 (Mech *et al.* 1986, p. 105). Minnesota wolves, however, may have been exposed to the virus as early as 1973 (Mech and Goyal 1995, p. 568). Serologic evidence of gray wolf exposure to CPV peaked at 95 percent for a group of Minnesota wolves live-trapped in 1989 (Mech and Goyal 1993, p, 331). In a captive colony of Minnesota wolves, pup and yearling mortality from CPV was 92 percent of the animals that showed indications of active CPV infections in 1983 (Mech and Fritts 1987, p. 6), demonstrating the substantial impacts this disease can have on young wolves. It is believed that the population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (WI DNR 1999, p. 61). CPV has been detected in nearly every wolf population in North America including Alaska (Bailey *et al.* 1995, p. 443) and exposure in wolves is now believed to be almost universal.

There is no evidence that CPV has caused a population decline or has had a significant impact on the recovery of the Minnesota gray wolf population. Mech and Goyal (1995, p. 566, Table 1, p. 568, Fig. 3), however, found that high CPV prevalence in the wolves of the Superior National Forest in Minnesota occurred during the same years in which wolf pup numbers were low. Because the wolf population did not decline during the study period, they concluded that CPV-caused pup mortality was compensatory, that is, it replaced deaths that would have occurred from other causes, especially starvation of pups. They theorized that CPV prevalence affects the amount of population increase and that a wolf population will decline when 76 percent of the adult wolves consistently test positive for CPV exposure. Their data indicate that CPV prevalence in adult wolves in their study area increased by an annual average of 4 percent during 1979–93 and was at least 80 percent during the last 5 years of their study (Mech and Goyal 1995, pp. 566, 568). Additional data gathered since 1995, currently in preparation for publication, suggests that CPV has been reducing pup survival both in the Superior National Forest and statewide, between 1984 and 2004; however, statewide there is some evidence of a slight increase in pup survival since about 1995. These conclusions are based upon an inverse relationship between pup numbers in summer captures and seroprevalence of CPV antibodies in summer-captured adult wolves (Mech in litt. 2006). These data provide strong justification for continuing population and disease monitoring.

Wisconsin DNR, in conjunction with the U.S. Geological Survey National Wildlife Health Center in Madison, Wisconsin, (formerly the National Wildlife Health Laboratory) has an extensive dataset on the incidence of wolf diseases, beginning in 1981. Canine parvovirus exposure was evident in 5 of 6 wolves tested in 1981, and probably stalled wolf population growth in Wisconsin during the early and mid-1980s when numbers there declined or were static; at that time 75 percent of 32 wolves tested positive for CPV. During the following years of population increase (1988–96) only 35 percent of the 63 wolves tested positive for CPV (WI DNR 1999, p. 62). More recent exposure rates for CPV continue to be high in Wisconsin wolves, with annual rates ranging from 60 to 100 percent among wild wolves handled from 2001 through mid-2005. Part of the reason for high exposure percentages is likely an increased emphasis in sampling pups and Central Forest wolves starting in 2001, so comparisons of post- and pre-2001 data are of limited value. CPV appears not to be a significant cause of mortality, as only a single wolf (male pup) is known to have died from CPV during this period (Wydeven and Wiedenhoeft 2002, p. 8 Table 4; 2003a,

pp. 11–12 Table 4; 2004a, pp. 11–12 Table 5; 2005, pp. 19–20 Table 4; 2006, pp. 23–25 Table 4). While the difficulty of discovering CPV-killed pups must be considered, and it is possible that CPV-caused pup mortality is being underestimated, the continuing increase of the Wisconsin wolf population indicates that CPV mortality is no longer impeding wolf population growth in the State. It may be that many Wisconsin wolves have developed some degree of resistance to CPV, and this disease is no longer a significant threat in the State.

Similar to Wisconsin wolves, serological testing of Michigan wolves captured from 1992 through 2001 (most recent available data) shows that the majority of UP wolves have been exposed to CPV. Fifty-six percent of 16 wolves captured from 1992 to 1999 and 83 percent of 23 wolves captured in 2001 showed antibody titers at levels established as indicative of previous CPV exposure that may provide protection from future infection from CPV (Beheler in litt. undated, in litt. 2004). There are no data showing any CPV-caused wolf mortality or population impacts to the gray wolf population on the UP, but few wolf pups are handled in the UP (Hammill in litt. 2002, Beyer in litt. 2006a), so low levels of CPV-caused pup mortality may go undetected there. Mortality data are primarily collected from collared wolves, which until recently received CPV inoculations. Therefore, mortality data for the UP should be interpreted cautiously.

Sarcoptic mange is caused by a mite (*Sarcoptes scabiei*) infection of the skin. The irritation caused by the feeding and burrowing mites results in scratching and then severe fur loss, which in turn can lead to mortality from exposure during severe winter weather. The mites are spread from wolf to wolf by direct body contact or by common use of ''rubs'' by infested and uninfested animals. Thus, mange is frequently passed from infested females to their young pups, and from older pack members to their pack mates. In a long-term Alberta, Canada, 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, p. 428).

From 1991 to 1996, 27 percent of live-trapped Wisconsin wolves exhibited symptoms of mange. During the winter of 1992–93, 58 percent showed symptoms, and a concurrent decline in the Wisconsin wolf population was attributed to mange-induced mortality (WI DNR 1999, p. 61). Seven Wisconsin wolves died from mange from 1993 through October 15, 1998, and severe fur loss affected five other wolves that died from other causes. During that period, mange was the third largest cause of death in Wisconsin wolves, behind trauma (usually vehicle collisions) and shooting (Thomas in litt. 1998). Largely as a result of mange, pup survival was only 16 percent in 1993, compared to a normal 30 percent survival rate from birth to one year of age.

Mange continues to be prevalent in Wisconsin, especially in the central Wisconsin wolf population. Mortality data from closely monitored radio-collared wolves provides a relatively unbiased estimate of mortality factors, especially those linked to disease or illegal actions, because nearly all carcasses are located within a few days of deaths. Diseased wolves suffering from hypothermia or nearing death generally crawl into dense cover and may go undiscovered if they are not radio-tracked (Wydeven *et al.* 2001b, p. 14). These data show that during the period of 2000 through August 2006 mange has killed as many wolves as were killed by illegal shooting, making them the two highest causes of wolf mortality in the State. Based on mortality data from closely monitored radio-collared wolves, mange mortality ranged from 14 percent of deaths in 2002 to 30 percent of deaths in 2003, totaling 27 percent of radio-collared wolf deaths for this period. Illegal shootings resulted in the death of an identical percentage of wolves (Wydeven and Wiedenhoeft 2001, p. 8 Table 5; 2002 p. 8 Table 4; 2003a, pp. 11–12 Table 4; 2004a, pp. 11–12 Table 5; 2005, pp. 19–20 Table 4). Preliminary data for 2006 show mange mortality and illegal shooting remain equal at 30 percent of radio-collared wolf mortality (Wydeven in litt. 2006c, unpublished data). Mange mortality does not appear to be declining in Wisconsin, and the incidence of mange may be on the increase among central Wisconsin wolf packs (Wydeven *et al.* 2005b, p. 6). However, not all mangy wolves succumb; other observations showed that some mangy wolves are able to survive the winter (Wydeven *et al.* 2001b, p. 14).

The survival of pups during their first winter is believed to be strongly affected by mange. The highest to date wolf mortality (30 percent of radio-collared wolves; Wydeven and Wiedenhoeft 2004a, p. 12) from mange in Wisconsin in 2003 may have had more severe effects on pup survival than in previous years. The prevalence of the disease may have contributed to the relatively small population increase in 2003 (2.4 percent in 2003 as compared to the average 18 percent to that point since 1985). However, mange has not caused a decline in the State's wolf population, and even though the rate of population increase has slowed in recent years, the wolf population continues to increase despite the continued prevalence of mange in Wisconsin wolves. Although mange mortality may not be the primary determinant of wolf population growth in the State, the impacts of mange in Wisconsin need to be closely monitored as identified and addressed in the Wisconsin wolf management plan (WI DNR 1999, p. 21; 2006a, p. 14).

Seven wild Michigan wolves died from mange during 1993–97, making it responsible for 21 percent of all mortalities, and all disease-caused deaths, during that period (MI DNR 1997, p. 39). During bioyears (mid-April to mid-April) 1999–04, mange-induced hypothermia killed 9 of the 11 radio-collared Michigan wolves whose cause of death was attributed to disease, and it represented 17 percent of the total mortality during those years. Mange caused the death of 31 percent of radio-collared wolves during the 1999–2001 bioyears, but that rate decreased to 11 percent during the 2001–04 bioyears. However, the sample sizes are too small to reliably detect a trend (Beyer 2005 unpublished data). Before 2004, MI DNR treated all captured wolves with Ivermectin if they showed signs of mange. In addition, MI DNR vaccinated all captured wolves against CPV and canine distemper virus (CDV) and administered antibiotics to combat potential leptospirosis infections. These inoculations were discontinued in 2004 to provide more natural biotic conditions and to provide biologists with an unbiased estimate of disease-caused mortality rates in the population (Roell in litt. 2005b).

Wisconsin wolves similarly had been treated with Ivermectin and vaccinated for CPV and CDV when captured, but the practice was stopped in 1995 to allow the wolf population to experience more natural biotic conditions. Since that time, Ivermectin has been administered only to captured wolves with severe cases of mange. In the future, Ivermectin and vaccines will be used sparingly on Wisconsin wolves, but will be used to counter significant disease outbreaks (Wydeven in litt. 1998).

Among Minnesota wolves, mange may always have been present at low levels. However, based on observations of wolves trapped under the Federal wolf depredation control program, mange appears to have become more widespread in the State during the

1999–2005 period. Data from Wildlife Services trapping efforts showed only 8 wolves showing symptoms of mange were trapped during a 22-month period in 1994–96; in contrast, Wildlife Services trapped 10, 6, and 19 mangy wolves in 2003, 2004, and 2005, respectively (2005 data run through November 22 only). These data indicate that 12.6 percent of Minnesota wolves were showing symptoms of mange in 2005 (Paul 2005 in litt.). However, the thoroughness of these observations may not have been consistent over this 11-year period. In a separate study, mortality data from 12 years (1994–2005) of monitoring radio-collared wolves in 7–9 packs in north-central Minnesota show that 11 percent died from mange (DelGiudice in litt. 2005). However, the sample size (17 total mortalities, 2 from mange in 1998 and 2004) is far too small to deduce trends in mange mortality over time. Furthermore, these data are from mange mortalities, while the Wildlife Services' data are based on mange symptoms, not mortalities.

It is hypothesized that the current incidence of mange is more widespread than it would have otherwise been, because the WGL wolf range has experienced a series of mild winters beginning with the winter of 1997–98 (Van Deelen 2005, Fig. 2). Mange-induced mortality is chiefly a result of winter hypothermia, thus the less severe winters resulted in higher survival of mangy wolves, and increased spread of mange to additional wolves during the following spring and summer. The high wolf population, and especially higher wolf density on the landscape, may also be contributing to the increasing occurrence of mange in the WGL wolf population. There has been speculation that 500 or more Minnesota wolves died as a result of mange over the last 5 to 6 years, causing a slowing or cessation of previous wolf population increase in the State (Paul in litt. 2005).

Lyme disease, caused by the spirochete (*Borrelia burgdorferi*), is another relatively recently recognized disease, first documented in New England in 1975, although it may have occurred in Wisconsin as early as 1969. It is spread by ticks that pass the infection to their hosts when feeding. Host species include humans, horses, dogs, white-tailed deer, white-footed mice, eastern chipmunks, coyotes, and wolves. The prevalence of Lyme disease exposure in Wisconsin wolves averaged 70 percent of live-trapped animals in 1988–91, dropped to 37 percent during 1992–97 and was back up to 56 percent (32 of 57 tested) in 2002–04 (Wydeven and Wiedenhoeft 2004b, pp. 23–24 Table 7; 2005, pp. 23–24 Table 7). Clinical symptoms have not been reported in wolves, but infected dogs can experience debilitating conditions, and abortion and fetal mortality have been reported in infected humans and horses. It is possible that individual wolves may be debilitated by Lyme disease, perhaps contributing to their mortality; however, Lyme disease is not believed to be a significant factor affecting wolf populations (Kreeger 2003, p. 212).

The dog louse (*Trichodectes canis*) has been detected in wolves in Ontario, Saskatchewan, Alaska, Minnesota, and Wisconsin (Mech *et al.* 1985, pp. 404–405; Kreeger 2003, p. 208; Paul in litt. 2005). Dogs are probably the source of the initial infections, and subsequently wild canids transfer lice by direct contact with other wolves, particularly between females and pups. Severe infestations result in irritated and raw skin, substantial hair loss, particularly in the groin. However, in contrast to mange, lice infestations generally result in loss of guard hairs but not the insulating under fur, thus, hypothermia is less likely to occur and much less likely to be fatal (Brand *et al.* 1995, p. 426). Even though observed in nearly 4 percent in a sample of 391 Minnesota wolves in 2003–05 (Paul in litt. 2005), dog lice infestations have not been confirmed as a cause of wolf mortality, and are not expected to have a significant impact even at a local scale.

Canine distemper virus (CDV) is an acute disease of carnivores that has been known in Europe since the sixteenth century and is now infecting dogs worldwide (Kreeger 2003, p. 209). CDV generally infects dog pups when they are only a few months old, so mortality in wild wolf populations might be difficult to detect (Brand *et al.* 1995, pp. 420–421). CDV mortality among wild wolves has been documented only in two littermate pups in Manitoba (Carbyn 1982, pp. 111–112), in two Alaskan yearling wolves (Peterson *et al.* 1984, p. 31), and in two Wisconsin wolves (an adult in 1985 and a pup in 2002 (Thomas in litt. 2006; Wydeven and Wiedenhoeft 2003b, p. 20). Carbyn (1982, pp. 113–116) concluded that CDV was a contributor to a 50 percent decline of the wolf population in Riding Mountain National Park (Manitoba, Canada) in the mid-1970s. Serological evidence indicates that exposure to CDV is high among some Midwest wolves—29 percent in northern Wisconsin wolves and 79 percent in central Wisconsin wolves in 2002–04 (Wydeven and Wiedenhoeft 2004b, pp. 23–24 Table 7; 2005, pp 23–24 Table 7). However, the continued strong recruitment in Wisconsin and elsewhere in North American wolf populations indicates that distemper is not likely a significant cause of mortality (Brand *et al.* 1995, p. 421).

Other diseases and parasites, including rabies, canine heartworm, blastomycosis, bacterial myocarditis, granulomatous pneumonia, brucellosis, leptospirosis, bovine tuberculosis, hookworm, coccidiosis, and canine hepatitis have 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; Hassett in litt. 2003; Johnson 1995, p. 431, 436–438; Mech and Kurtz 1999, pp. 305–306; Thomas in litt. 1998, Thomas in litt. 2006, WI DNR 1999, p. 61; Kreeger 2003, pp. 202–214). Continuing wolf range expansion, however, likely will provide new avenues for exposure to several of these diseases, especially canine heartworm, raccoon rabies, and bovine tuberculosis (Thomas in litt. 2000, in litt. 2006), further emphasizing the need for disease monitoring programs. In addition, the possibility of new diseases developing and existing diseases, such as chronic wasting disease (CWD), West Nile Virus (WNV) and canine influenza (Crawford *et al.* 2005, 482–485), moving across species barriers or spreading from domestic dogs to wolves must all be taken into account, and monitoring programs will need to address such threats. Currently there is no evidence that CWD can directly affect canids (Thomas in litt. 2006). Wisconsin wolves have been tested for WNV at necropsy since the first spread of the virus across the State: to date all results have been negative. Although experimental infection of dogs produced no ill effects, WNV is reported to have killed two captive wolf pups, so young wolves may be at some risk (Thomas in litt. 2006).

In aggregate, diseases and parasites were the cause of 21 percent of the diagnosed mortalities of radio-collared wolves in Michigan from 1999 through 2004 (Beyer unpublished data 2005) and 27 percent of the diagnosed mortalities of radio-collared wolves in Wisconsin and adjacent Minnesota from October 1979 through June 2005 (Wydeven and Wiedenhoeft 2005, p. 21).

Many of the diseases and parasites are known to be spread by wolf-to-wolf contact. Therefore, the incidence of mange, CPV, CDV, and canine heartworm may increase as wolf densities increase in the more recently colonized areas (Thomas in litt. 2006). Because wolf densities generally are relatively stable following the first few years of colonization, wolf-to-wolf

contacts will not likely lead to a continuing increase in disease prevalence in areas that have been occupied for several years or more and are largely saturated with wolf packs (Mech in litt. 1998).

Disease and parasite impacts may increase because several wolf diseases and parasites are carried and spread by domestic dogs. This transfer of pathogens from domestic dogs to wild wolves may increase as gray wolves continue to colonize non-wilderness areas (Mech in litt. 1998). Heartworm, CPV, and rabies are the main concerns (Thomas in litt. 1998) but dogs may become significant vectors for other diseases with potentially serious impacts on wolves in the future (Crawford *et al.* 2005, pp. 482–485). However, to date wolf populations in Wisconsin and Michigan have continued their expansion into areas with increased contacts with dogs and have shown no adverse pathogen impacts since the mid-1980s impacts from CPV.

Disease and parasite impacts are a recognized concern of the Minnesota, Michigan, and Wisconsin DNRs. The Michigan Gray Wolf Recovery and Management Plan states that necropsies will be conducted on all dead wolves, and that all live wolves that are handled will be examined, with blood, skin, and fecal samples taken to provide disease information. The Michigan Plan states that wolf health and disease monitoring will receive a high priority for a minimum of five years following Federal delisting (MI DNR 1997, pp. 21–22, 45).

Similarly, the Wisconsin Wolf Management Plan states that as long as the wolf is State-listed as a threatened or endangered species, the WI DNR will conduct necropsies of dead wolves and test a sample of live-captured wolves for diseases and parasites, with a goal of screening 10 percent of the State wolf population for diseases annually. However, the plan anticipates that since State delisting (which occurred on March 24, 2004), disease monitoring will be scaled back because the percentage of the wolf population that is live-trapped each year will decline. Disease monitoring of captured wolves currently is focusing on diseases known to be causing noteworthy mortality, such as mange, and other diseases for which data are judged to be sparse, such as Lyme disease and ehrlichiosis (Wydeven and Wiedenhoeft 2006, p. 8). The State will continue to test for disease and parasite loads through periodic necropsy and scat analyses. The 2006 update to the 1999 plan also recommends that all wolves live-trapped for other studies should have their health monitored and reported to the WI DNR wildlife health specialists (WI DNR 1999, p. 21; 2006c, p. 14). Furthermore, the 2006 update identifies a need for ''continued health monitoring to document significant disease events that may impact the wolf population and to identify new diseases in the population * * *.'' (WI DNR 2006a, p. 24).

The Minnesota Wolf Management Plan states that MN DNR ''will collaborate with other investigators and continue monitoring disease incidence, where necessary, by examination of wolf carcasses obtained through depredation control programs, and also through blood/tissue physiology work conducted by DNR and the U.S. Geological Survey. DNR will also keep records of documented and suspected incidence of sarcoptic mange (MN DNR 2001, p. 32).'' In addition, it will initiate ''(R)egular collection of pertinent tissues of live captured or dead wolves'' and periodically assess wolf health ''when circumstances indicate that diseases or parasites may be adversely affecting portions of the wolf population (MN DNR 2001, p. 19).'' Unlike Michigan and Wisconsin, Minnesota has not established minimum goals for the proportion of its wolves that will be assessed for disease nor does it plan to treat any wolves, although it does not rule out these measures. Minnesota's less intensive approach to disease monitoring and management seems warranted in light of its much greater abundance of wolves than in the other two States.

In areas within the WGL DPS, but outside Minnesota, Wisconsin, and Michigan, we lack data on the incidence of diseases or parasites in transient wolves. However, the WGL DPS boundary is laid out in a manner such that the vast majority of, and perhaps all, wolves that will occur in the DPS in the foreseeable future will have originated from the Minnesota-Wisconsin-Michigan wolf metapopulation. Therefore, they will be carrying the ''normal'' complement of Midwest wolf parasites, diseases, and disease resistance with them. For this reason, any new pairs, packs, or populations that develop within the DPS are likely to experience the same low to moderate adverse impacts from pathogens that have been occurring in the core recovery areas. The most likely exceptions to this generalization would arise from exposure to sources of novel diseases or more virulent forms that are being spread by other canid species that might be encountered by wolves dispersing into currently unoccupied areas of the DPS. To increase the likelihood of detecting such novel, or more virulent diseases and thereby reduce the risk that they might pose to the core meta-population after delisting, we will encourage these States and Tribes to provide wolf carcasses or suitable tissue, as appropriate, to the USGS Madison Wildlife Health Center or the Service's National Wildlife Forensics Laboratory for necropsy. This practice should provide an early indication of new or increasing pathogen threats before they reach the core metapopulation or impact future transient wolves to those areas.

Disease summary—We believe that several diseases have had noticeable impacts on wolf population growth in the Great Lakes region in the past. These impacts have been both direct, resulting in mortality of individual wolves, and indirect, by reducing longevity and fecundity of individuals or entire packs or populations. Canine parvovirus stalled wolf population growth in Wisconsin in the early and mid-1980s and has been implicated in the decline in the mid-1980s of the isolated Isle Royale wolf population in Michigan, and in attenuating wolf population growth in Minnesota (Mech in litt. 2006). Sarcoptic mange has affected wolf recovery in Michigan's UP and in Wisconsin over the last ten years, and it is recognized as a continuing issue. Despite these and other diseases and parasites, the overall trend for wolf populations in the WGL DPS continues to be upward. Wolf management plans for Minnesota, Michigan, and Wisconsin include disease monitoring components that we expect will identify future disease and parasite problems in time to allow corrective action to avoid a significant decline in overall population viability. We conclude that diseases and parasites will not prevent the continuation of wolf recovery or the maintenance of viable wolf populations in the DPS. Delisting wolves in the WGL DPS will not significantly change the incidence or impacts of disease and parasites on these wolves. Furthermore, we conclude that diseases and parasites will not be threats sufficient to cause the WGL DPS gray wolves to be in danger of extinction in the foreseeable future in all or a significant portion of the range within the WGL DPS.

Predation

No wild animals habitually prey on gray wolves. Large prey such as deer, elk, or moose (Mech and Nelson 1989, pp. 207–208; Smith et al. 2001, p. 3), or other predators, such as mountain lions (*Felis concolor*) or grizzly bears (*Ursus arctos horribilis*) where they are extant (USFWS 2005, p. 3), occasionally kill

wolves, but this has only been rarely documented. This very small component of wolf mortality will not increase with delisting.

Wolves frequently are killed by other wolves, most commonly when packs encounter and attack a dispersing wolf as an intruder or when two packs encounter each other along a territorial boundary (Mech 1994, p. 201). This form of mortality is likely to increase as more of the available wolf habitat becomes saturated with wolf pack territories, as is the case in northeastern Minnesota, but such a trend is not yet evident from Wisconsin or Michigan data. From October 1979 through June 1998, seven (12 percent) of the mortalities of radio-collared Wisconsin wolves resulted from wolves killing wolves, and 8 of 73 (11 percent) mortalities were from this cause during 2000–05 (Wydeven 1998, p. 16 Table 4; Wydeven and Wiedenhoeft 2001, p. 8 Table 5; 2002, pp. 8–9 Table 4; 2003a, pp. 11–12 Table 4; 2004a, pp. 11–12 Table 5, 2005, p. 21 Table 5). Gogan *et al.* (2004, p. 7) studied 31 radio-collared wolves in northern Minnesota from 1987–91 and found that 4 (13 percent) were killed by other wolves, representing 29 percent of the total mortality of radio-collared wolves. Intra-specific strife caused 50 percent of mortality within Voyageurs National Park and 20 percent of the mortality of wolves adjacent to the Park (Gogan *et al.* 2004, p. 22). The Del Giudice data (in litt. 2005) show a 17 percent mortality rate from other wolves in another study area in north-central Minnesota from 1994–2005. This behavior is normal in healthy wolf populations and is an expected outcome of dispersal conflicts and territorial defense, as well as occasional intra-pack strife. This form of mortality is something that the species has evolved with and it should not pose a threat to wolf populations in the WGL DPS following delisting.

Humans have functioned as highly effective predators of the gray wolf in North America for several hundred years. European settlers in the Midwest attempted to eliminate the wolf entirely in earlier times, and the U.S. Congress passed a wolf bounty that covered the Northwest Territories in 1817. Bounties on wolves subsequently became the norm for States across the species' range. In Michigan, an 1838 wolf bounty became the ninth law passed by the First Michigan Legislature; this bounty remained in place until 1960. A Wisconsin bounty was instituted in 1865 and was repealed about the time wolves were extirpated from the State in 1957. Minnesota maintained a wolf bounty until 1965.

Subsequent to the gray wolf's listing as a federally endangered species, the Act and State endangered species statutes prohibited the killing of wolves except under very limited circumstances, such as in defense of human life, for scientific or conservation purposes, or under special regulations intended to reduce wolf depredations of livestock or other domestic animals. The resultant reduction in human-caused wolf mortality is the main cause of the wolf's reestablishment in large parts of its historical range. It is clear, however, that illegal killing of wolves has continued in the form of intentional mortality and incidental deaths.

Illegal killing of wolves occurs for a number of reasons. Some of these killings are accidental (e.g., wolves are hit by vehicles, mistaken for coyotes and shot, or caught in traps set for other animals); some of these accidental killings are reported to State, Tribal, and Federal authorities. It is likely that most illegal killings, however, are intentional and are never reported to government authorities. Because they generally occur in remote locations and the evidence is easily concealed, we lack reliable estimates of annual rates of intentional illegal killings.

In Wisconsin, all forms of human-caused mortality accounted for 54 percent of the diagnosed deaths of radio-collared wolves from October 1979 through June 2005. Thirty percent of the diagnosed mortalities, and 55 percent of the human-caused mortalities, were from shooting (firearms and bows). Another 14 percent of all the diagnosed mortalities (25 percent of the human-caused mortalities) resulted from vehicle collisions. (These percentages and those in the following paragraphs exclude two radio-collared Wisconsin wolves that were killed in depredation control actions by USDA—APHIS—Wildlife Services in 2003–04. The wolf depredation control programs in the Midwest are discussed separately under Depredation Control, below.) Preliminary 2006 data through September (8 diagnosed mortalities of radio-collared wolves) show these mortality percentages to be unchanged, with 38 percent of the mortalities resulting from mange, 38 percent shot, and 13 percent from vehicle collisions (Wydeven in litt. 2006c).

As the Wisconsin population has increased in numbers and range, vehicle collisions have increased as a percentage of radio-collared wolf mortalities. During the October 1979 through June 1992 period, only 1 of 27 (4 percent) known mortalities was from that cause; but from July 1992 through June 1998, 5 of the 26 (19 percent) known mortalities resulted from vehicle collisions (Wydeven 1998, p. 6). From 2002 through 2004, 7 of 45 (16 percent) known mortalities were from that cause (Wydeven and Wiedenhoeft 2003a, pp. 11–12 Table 4; 2004a, pp. 11–12 Table 5; 2005, pp. 19–20 Table 4).

A comparison over time for diagnosed mortalities of radio-collared Wisconsin wolves shows that 18 of 57 (32 percent) were illegally shot from October 1979 through 1998, while 12 of 42 (29 percent) were illegally shot from 2002 through 2004 (Wisconsin DNR 1999, p. 63; Wydeven and Wiedenhoeft 2003a, pp. 11–12 Table 4; 2004a, pp. 11–12 Table 4; 2005. pp. 19–20 Table 4). However, a more recent analysis incorporating 2005 and preliminary 2006 data for radio-collared wolves indicates an increase in illegal killing of wolves since 2000 (about 32 percent) compared to the previous decade (about 19 percent). The same analysis shows vehicle mortality declined and disease/malnutrition mortality increased from the 1990s to the 2000s (Wiedenhoeft 2006 unpublished data).

In the UP of Michigan, human-caused mortalities accounted for 75 percent of the diagnosed mortalities, based upon 34 wolves recovered from 1960 to 1997, including mostly non-radio-collared wolves. Twenty-eight percent of all the diagnosed mortalities and 38 percent of the human-caused mortalities were from shooting. In the UP during that period, about one-third of all the known mortalities were from vehicle collisions (MI DNR 1997, pp. 5–6). During the 1998 Michigan deer hunting season, 3 radio-collared wolves were shot and killed, resulting in one arrest and conviction (Hammill in litt. 1999, Michigan DNR 1999). During the subsequent 3 years, 8 additional wolves were killed in Michigan by gunshot, and the cut-off radio-collar from a ninth animal was located, but the animal was never found. These incidents resulted in 6 guilty pleas, with 3 cases remaining open. Data collected from radio-collared wolves from the 1999 to 2004 bioyears (mid-April to mid-April) show that human-caused mortalities still account for the majority of the wolf mortalities (60 percent) in Michigan. Deaths from vehicular collisions were about 15 percent of total mortality (25 percent of the human-caused mortality) and showed no trend over this six-year period. Deaths from illegal killing constituted 38 percent of all mortalities (65 percent of the human-caused mortality) over the period. From 1999 through 2001 illegal killings were 31 percent of the mortalities, but this

increased to 42 percent during the 2002 through 2004 bioyears (Beyer unpublished data 2005),

North-central Minnesota data from 16 diagnosed mortalities of radio-collared wolves over a 12-year period (1994–2005) show that human-causes resulted in 69 percent of the diagnosed mortalities. This includes 1 wolf accidentally snared, 2 vehicle collisions, and 8 (50 percent of all diagnosed mortalities) that were shot (Del Giudice in litt. 2005). However, this data set of only 16 mortalities over 12 years is too small for reliable comparison to Wisconsin and Michigan data.

A smaller mortality dataset is available from a 1987–1991 study of wolves in, and adjacent to, Minnesota's Voyageurs National Park, along the Canadian border. Of 10 diagnosed mortalities, illegal killing outside the Park was responsible for a minimum of 60 percent of the deaths (Gogan *et al.* 2004, p. 22).

Two Minnesota studies provide some limited insight into the extent of human-caused wolf mortality before and after the species' listing. On the basis of bounty data from a period that predated wolf protection under the Act by 20 years, Stenlund (1955, p. 33) found an annual human-caused mortality rate of 41 percent. Fuller (1989, pp. 23–24) provided 1980–86 data from a north-central Minnesota study area and found an annual human-caused mortality rate of 29 percent, a figure that includes 2 percent mortality from legal depredation control actions. Drawing conclusions from comparisons of these two studies, however, is difficult due to the confounding effects of habitat quality, exposure to humans, prey density, differing time periods, and vast differences in study design. Although these figures provide support for the contention that human-caused mortality decreased after the wolf's protection under the Act, it is not possible at this time to determine if human-caused mortality (apart from mortalities from depredation control) has significantly changed over the 30-year period that the gray wolf has been listed as threatened or endangered.

Wolves were largely eliminated from the Dakotas in the 1920s and 1930s and were rarely reported from the mid-1940s through the late 1970s. Ten wolves were killed in these two States from 1981 to 1992 (Licht and Fritts 1994, pp. 76–77). Six more were killed in North Dakota since 1992, with four of these mortalities occurring in 2002 and 2003; in 2001, one wolf was killed in Harding County in extreme northwestern South Dakota. The number of reported sightings of gray wolves in North Dakota is increasing. From 1993–98, six wolf depredation reports were investigated in North Dakota, and adequate signs were found to verify the presence of wolves in two of the cases. A den with pups was also documented in extreme north-central North Dakota near the Canadian border in 1994. From 1999–2003, 16 wolf sightings/depredation incidents in North Dakota were reported to USDA—APHIS—Wildlife Services, and 9 of these incidents were verified. Additionally, one North Dakota wolf sighting was confirmed in early 2004, and two wolf depredation incidents were verified north of Garrison in late 2005. USDA—APHIS—Wildlife Services also confirmed a wolf sighting along the Minnesota border near Gary, South Dakota, in 1996, and a trapper with the South Dakota Game, Fish, and Parks Department sighted a lone wolf in the western Black Hills in 2002. Several other unconfirmed sightings have been reported from these States, including two reports in South Dakota in 2003. Wolves killed in North and South Dakota are most often shot by hunters after being mistaken for coyotes, or were killed by vehicles. The 2001 mortality in South Dakota and one of the 2003 mortalities in North Dakota were caused by M–44 devices that had been legally set in response to complaints about coyotes.

In and around the core recovery areas in the Midwest, a continuing increase in wolf mortalities from vehicle collisions, both in actual numbers and as a percent of total diagnosed mortalities, is expected as wolves continue their colonization of areas with more human developments and a denser network of roads and vehicle traffic. In addition, the growing wolf populations in Wisconsin and Michigan are producing greater numbers of dispersing individuals each year, and this also will contribute to increasing numbers of wolf-vehicle collisions. This increase would be unaffected by a removal of WGL DPS wolves from the protections of the Act.

In those areas of the WGL DPS that are beyond the areas currently occupied by wolf packs in Minnesota, Wisconsin, and the UP, we expect that human-caused wolf mortality in the form of vehicle collisions, shooting, and trapping have been removing all, or nearly all, the wolves that disperse into these areas. We expect this to continue after Federal delisting. Road densities are high in these areas, with numerous interstate highways and other freeways and high-speed thoroughfares that are extremely hazardous to wolves attempting to move across them. Shooting and trapping of wolves also is likely to continue as a threat to wolves in these areas for several reasons. Especially outside of Minnesota, Wisconsin, and the UP, hunters will not expect to encounter wolves, and may easily mistake them for coyotes from a distance, resulting in unintentional shootings.

It is important to note that, despite the difficulty in measuring the extent of illegal killing of wolves, all sources of wolf mortality, including legal (e.g., depredation control) and illegal human-caused mortality, have not been of sufficient magnitude to stop the continuing growth of the wolf population in Wisconsin and Michigan, nor to cause a wolf population decline in Minnesota. This indicates that total gray wolf mortality does not threaten the continued viability of the wolf population in these three States, or in the WGL DPS.

Predation summary—The high reproductive potential of wolves allows wolf populations to withstand relatively high mortality rates, including human-caused mortality. The principle of compensatory mortality is believed to occur in wolf populations. This means that human-caused mortality is not simply added to ''natural'' mortality, but rather replaces a portion of it. For example, some of the wolves that are killed during depredation control actions would have otherwise died during that year from disease, intraspecific strife, or starvation. Thus, the addition of intentional killing of wolves to a wolf population will reduce the mortality rates from other causes on the population. Based on 19 studies by other wolf researchers, Fuller *et al.* (2003, pp. 182–186) concludes that human-caused mortality can replace about 70 percent of other forms of mortality.

Fuller *et al.* (2003, p. 182 Table 6.8) has summarized the work of various researchers in estimating mortality rates, especially human harvest, that would result in wolf population stability or decline. They provide a number of human-caused and total mortality rate estimates and the observed population effects in wolf populations in the United States and Canada. While variability is apparent, in general, wolf populations increased if their total average annual mortality was 30 percent or less, and populations decreased if their total average annual mortality was 40 percent or more. Four of the cited studies showed wolf population stability or increases with human-caused mortality rates of 24 to 30 percent. The clear conclusion is that a wolf population with high pup productivity—the normal situation in a wolf population—can

withstand levels of overall and of human-caused mortality without suffering a long-term decline in numbers.

The wolf populations in Minnesota, Wisconsin, and Michigan will stop growing when they have saturated the suitable habitat and are curtailed in less suitable areas by natural mortality (disease, starvation, and intraspecific aggression), depredation management, incidental mortality (e.g., road kill), illegal killing, and other means. At that time, we should expect to see population declines in some years followed by short-term increases in other years, resulting from fluctuations in birth and mortality rates. Adequate wolf monitoring programs, however, as described in the Michigan, Wisconsin, and Minnesota wolf management plans are likely to identify high mortality rates and/or low birth rates that warrant corrective action by the management agencies. The goals of all three State wolf management plans are to maintain wolf populations well above the numbers recommended in the Federal Eastern Recovery Plan to ensure long-term viable wolf populations. The State management plans recommend a minimum wolf population of 1,600 in Minnesota, 350 in Wisconsin, and 200 in Michigan.

Despite human-caused mortalities of wolves in Minnesota, Wisconsin, and Michigan, these wolf populations have continued to increase in both numbers and range. If wolves in the WGL DPS are delisted, as long as other mortality factors do not increase significantly and monitoring is adequate to document, and if necessary counteract, the effects of excessive human-caused mortality should that occur, the Minnesota-Wisconsin-Michigan wolf population will not decline to nonviable levels in the foreseeable future as a result of human-caused killing or other forms of predation either within the core wolf populations or in all other parts of the DPS. Therefore, we conclude that predation, including all forms of human-caused mortality, will not be a sufficient future threat to cause the WGL DPS gray wolves to be in danger of extinction in the foreseeable future in all or a significant portion of the range within the WGL DPS

D. The inadequacy of existing regulatory mechanisms.

For the reasons described in the following section, the Service has determined that over a significant portion of the WGL DPS range, there are adequate regulatory mechanisms to ensure that this population of gray wolves is neither threatened nor endangered.

Regulatory Mechanisms in Minnesota, Wisconsin, and Michigan

State Wolf Management Planning

During the 2000 legislative session, the Minnesota Legislature passed wolf management provisions addressing wolf protection, taking of wolves, and directing MN DNR to prepare a wolf management plan. The MN DNR revised a 1999 draft wolf management plan to reflect the legislative action of 2000, and completed the Minnesota Wolf Management Plan (MN Plan) in early 2001 (MN DNR 2001, pp. 8–9).

The Wisconsin Natural Resources Board approved the Wisconsin Wolf Management Plan in October 1999 (WI Plan). In 2004 and 2005 the Wisconsin Wolf Science Advisory Committee and the Wisconsin Wolf Stakeholders group reviewed the 1999 Plan, and the Science Advisory Committee subsequently developed updates and recommended modifications to the 1999 Plan. The WI DNR presented the Plan updates and modifications to the Wisconsin Natural Resources Board on June 28, 2006, and the NRB approved them at that time, with the understanding that some numbers would be updated and an additional reference document would be added (Holtz in litt. 2006). The updates were completed and received final NRB approval on November 28, 2006 (WI DNR 2006a, p. 1).

In late 1997, the Michigan Wolf Recovery and Management Plan (MI Plan) was completed and received the necessary State approvals. However, it is primarily focused on wolf recovery, rather than long-term management of a large wolf population and the conflicts that result as a consequence of successful wolf restoration. In 2006 the MI DNR convened a Michigan Wolf Management Roundtable committee (Roundtable) to provide guiding principles to the DNR on changes and revisions to the 1997 Plan and to guide management of Michigan wolves and wolf-related issues following Federal delisting of the species. The MI DNR will rely heavily on those guiding principles as it drafts a new wolf management plan. The Roundtable is composed of representatives from 20 Michigan stakeholder interests in wolf recovery and management, and its membership is roughly equal in numbers from the UP and the LP. During 2006, the Roundtable provided its ''Recommended Guiding Principles for Wolf Management in Michigan'' to the DNR in November (Michigan Wolf Management Roundtable 2006. p. 2). The first public draft of the revised MI Plan is expected to be available for public review and comment in March 2007, and the plan should be completed in late 2007 (Hogrefe in litt. 2006). *See* The Michigan Wolf Management Plan section below for a detailed description of the efforts of the Roundtable.

The Minnesota Wolf Management Plan

The Minnesota Plan is based, in part, on the recommendations of a State wolf management roundtable (MN DNR 2001, Appendix V) and on a State wolf management law enacted in 2000 (MN DNR 2001, Appendix I). This law and the Minnesota Game and Fish Laws constitute the basis of the State's authority to manage wolves. The Plan's stated goal is ''to ensure the long-term survival of wolves in Minnesota while addressing wolf-human conflicts that inevitably result when wolves and people live in the same vicinity'' (MN DNR 2001, p. 2). It establishes a minimum goal of 1,600 wolves in the State. Key components of the plan are population monitoring and management, management of wolf depredation of domestic animals, management of wolf prey, enforcement of laws regulating take of wolves, public education, and increased staffing to accomplish these actions. Following delisting, Minnesota DNR's management of wolves would differ from their current management while listed as threatened under the Act. Most of these differences deal with the control of wolves that attack or threaten domestic animals.

The Minnesota Plan divides the State into two wolf management zones—Zones A and B (see Figure 2 below). Zone A corresponds to Federal Wolf Management Zones 1 through 4 (approximately 30,000 sq mi (48,000 sq km) in northeastern Minnesota) in the Service's Eastern Recovery Plan, whereas Zone B constitutes zone 5 in the Eastern Recovery Plan (MN DNR 2001, pp. 19–20 and Appendix III; USFWS 1992, p. 72). Within Zone A, wolves would receive strong protection by the State, unless they were involved in attacks on domestic animals. The rules governing the take of wolves to protect domestic animals in Zone B would be less protective than in Zone A.

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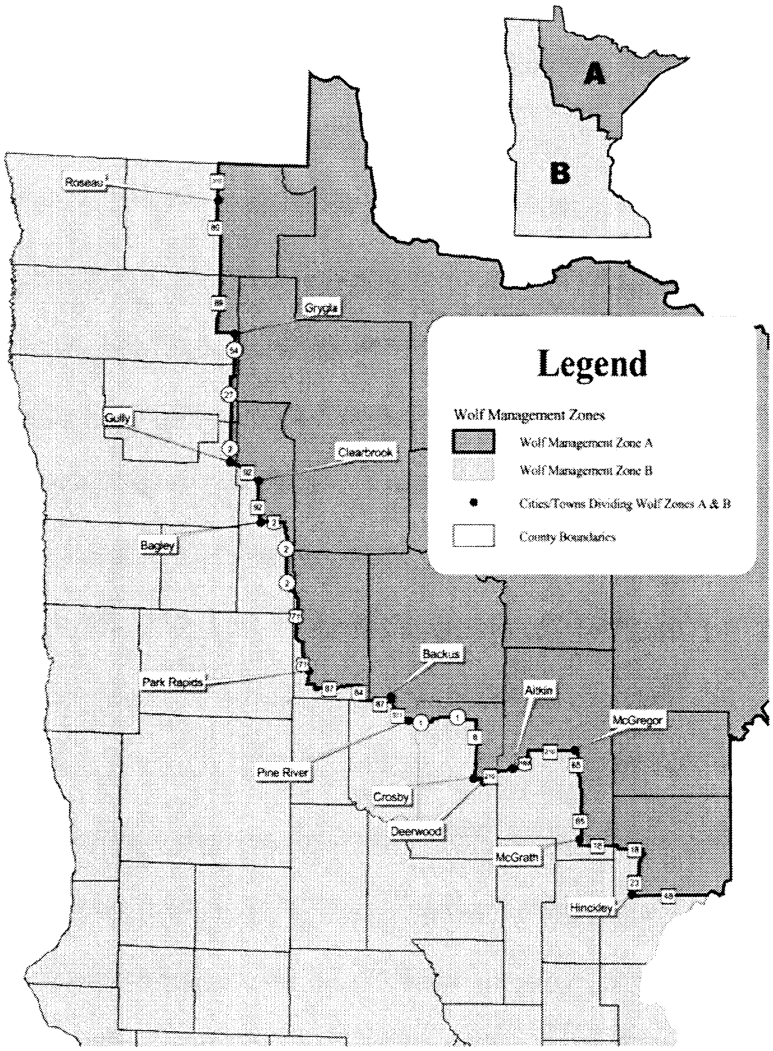
Figure 2. Minnesota wolf management zones.



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The MN DNR plans to allow wolf numbers and distribution to naturally expand, with no maximum population goal, and if any winter population estimate is below 1,600 wolves, it would take actions to ''assure recovery'' to 1,600 wolves (MN DNR 2001 p. 19). The MN DNR will continue to monitor wolves in Minnesota to determine whether such intervention is necessary. The MN DNR will conduct a statewide population survey in the first and fifth years after delisting and at subsequent five-year intervals. In addition to these statewide population surveys, MN DNR annually reviews data on depredation incident frequency and locations provided by Wildlife Services and winter track survey indices (*see* Erb 2005) to help ascertain annual trends in wolf population or range (MN DNR 2001, p. 18–19).

Minnesota (MN DNR 2001, pp. 21–24, 27–28) plans to reduce or control illegal mortality of wolves through education, increased enforcement of the State's wolf laws and regulations, by discouraging new road access in some areas, and by maintaining a depredation control program that includes compensation for livestock losses. The MN DNR plans to use a variety of methods to encourage and support education of the public about the effects of wolves on livestock, wild ungulate populations, and human activities and the history and ecology of wolves in the State (MN DNR 2001, pp. 29–30). These are all measures that have been in effect for years in Minnesota, although ''increased enforcement'' of State laws against take of wolves would replace enforcement of the Act's take prohibitions. Financial compensation for livestock losses has been increased in recent years to the full market value of the animal, replacing previous caps of $400 and $750 per animal (MN DNR 2001, p. 24). We do not expect the State's efforts will result in the reduction of illegal take of wolves from existing levels, but we believe these measures will be crucial in ensuring that illegal mortality does not significantly increase following Federal delisting.

The likelihood of illegal take increases in relation to road density and human population density, but changing attitudes towards wolves may allow them to survive in areas where road and human densities were previously thought to be too high (Fuller *et al.* 2003, p. 181). The MN DNR does not plan to reduce current levels of road access, but would encourage managers

of land areas large enough to sustain one or more wolf packs to ''be cautious about adding new road access that could exceed a density of one mile of road per square mile of land, without considering the potential effect on wolves'' (MN DNR 2001, pp. 27–28).

Under Minnesota law, the illegal killing of a wolf is a gross misdemeanor and is punishable by a maximum fine of $3,000 and imprisonment for up to one year. The restitution value of an illegally killed wolf is $2,000 (MN DNR 2001, p.29). The MN DNR acknowledges that increased enforcement of the State's wolf laws and regulations would be dependent on increases in staff and resources, additional cross-deputization of tribal law enforcement officers, and continued cooperation with Federal law enforcement officers. They specifically propose after delisting to add three Conservation Officers ''strategically located within current gray wolf range in Minnesota'' whose priority duty would be to implement the gray wolf management plan (MN DNR 2001, pp. 29, 32).

Minnesota DNR will consider wolf population management measures, including public hunting and trapping seasons and other methods, in the future. However, State law and the Minnesota Plan state that such consideration will occur no sooner than five years after Federal delisting, and there would be opportunity for full public comment on such possible changes at that time (Minnesota Statutes 97B.645 Subdiv. 9, see MN DNR 2001 Appendix 1, p. 6; MN DNR 2001, p. 20) The Minnesota Plan requires that these population management measures have to be implemented in such a way to maintain a statewide late-winter wolf population of at least 1,600 animals (MN DNR 2001, pp. 19–20), well above the Federal Recovery Plan's 1250–1400 for the State (USFWS 1992, p. 28).

Depredation Control in Minnesota

While federally-protected as a threatened species in Minnesota (since their 1978 reclassification), wolves that have attacked domestic animals have been killed by designated government employees under the authority of a special regulation (50 CFR 17.40(d)) under section 4(d) of the Act. However, no control of depredating wolves was allowed in Federal Wolf Management Zone 1, comprising about 4,500 sq mi (7,200 sq km) in extreme northeastern Minnesota (USFWS 1992, p. 72). In Federal Wolf Management Zones 2 through 5, employees or agents of the Service (including USDA–APHIS—Wildlife Services) have taken wolves in response to depredations of domestic animals within one-half mile of the depredation site. Young-of-the-year captured on or before August 1 must be released. The regulations that allow for this take (50 CFR 17.40(d)(2)(i)(B)(4)) do not specify a maximum duration for depredation control, but Wildlife Services personnel have followed internal guidelines under which they trap for no more than 10–15 days, except at sites with repeated or chronic depredation, where they may trap for up to 30 days (Paul pers. comm. 2004).

During the period from 1980–2005, the Federal Minnesota wolf depredation control program euthanized from 20 (in 1982) to 216 (in 1997) gray wolves annually. Annual averages (and percentage of statewide population) were 30 (2.2 percent) wolves killed from 1980 to 1984, 49 (3.0 percent) from 1985 to 1989, 115 (6.0 percent) from 1990 to 1994, and 152 (6.7 percent) from 1995 to 1999. During 2000–05 an average of 128 wolves (4.2 percent of the wolf population, based on the 2003–2004 statewide estimate) were killed under the program annually. Since 1980, the lowest annual percentage of Minnesota wolves killed under this program was 1.5 percent in 1982; the highest percentage was 9.4 in 1997 (Paul 2004, pp. 2–7; 2006, p. 1).

This level of wolf removal for depredation control has not interfered with wolf recovery in Minnesota, although it may have slowed the increase in wolf numbers in the State, especially since the late-1980s, and may be contributing to the possibly stabilized Minnesota wolf population suggested by the 2003–04 estimate (see additional information in Minnesota Recovery). Minnesota wolf numbers grew at an average annual rate of nearly 4 percent between 1989 and 1998 while the depredation control program was taking its highest percentages of wolves (Paul 2004, pp. 2–7).

Under a Minnesota statute, the Minnesota Department of Agriculture (MDA) compensates livestock owners for full market value of livestock that wolves have killed or severely injured. A university extension agent or conservation officer must confirm that wolves were responsible for the depredation. The agent or officer also evaluates the livestock operation for conformance to a set of Best Management Practices (BMPs) designed to minimize wolf depredation and provides operators with an itemized list of any deficiencies relative to the BMPs (MN DNR 2001, p. 24). The Minnesota statute also requires MDA to periodically update its BMPs to incorporate new practices that it finds would reduce wolf depredation (Minnesota Statutes 2005, Section 3.737, subdivision 5).

Post-Delisting Depredation Control in Minnesota

Following Federal delisting, depredation control will be authorized under Minnesota State law and conducted in conformance with the Minnesota Wolf Management Plan (MN DNR 2001). The Minnesota Plan divides the State into Wolf Management Zones A and B. Zone A is composed of Federal Wolf Management Zones 1–4, covering 30,728 sq mi (49,452 sq km), approximately the northeastern third of the State. Zone B is identical to the current Federal Wolf Management Zone 5, and contains the 54,603 sq mi (87,875 sq km.) that make up the rest of the State (MN DNR 2001, pp. 19–20 and Appendix III; USFWS 1992, p. 72). The statewide survey conducted during the winter of 2003–04 estimated that there were approximately 2,570 wolves in Zone A and 450 in Zone B (Erb in litt. 2005). As discussed in Recovery Criteria, the Federal planning goal is 1251–1400 wolves for Zones 1–4 and no wolves in Zone 5 (USFWS 1992, p. 28).

In Zone A wolf depredation control is limited to situations of (1) immediate threat and (2) following verified loss of domestic animals. In this zone, if DNR verifies that a wolf destroyed any livestock, domestic animal, or pet, and if the owner requests wolf control be implemented, trained and certified predator controllers may take wolves within a one-mile radius of the depredation site (depredation control area) for up to 60 days. In contrast, in Zone B, predator controllers may take wolves for up to 214 days after MN DNR opens a depredation control area, depending on the time of year. Under State law, the DNR may open a control area in Zone B anytime within five years of a verified depredation loss upon request of the landowner, thereby providing more of a preventative approach than is allowed in Zone A, in order to head off repeat depredation incidents (MN DNR 2001, p. 22).

State law and the Minnesota Plan will also allow for private wolf depredation control throughout the State. Persons may shoot or destroy a gray wolf that poses ''an immediate threat'' to their livestock, guard animals, or domestic animals on lands that they own, lease, or occupy. Immediate threat is defined as ''in the act of stalking, attacking, or killing.'' This does not include trapping because traps cannot be placed in a manner such that they trap only wolves in the act of stalking, attacking, or killing. Owners of domestic pets may also kill wolves posing an immediate

threat to pets under their supervision on lands that they do not own or lease, although such actions are subject to local ordinances, trespass law, and other applicable restrictions. The MN DNR will investigate any private taking of wolves in Zone A (MN DNR 2001, p. 23).

To protect their domestic animals in Zone B, individuals do not have to wait for an immediate threat or a depredation incident in order to take wolves. At anytime in Zone B, persons who own, lease, or manage lands may shoot wolves on those lands to protect livestock, domestic animals, or pets. They may also employ a predator controller to trap a gray wolf on their land or within one mile of their land (with permission of the landowner) to protect their livestock, domestic animals, or pets (MN DNR 2001, p. 23–24).

The Minnesota Plan will also allow persons to harass wolves anywhere in the State within 500 yards of ''people, buildings, dogs, livestock, or other domestic pets or animals''. Harassment may not include physical injury to a wolf.

Depredation control will be allowed throughout Zone A, which includes an area (Federal Wolf Management Zone 1) where such control has not been permitted under the Act's protection. Depredation in Zone 1, however, has been limited to 3 to 6 reported incidents per year, mostly of wolves killing dogs (Paul pers. comm. 2004), although some dog kills in this zone probably go unreported. There are few livestock in Zone 1; therefore, the number of verified future depredation incidents in that Zone is expected to be low, resulting in a correspondingly low number of depredating wolves being killed there after delisting.

The final change in Zone A is the ability for owners/lessees to respond to situations of immediate threat by shooting wolves in the act of stalking, attacking, or killing livestock or other domestic animals. We believe this is not likely to result in the killing of many additional wolves, as opportunities to shoot wolves ''in the act'' will likely be few and difficult to successfully accomplish, a belief shared by the most experienced wolf depredation agent in the lower 48 States (Paul in litt. 2006, p. 5). It is also possible that illegal killing of wolves in Minnesota will decrease, because the expanded options for legal control of problem wolves may lead to an increase in public tolerance for wolves (Paul in litt. 2006, p. 5).

Within Zone B, State law and the Minnesota Plan provide broad authority to landowners and land managers to shoot wolves at any time to protect their livestock, pets, or other domestic animals on land owned, leased, or managed by the individual. Such takings can occur in the absence of wolf attacks on the domestic animals. Thus, the estimated 450 wolves in Zone B could be subject to substantial reduction in numbers, and at the extreme, wolves could be eliminated from Zone B. However, there is no way to reasonably evaluate in advance the extent to which residents of Zone B will use this new authority, nor how vulnerable Zone B wolves will be. Thus, any estimate of future wolf numbers in Zone B would be highly speculative at this time. The limitation of this broad take authority to Zone B is fully consistent with the Federal Recovery Plan's advice that wolves should be restored to the rest of Minnesota but not to Zone B (Federal Zone 5) because that area ''is not suitable for wolves'' (USFWS 1992, p. 20). The Federal Recovery Plan envisioned that the Minnesota numerical recovery goal would be achieved solely in Zone A (Federal Zones 1–4) (USFWS 1992, p. 28), and that has occurred. Wolves outside of Zone A are not necessary to the establishment and long-term viability of a self-sustaining wolf population in the State, and therefore there is no need to establish or maintain a wolf population in Zone B. Therefore, there is no need to maintain significant protection for wolves in Zone B in order to maintain a Minnesota wolf population that continues to satisfy the Federal recovery goals after Federal delisting.

This expansion of depredation control activities will not threaten the continued conservation of wolves in the State or the long-term viability of the wolf population in Zone A, the significant part of wolf range in Minnesota. Significant changes in wolf depredation control under State management will primarily be restricted to Zone B, which is outside of the area necessary for wolf recovery (USFWS 1992, pp. 20, 28). Furthermore, wolves may still persist in Zone B despite the likely increased take there. The Eastern Timber Wolf Recovery Team concluded that the changes in wolf management in the State's Zone A would be ''minor'' and would not likely result in ''significant change in overall wolf numbers in Zone A.'' They found that, despite an expansion of the individual depredation control areas and an extension of the control period to 60 days, depredation control will remain ''very localized'' in Zone A. The requirement that such depredation control activities be conducted only in response to verified wolf depredation in Zone A played a key role in the team's evaluation (Peterson in litt. 2001).

The proposed changes in the control of depredating wolves in Minnesota under State management emphasize the need for post-delisting monitoring. Minnesota will continue to monitor wolf populations throughout the State and will also monitor all depredation control activities in Zone A (MN DNR 2001, p. 18). These and other activities contained in their plan will be essential in meeting their population goal of a minimum statewide winter population of 1,600 wolves, which exceeds the 1992 Federal Recovery Plan's criteria of 1,251 to 1,400 wolves (USFWS 1992, p. 28).

The Wisconsin Wolf Management Plan

Both the Wisconsin and Michigan Wolf Management Plans are designed to manage and ensure the existence of wolf populations in the States as if they are isolated populations and are not dependent upon immigration of wolves from an adjacent State or Canada. We support this approach and believe it provides strong assurances that the gray wolf in both States will remain a viable component of the WGL DPS for the foreseeable future.

The WI Plan allows for differing levels of protection and management within four separate management zones (*see* figure 3). The Northern Forest Zone (Zone 1) and the Central Forest Zone (Zone 2) now contain most of the wolf population, with less than 5 percent of the Wisconsin wolves in Zones 3 and 4 (Wydeven *et al.* 2006, p. 27–29). Zones 1 and 2 contain all the larger unfragmented areas of suitable habitat (see Wolf Range Ownership and Protection, above), so most of the State's wolf packs will continue to inhabit those parts of Wisconsin for the foreseeable future. The varying levels of protection provided across these zones are fully consistent with our determination of the SPR in Wisconsin. The inclusion of all primary and secondary habitat in Zones 1 and 2, and the lack of suitable habitat in Zones 3 and 4 (Wydeven *et al.* 1999, pp. 46–49), indicate that Zones 1 and 2 constitute the SPR in Wisconsin and preclude the need for substantial wolf protection outside these zones.

At the time the Wisconsin Wolf Management Plan was completed, it recommended immediate reclassification from State-endangered to State-threatened status, because Wisconsin's wolf population had already exceeded its reclassification criterion of 80 wolves for 3 years. That State reclassification occurred in 1999,

after the population exceeded that level for 5 years. The Wisconsin Plan further recommends the State manage for a gray wolf population of 350 wolves outside of Native American reservations, and specifies that the species should be delisted by the State once the population reaches 250 animals outside of reservations. The species was proposed for State delisting in late 2003, and the State delisting process was completed in 2004. Upon State delisting, the species was classified as a ''protected nongame species,'' a designation that continues State prohibitions on sport hunting and trapping of the species (Wydeven and Jurewicz 2005, p. 1; WI DNR 2006b, p. 71). The Wisconsin Plan includes criteria that would trigger State relisting to threatened (a decline to fewer than 250 wolves for 3 years) or endangered status (a decline to fewer than 80 wolves for 1 year). The Wisconsin Plan will be reviewed annually by the Wisconsin Wolf Advisory Committee and will be reviewed by the public every 5 years.

The WI Plan was updated during 2004–06 to reflect current wolf numbers, additional knowledge, and issues that have arisen since its 1999 completion. This update is in the form of text changes, revisions to two appendices, and the addition of a new appendix to the 1999 plan, rather than as a major revision to the plan. Several components of the plan that are key to our delisting evaluation are unchanged. The State wolf management goal of 350 animals and the boundaries of the four wolf management zones remain the same as in the 1999 Plan. The updated 2006 Plan continues access management on public lands and the protection of active den sites. However, protection of pack rendezvous sites is no longer considered to be needed in areas where wolves have become well established, due to the transient nature of these sites and the larger wolf population. The updated Plan states that rendezvous sites may need protection in areas where wolf colonization is still underway or where pup survival is extremely poor, such as in northeastern Wisconsin (WI DNR 2006a, p. 17). The guidelines for the wolf depredation control program did not undergo significant alteration during the update process. The only substantive change to depredation control practices is to expand the area of depredation control trapping in Zones 1 and 2 to 1 mi (1.6 km) outward from the depredation site, replacing the previous 0.5 mi (0.8 km) radius trapping zone (WI DNR 2006a, pp. 3–4).

An important component of the WI Plan is the annual monitoring of wolf populations by radio collars and winter track surveys in order to provide comparable annual data to assess population size and growth for at least 5 years after Federal delisting. This monitoring will include health monitoring of captured wolves and necropsies of dead wolves that are found. Wolf scat will be collected and analyzed to monitor for canine viruses and parasites. Health monitoring will be part of the capture protocol for all studies that involve the live capture of Wisconsin wolves (WI DNR 2006a, p. 14).

Cooperative habitat management will be promoted with public and private landowners to maintain existing road densities in Zones 1 and 2, protect wolf dispersal corridors, and manage forests for deer and beaver (WI DNR 1999, pp. 4, 22–23; 2006a, pp. 15–17). Furthermore, in Zone 1, a year-around prohibition on tree harvest within 330 feet of den sites, and seasonal restrictions to reduce disturbance within one-half mile of dens, will be DNR policy on public lands and will be encouraged on private lands (WI DNR 1999, p. 23; 2006a, p. 17).

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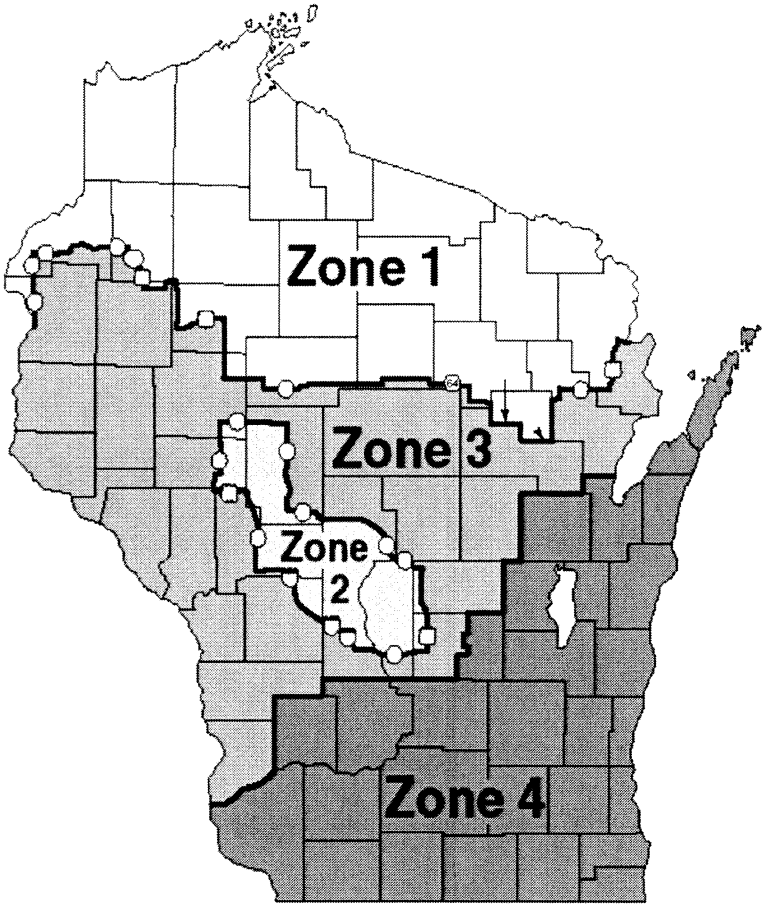
Figure 3. Wisconsin wolf management zones.



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The 1999 WI Plan contains, and the 2006 update retains, other recommendations that will provide protection to assist in maintenance of a viable wolf population in the State: (1) Continue the protection of the species as a ''protected wild animal'' with penalties similar to those for unlawfully killing large game species (fines of $1,000–2,000, loss of hunting privileges for 3–5 years, and a possible 6-month jail sentence), (2) maintain closure zones where coyotes cannot be shot during deer hunting season in Zone 1, (3) legally protect wolf dens under the Wisconsin Administrative Code, (4) require State permits to possess a wolf or wolf-dog hybrid, and (5) establish a restitution value to be levied in addition to fines and other penalties for wolves that are illegally killed (WI DNR 1999, pp. 21, 27–28, 30–31; 2006a, pp. 3–4).

The 2006 update of the WI Plan continues to emphasize the need for public education efforts that focus on living with a recovered wolf population, ways to manage wolves and wolf-human conflicts, and the ecosystem role of wolves. The Plan continues the State reimbursement for depredation losses (including dogs and missing calves), citizen stakeholder involvement in the wolf management program, and coordination with the Tribes in wolf management and investigation of illegal killings (WI DNR 1999, pp. 24, 28–29; 2006a, pp. 22–23).

Given the decline and ultimate termination in Federal funding for wolf monitoring in the future, Wisconsin and Michigan DNRs are seeking an effective, yet cost-efficient, method for detecting wolf population changes to replace the current labor-intensive and expensive monitoring protocols. Both DNRs have considered implementing a ''Minnesota-type'' wolf survey. Such methodology is less expensive for larger wolf populations than the intensive radio monitoring/track survey methods currently used by the two States, and if the wolf population continues to grow there will be increased need to develop and implement a less expensive method. However, each State conducted independent field testing of the Minnesota method several years ago and found that method to be unsuitable for both States' lower wolf population

density and uneven pack distribution. In both States the application of that method resulted in an overestimate of wolf abundance, possibly due to the more patchy distribution of wolves and packs in these States and the difficulty in accurately delineating occupied wolf range in areas where wolf pack density is relatively low in comparison to Minnesota and where agricultural lands are interspersed with forested areas (Wiedenhoeft 2005, pp. 11–12; Beyer in litt. 2006b).

Both States remain interested in developing accurate but less costly alternate survey methods. WI DNR might test other methods following Federal delisting, but the State will not replace its traditional radio tracking/snow tracking surveys during the five year post-delisting monitoring period (Wydeven in litt. 2006b). The 2006 update to the Wisconsin Wolf Management Plan has not changed the WI DNR's commitment to annual wolf population monitoring in a manner that ensures accurate and comparable data (WI DNR 1999, pp. 19–20), and we are confident that adequate annual monitoring will continue for the foreseeable future.

Depredation Control in Wisconsin

The rapidly expanding Wisconsin wolf population has resulted in increased need for depredation control. From 1979 through 1989, there were only five cases (an average of 0.4 per year) of verified wolf depredations in Wisconsin. Between 1990 and 1997, there were 27 verified depredation incidents in the State (an average of 3.4 per year), and 82 incidents (an average of 16.4 per year) occurred from 1998–2002. Depredation incidents increased to 23 cases (including 50 domestic animals killed and 4 injured) in 2003, and to 35 cases (53 domestic animals killed, 3 injured, and 6 missing) in 2004 (Wydeven and Wiedenhoeft 2004a, pp. 2–3, 7–8 Table 3; Wydeven *et al.* 2005b, p. 7). In 2005, depredation grew to 45 cases, with 53 domestic animals killed and 11 injured (Wydeven *et al.* 2006b, p. 7). The number of farms experiencing wolf depredations on livestock averaged 2.8 annually (range 0 to 8) during the 1990s, but jumped to an average of 14.0 per year during 2000–2005 (WI DNR 2006a, p. 19). During those five years an annual upward trend was evident, increasing from 10 in 2002, to 14 in 2003, to 22 in 2004, and to 25 in 2005 (WI DNR 2006a, p. 34).

A significant portion of depredation incidents in Wisconsin involve attacks on dogs engaged in bear hunting activities or dogs being trained in the field for hunting. In almost all cases, these have been hunting dogs that were being used for, or being trained for, hunting bears and bobcats at the time they were attacked. It is believed that the dogs entered the territory of a wolf pack and may have been close to a den, rendezvous site, or feeding location, thus triggering an attack by wolves defending their territory or pups. The frequency of attacks on hunting dogs has increased as the State's wolf population has grown. In 2004, 13 dogs involved in bear hunting or training were killed by wolves and 2 dogs not involved in hunting/training were killed. These incidents were believed to involve 7 different wolf packs, or 6 percent of the 108 packs in Wisconsin in the winter of 2003–2004. Preliminary data from 2006 through the middle of October show a continuation of increased wolf attacks on bear hunting dogs, with 20 killed and 5 injured by 8 separate wolf packs, 7 percent of the winter 2005–2006 packs. (*http://www.dnr.state.wi.us/org/land/er/mammals/wolf/dogdepred.htm*, accessed Nov. 21, 2006). While Wisconsin DNR compensates dog owners for mortalities and injuries to their dogs, DNR takes no action against the depredating pack unless the attack was on a dog that was leashed, confined, or under the owner's control on the owner's land. Instead, the DNR issues press releases to warn bear hunters and bear dog trainers of the areas where wolf packs have been attacking bear dogs (WI DNR 2005, p. 4) and provides maps and advice to hunters on the DNR Web site (see *http://www.dnr.state.wi.us/org/land/er/mammals/wolf/dogdepred.htm*).

Post-Delisting Depredation Control in Wisconsin

Following Federal delisting, wolf depredation control in Wisconsin will be carried out according to the 2006 Updated Wisconsin Wolf Management Plan (WI DNR 2006a, pp. 19–23), Wisconsin Guidelines for Conducting Depredation Control on Wolves (Wisconsin DNR 2005) which are being revised to conform to the 2006 Updated Plan, and any Tribal wolf management plans or guidelines that may be developed in the future for reservations in occupied wolf range. The 2006 updates have not significantly changed the 1999 State Plan, and the State wolf management goal of 350 wolves outside of Indian reservations (WI DNR 2006a, p. 3) is unchanged. Verification of wolf depredation incidents will continue to be conducted by USDA–APHIS–Wildlife Services, working under a cooperative agreement with WI DNR, or at the request of a Tribe, depending on the location of the suspected depredation incident. If determined to be a confirmed or probable depredation by a wolf or wolves, one or more of several options will be implemented to address the depredation problem. These options include technical assistance, loss compensation to landowners, translocation or euthanizing problem wolves, and private landowner control of problem wolves in some circumstances (WI DNR 2006a, pp. 3–4, 20–22).

Technical assistance, consisting of advice or recommendations to prevent or reduce further wolf conflicts, will be provided. This may also include providing to the landowner various forms of non-injurious behavior modification materials, such as flashing lights, noise makers, temporary fencing, and fladry. Monetary compensation is also provided for all verified and probable losses of domestic animals and for a portion of documented missing calves (WI DNR 2006a, pp. 22–23).

The WI DNR compensates livestock and pet owners for confirmed losses to depredating wolves. The compensation is made at full market value of the animal (up to a limit of $2500 for hunting dogs and pets) and can include veterinarian fees for the treatment of injured animals (WI DNR 2006c 12.54). Compensation costs have been funded from the endangered resources tax check-off and sales of the endangered resources license plates. Current Wisconsin law requires the continuation of the compensation payment for wolf depredation regardless of Federal listing or delisting of the species (WI DNR 2006c 12.50). In recent years annual depredation compensation payments have ranged from $18,630 to nearly $110,000 (WI DNR 2006a, p. 22–23, 29).

For depredation incidents in Wisconsin Zones 1 through 3, where all wolf packs currently reside, wolves may be trapped by Wildlife Services or WI DNR personnel and, if feasible, they are translocated and released at a point distant from the depredation site. If wolves are captured adjacent to an Indian reservation or a large block of public land the animals may be translocated locally to that area. As noted above, long-distance translocating of depredating wolves has become increasingly difficult in Wisconsin and is likely to be used infrequently in the future as long as the off-reservation wolf population is above 350 animals. In most wolf depredation cases where technical assistance and non-lethal methods of behavior modification are judged to be ineffective, wolves will be shot or trapped and euthanized by Wildlife Services or DNR personnel.

Trapping and euthanizing will be conducted within a 1 mi (1.6 km) radius of the depredation in Zones 1 and 2, and within a 5 mi (8 km) radius in Zone 3. There is no distance limitation for depredation control trapping in Zone 4, and all wolves trapped in Zone 4 will be euthanized, rather than translocated (WI DNR 2006a, pp. 22–23).

Following Federal delisting, Wisconsin landowners who have had a verified wolf depredation will be able to obtain limited-duration permits from WI DNR to kill a limited number of depredating wolves on land they own or lease. In addition, landowners and lessees of land statewide will be allowed to kill a wolf without obtaining a permit ''in the act of killing, wounding, or biting a domestic animal,'' and the incident must be reported to a conservation warden within 24 hours (WI DNR 2006a, pp. 22–23).

The updated Wisconsin Plan also envisions the possibility of intensive control management actions in sub-zones of the larger wolf management zones, but such actions, and the triggering events for them, have yet to be determined (WI DNR 2006a, pp. 22–23). These actions would be considered on a case-by-case basis to address specific problems, and would likely be carried out only in areas that lack suitable habitat, have extensive agricultural lands with little forest interspersion, in urban or suburban settings, and only when the State wolf population is well above the management goal of 350 wolves in late winter surveys. The use of intensive population management in small areas will be adapted as experience is gained with implementing and evaluating localized control actions (Wydeven pers. comm. 2006).

We have evaluated future lethal depredation control based upon verified depredation incidents over the last decade and the impacts of the implementation of similar lethal control of depredating wolves under 50 CFR 17.40(d) for Minnesota, 17.40(o) for Wisconsin and Michigan, and section 10(a)(1)(A) of the Act for Wisconsin and Michigan. Under those authorities, WI DNR and Wildlife Services trapped and euthanized 17 wolves in 2003, 24 in 2004, 32 (including several possible hybrids) in 2005, and 18 in 2006 (WI DNR 2006a, p. 32). (Although these lethal control authorities applied to Wisconsin and Michigan DNRs for only a portion of 2003 (April through December) and 2005 (all of January for both States; April 1 and April 19, for Wisconsin and Michigan respectively, through September 13), they covered nearly all of the verified wolf depredations during those years, and thus provide a reasonable measure of annual lethal depredation control. Lethal control authority only occurred for about 4 months in 2006.) For 2003, 2004, and 2005 this represents 5.1 percent, 6.4 percent, 7.4 percent (including the several possible wolf-dog hybrids), respectively, of the late winter population of Wisconsin wolves during the previous winter. Note that some of the wolves euthanized after August 1 were young-of-the-year who were not present during the late winter survey, so the cited percentages are overestimates. This level of lethal depredation control was followed by a wolf population increase of 11 percent from 2003 to 2004, 17 percent from 2004 to 2005, and 7 percent from 2005 to 2006 (Wydeven and Jurewicz 2005, p.5; Wydeven *et al* 2006a, p. 10). This provides strong evidence that this form and magnitude of depredation control will not adversely impact the viability of the Wisconsin wolf population. The locations of depredation incidents provide additional evidence that lethal control will not be an adverse impact on the State's wolf population. Most livestock depredations are caused by packs near the northern forest—farm land interface. Few depredations occur in core wolf range and in large blocks of public land. Thus, lethal depredation control actions will not impact most of the Wisconsin wolf population (WI DNR 2006a, p. 30).

One substantive change to lethal control that likely will result from Federal delisting is the ability of a small number of private landowners, whose farms have a history of recurring wolf depredation, to obtain DNR permits to kill depredating wolves (WI DNR 2006a, p. 23). We estimate that up to 3 wolves from each of 5 to 10 farms may be killed annually under these permits in the several years immediately after delisting. Because the late-winter 2005–06 Wisconsin wolf population was approaching 500 animals, the death of these 5 to 30 additional wolves—only 1 to 6 percent of the State wolves—would not affect the viability of the population. Another substantive change may be potential proactive trapping or ''intensive control'' of wolves in limited areas as described above. While it is not possible to estimate the number of wolves that might be killed via these actions, we are confident that they will not impact the long-term viability of the Wisconsin wolf population, because they will be carried out only if the State's late-winter wolf population exceeds 350 animals.

The State's current guidelines for conducting depredation control actions say that no control trapping will be conducted on wolves that kill ''dogs that are free-roaming, roaming at large, hunting, or training on public lands, and all other lands except land owned or leased by the dog owner'' (Wisconsin DNR 2005, p, 4). Because of these State-imposed limitations, we believe that lethal control of wolves depredating on hunting dogs will be rare, and therefore will not be a significant additional source of mortality in Wisconsin.

Lethal control of wolves that attack captive deer is included in the WI DNR depredation control program, because farm-raised deer are considered to be livestock under Wisconsin law (WI DNR 2005, p. 4; 2006c, 12.52). However, Wisconsin regulations for deer farms fencing have been strengthened, and it is unlikely that more than an occasional wolf will need to be killed to end wolf depredations inside deer farms in the foreseeable future. Claims for wolf depredation compensation are rejected if the claimant is not in compliance with regulations regarding farm-raised deer fencing or livestock carcass disposal (Wisconsin Statutes 90.20 & 90.21, WI DNR 2006c 12.54).

Data from verified wolf depredations in recent years indicate that depredation on livestock is likely to increase as long as the Wisconsin wolf population increases in numbers and range. Most large areas of forest land and public lands are included in Wisconsin Wolf Management Zones 1 and 2, and they have already been colonized by wolves. Therefore, new areas likely to be colonized by wolves in the future will be in Zones 3 and 4, where they will be exposed to much higher densities of farms, livestock, and residences. During the period from July 2004 through June 2005, 29 percent (8 of 28) of farms experiencing wolf depredation were in Zone 3, yet only 4 percent of the State wolf population occurs in this zone (Wydeven and Wiedenhoeft 2005, p. 3). Further expansion of wolves into Zone 3 would likely lead to an increase in depredation incidents and an increase in lethal control actions against Zone 3 wolves. However, these Zone 3 mortalities will have no impact on wolf population viability in Wisconsin because of the much larger wolf populations in Zones 1 and 2.

For the foreseeable future, the wolf population in Zones 1 and 2 will continue to greatly exceed the Federal recovery goal of 200 late winter wolves for an isolated population and 100 wolves for a subpopulation connected to the larger Minnesota population, regardless of the extent of wolf mortality from all causes in Zones 3 and 4. Ongoing annual wolf population monitoring by WI DNR will provide

timely and accurate data to evaluate the effects of wolf management under the Wisconsin Plan.

The possibility of a public harvest of wolves is acknowledged in the Wisconsin Wolf Management Plan and in plan update drafts (WI DNR 1999, Appendix D; 2006c, p. 23). However, the question of whether a public harvest will be initiated and the details of such a harvest are far from resolved. Public attitudes toward a wolf population in excess of 350 would have to be fully evaluated, as would the impacts from other mortalities, before a public harvest could be initiated. Establishing a public harvest would be preceded by extensive public input, including public hearing, and would require legislative authorization and approval by the Wisconsin Natural Resources Board. Because of the steps that must precede a public harvest of wolves and the uncertainty regarding the possibility of, and the details of, any such program, it is not possible to evaluate the potential impacts of the public harvest of wolves. Therefore, we consider public harvest of Wisconsin wolves to be highly speculative at this time. The Service will closely monitor any steps taken by States and/or Tribes within the WGL DPS to establish any public harvest of gray wolves during our post-delisting monitoring program. The fact that the Wisconsin Plan calls for State relisting of the wolf as a threatened species if the population falls to fewer than 250 for 3 years provides a strong assurance that any future public harvest is not likely to threaten the persistence of the population (WI DNR 1999, pp. 15–17). Based on wolf population data, the current Wisconsin Plan and the 2006 updates, we believe that any public harvest plan would continue to maintain the State wolf population well above the recovery goal of 200 wolves in late winter.

Michigan Wolf Management Plan

The 1997 Michigan Gray Wolf Recovery and Management Plan (MI Plan) (MI DNR 1997) describes the wolf recovery goals and management actions needed to achieve a viable wolf population in the UP of Michigan. It does not address the potential need for wolf recovery or management in the Lower Peninsula, nor wolf management within Isle Royale National Park (where the wolf population is fully protected by the National Park Service). Necessary wolf management actions detailed in the Michigan Plan include public education and outreach activities, annual wolf population and health monitoring, research, depredation control, and habitat management. As described above, MI DNR currently is in the process of revising its plan to enable more effective management of a recovered and expanding wolf population. The revision is expected to be completed in late 2007.

As with the WI Plan, the MI DNR has chosen to manage the State's wolves as though they are an isolated population that receives no genetic or demographic benefits from immigrating wolves. Therefore, although we do not know if the revised Michigan Plan will contain any long-term minimum numerical goal for wolves in the UP or NLP, as a result of written commitments from the MI DNR, as discussed below, we are confident that the State plan will have a goal of maintaining a wolf population that is large enough so as to be viable for the foreseeable future and will not have to be listed as threatened or endangered under either State or Federal law (Moritz in litt. 2006; Koch in litt. 2006a). The MI DNR has assured us that ''the new revised Plan will underscore commitments to wolf management already made in the 1997 plan.'' (Koch in litt. 2006b). We strongly support this approach, as it provides assurance that a viable wolf population will remain in the UP regardless of the future fate of wolves in Wisconsin or Ontario.

Until the MI Plan revision is completed, the 1997 Michigan Plan will remain in effect, as supplemented by additional guidance developed since 1997 to deal with aspects of wolf management and recovery not adequately covered in the 1997 Plan, such as ''Guidelines for Management and Lethal Control of Wolves Following Confirmed Depredation Events'' (MI DNR 2005a).

The 1997 Michigan Plan identifies wolf population monitoring as a priority activity (MI DNR 1997, pp. 21–22). As discussed previously, the size of the wolf population is determined annually by extensive radio and snow tracking surveys. Recently the Michigan DNR also conducted a field evaluation of a less expensive ''Minnesota-type'' wolf survey. However, similar to Wisconsin DNR's experience, the evaluation concluded that the method overestimated wolf numbers, and is not suitable for use on the State's wolf population as it currently is distributed (Beyer in litt. 2006b).

The MI DNR remains interested in developing accurate but less costly alternate survey methods, and in the winter of 2006–2007 is planning to implement a sampling approach to increase the efficiency of the survey based on an analysis by Potvin *et al.* (2005, p. 1668). The UP will be stratified into three sampling areas, and within each stratum the DNR will intensively survey roughly 40 to 50 percent of the wolf habitat area annually. Computer simulations have shown that such a geographically stratified monitoring program will produce unbiased and precise estimates of the total wolf population which can be statistically compared to estimates derived from the previous method to detect significant changes in the UP wolf population (Beyer in litt 2006b, see attachment by Drummer; Lederle in litt. 2006).

The 1997 Michigan Plan identifies 800 wolves as the estimated biological carrying capacity of suitable areas in the UP (MI DNR 1997, p. 17). ''Carrying capacity'' is the number of animals that an area is able to support over the long term; for wolves, it is primarily based on the availability of prey animals and competition from other wolf packs. Under the 1997 Michigan Plan, wolves in the State will be considered recovered when a sustainable population of at least 200 wolves is maintained for 5 consecutive years. The UP has had more than 200 wolves since the winter of 1999–2000. Therefore, Michigan reclassified wolves from endangered to threatened in June 2002, and the gray wolf became eligible for State delisting under the Michigan Plan's criteria in 2004. In Michigan, however, State delisting cannot occur until after Federal delisting; therefore we expect State delisting to be initiated in the near future. During the State delisting process, Michigan intends to amend its Wildlife Conservation Order to grant ''protected animal'' status to the gray wolf. That status would ''prohibit take, establish penalties, and restitution for violations of the Order, and detail conditions under which lethal depredation control measures could be implemented'' (Humphries in litt. 2004). Population management, except for depredation control, is not addressed in the 1997 Michigan Plan beyond statements that the wolf population may need to be controlled by lethal means at some future time.

Similar to the Wisconsin Plan, the 1997 Michigan Plan recommends high levels of protection for wolf den and rendezvous sites, whether on public or private land. The Plan recommends that most land uses be prohibited at all times within 330 feet (100 meters) of active sites. Seasonal restrictions (March through July) should be enforced within 0.5 mi (0.8 km) of these sites, to prevent high-disturbance activities, such as logging, from disrupting pup-rearing activities. These restrictions should remain in effect even after State delisting occurs (MI DNR 1997, pp. 26-

27), but they may be modified by the revision of the 1997 Plan, which is expected to be completed in late 2007.

The 1997 Michigan Plan calls for re-evaluation of the plan at 5-year intervals. The MI DNR initiated this re-evaluation process in 2001, with the appointment of a committee to evaluate wolf recovery and management. As a result of that review, MI DNR concluded that a revision of the 1997 Plan is needed, and a more formal review, including extensive stakeholder input, was recently initiated. Recognizing that wolf recovery has been achieved in Michigan, additional scientific knowledge has been gained, and new social issues have arisen since the 1997 Plan was drafted, the DNR intends the revised plan to be more of a wolf management document than a recovery plan. The DNR convened a Michigan Wolf Management Roundtable to assist in this endeavor. The Roundtable is a diverse group of 20 citizens drawn from organizations spanning the spectrum of those interested in, and impacted by, wolf recovery and management in Michigan, including Tribal entities and organizations focused on agriculture, hunting/trapping, the environment, animal protection, law enforcement and public safety, and tourism.

To help the Roundtable produce guiding principles that are based on the best biological and sociological data available, the MI DNR developed a ''Review of Social and Biological Science Relevant to Wolf Management in Michigan'' (Beyer *et al.* 2006). The MI DNR instructed the Roundtable to provide strategic guidance for the DNR's use in subsequent development of an operational wolf management plan. The Roundtable was asked to review the 1997 wolf management goal, to set priorities for management issues, and to recommend strategic goals or policies the DNR should use in addressing the management issues. The Roundtable was not asked to provide input regarding specific methods to achieve wolf management goals and objectives. The DNR's instructions specified the ''wolf management working goal'' currently is ''to establish and maintain a population of gray wolves in the Upper Peninsula at a level that (1) assures wolf population sustainability, (2) is consistent with available wolf habitat, and (3) is compatible with human land-use practices'' (Moritz in litt 2006, attachment pp. 1–2).

The Roundtable has provided this guidance to MI DNR in the form of a series of ''guiding principles'' that were developed by member consensus over a period of 10 days of meetings over a 5-month period. The Roundtable prefaced their guidance by stating that wolf management should have a goal of maintaining ''acceptable levels of positive and negative [wolf-human] interactions while ensuring the long-term viability of a wolf population'' (Michigan Wolf Management Roundtable 2006, p. 5). Because the factors that influence the levels of wolf-human interactions vary across geographic scales and over time, the Roundtable felt that setting numerical goals for large geographical areas would be unwise. Instead, the Roundtable believes that local and case-by-case management would be better able to enhance opportunities for positive interactions and reduce negative interactions. Therefore, in place of recommending a numerical goal for the Michigan wolf population, the Roundtable provided a series of general guiding principles for the DNR to use in wolf population management (Michigan Wolf Management Roundtable 2006, pp. 6-7):

- Strategic management goals should be based on positive and negative wolf impacts, rather than on wolf numbers, and should consider genetic diversity, population sustainability, ecological and social benefits, impacts on wildlife and their habitats, human safety, and limiting wolf depredation on domestic animals.
- Wolf-human conflicts are best resolved at the individual wolf or pack level, with broader scale wolf population management considered only when excessive wolf numbers are determined to be the cause of significant conflict.
- Wolf management should be ''adaptive management'' and should include evaluation of management practices.
- Michigan wolves will need to be killed on a case-by-case basis to resolve conflicts, and hunters can be used for such management in the future.
- Natural expansion of wolves to the NLP should be accompanied by education efforts to enhance public tolerance of that expansion.

The Roundtable provided a series of guiding principles that specifically deal with wolf-related conflicts in order to minimize such conflicts and provide relief when they occur, with the goal of ensuring long-term viability of the wolf population (Michigan Wolf Management Roundtable 2006, pp. 7–9).

- Lethal control is an accepted option, but more emphasis is needed on the development and use of non-lethal methods. The Roundtable does not recommend the use of lethal measures as a preventative approach where conflicts do not yet exist.
- Attacks on dogs trespassing into a pack territory are predictable and normal wolf behavior, and the primary responsibility for reducing the attacks lies with the dog owner. Lethal control of the pack should not be used unless non-lethal methods are ineffective and the attacks become chronic.
- Compensation for livestock losses should be tied to the use of best management practices to decrease wolf-livestock conflicts. An incremental approach by MI DNR to resolve wolf-livestock conflicts should involve technical support, non-lethal methods, and lethal control, and should be implemented in a manner that reflects the severity and frequency of the attacks.
- Livestock owners should be allowed, without a permit, to kill wolves in the act of attacking livestock on private property. Lethal take permits should be available to landowners if non-lethal methods are ineffective following verified wolf depredations. Abuses of these permits should be referred for prosecution.

While recognizing that public hunting or trapping of wolves is a valid management tool to reduce wolf-related conflicts under specific conditions, the Roundtable was unable to come to a consensus position on conducting a wolf hunting or trapping program in the absence of a need to reduce the wolf population to address identified conflicts. Developing guiding principles regarding such a public harvest of wolves was not possible due to the significantly different and deeply held fundamental values of various Roundtable members (Michigan Wolf Management Roundtable 2006, p. 10).

Guiding principles also were provided by the Roundtable to stress the importance of continuing and enhancing information, education, and research components of wolf management and to include information in the management plan regarding the cultural and spiritual significance of the wolf to Native Americans. The Roundtable provided additional guiding principles that support a prohibition on the private possession of wolves without a permit, express concern that wolf-dog hybrids will have negative effects on the State's wild wolf population, and encourage annual review by a State wolf advisory council and plan updates at 5-year intervals.

Because the Michigan plan revision process will not be completed until late in 2007, we cannot evaluate the goals, strategies, or activities that it will contain. However, MI DNR has long been an innovative leader, not a reluctant follower, in wolf recovery

efforts, exemplified by its initiation of the nation's first attempt to reintroduce wild wolves to vacant historical wolf habitat in 1974 (Weise *et al.* 1975). MI DNR's history of leadership in wolf recovery, its repeated written commitments to ensure the continued viability of a Michigan wolf population above a level that would trigger State or Federal listing as threatened or endangered, along with the protective ''Guiding Principles'' from the Michigan Wolf Management Roundtable, lead us to conclude that both the current Michigan Plan, and the revised plan to be developed using the guidance of the Roundtable, will provide adequate regulatory mechanisms for Michigan wolves. The DNR's goal remains to ''ensure the wolf population remains viable and above a level that would require either Federal or State reclassification as a threatened or endangered species'' (Moritz in litt. 2006) and upon Federal delisting to ''conduct management to ensure the persistence of a viable wolf population in Michigan, and thus preclude the need for its reclassification as threatened or endangered under State or Federal law'' (Koch in litt. 2006a).

Depredation Control in Michigan

Data from Michigan show a general increase in confirmed wolf depredations on livestock: 3 in 1998, 1 in 1999, 5 in 2000, 3 in 2001, 5 in 2002, 13 in 2003, 11 in 2004, and 5 in 2005. These livestock depredations occurred at 34 different UP farms; nearly three-quarters of the depredations were on cattle, with the rest on sheep, poultry and captive cervids (Beyer *et al.* 2006, p. 85).

Michigan has not experienced as high a level of attacks on dogs by wolves as Wisconsin, although a slight increase in such attacks has occurred over the last decade. The number of dogs killed in the State was one in 1996, two in 1999, three in 2001, four in 2002, eight in 2003, 4 in 2004, and 2 in 2005; seven additional dogs were injured in wolf attacks during that same period (Beyer *et al.* 2006, p. 93). Similar to Wisconsin, MI DNR has guidelines for its depredation control program, stating that lethal control will not be used when wolves kill dogs that are free-roaming, hunting, or training on public lands. Lethal control of wolves, however, would be considered if wolves have killed confined pets and remain in the area where more pets are being held (MI DNR 2005a, p. 6).

During the several years that lethal control of depredating wolves had been conducted in Michigan, there is no evidence of resulting adverse impacts to the maintenance of a viable wolf population in the UP. Four, six, two, and seven wolves, respectively, were euthanized in 2003, 2004, 2005, and 2006 (Beyer *et al.* 2006, p. 88; Roell in litt. 2006c, p. 1). This represents 1.2 percent, 1.7 percent, 0.5 percent, and 1.6 percent, respectively, of the UP's late winter population of wolves during the previous winter. Following this level of lethal depredation control, the UP wolf population increased 12 percent from 2003 to 2004, 13 percent from 2004 to 2005, and 7 percent from 2005 to 2006, demonstrating that the wolf population continues to increase at a healthy rate (Huntzinger *et al.* 2005, p. 6; MI DNR 2006a).

Post-Delisting Depredation Control in Michigan

Following Federal delisting, wolf depredation control in Michigan would be carried out according to the 1997 Michigan Wolf Recovery and Management Plan (MI DNR 1997), the revised Michigan management plan when completed, and any Tribal wolf management plans that may be developed in the future for reservations in occupied wolf range. Until such time as MI DNR adopts changes to wolf depredation control measures, the following management practices will be used following the effective date of Federal delisting.

To provide depredation control guidance when lethal control is an option, MI DNR has developed detailed instructions for incident investigation and response (MI DNR 2005a). Verification of wolf depredation incidents will be conducted by MI DNR or USDA–APHIS–Wildlife Services personnel (working under a cooperative agreement with MI DNR or at the request of a Tribe, depending on the location) who have been trained in depredation investigation techniques. The MI DNR specifies that the verification process will use the investigative techniques that have been developed and successfully used in Minnesota by Wildlife Services (MI DNR 2005a, Append. B, pp. 9–10). Following verification, one or more of several options will be implemented to address the depredation problem. Technical assistance, consisting of advice or recommendations to reduce wolf conflicts, will be provided. Technical assistance may also include providing to the landowner various forms of non-injurious behavior modification materials, such as flashing lights, noise makers, temporary fencing, and fladry.

Trapping and translocating depredating wolves has been used in the past, resulting in the translocation of 23 UP wolves during 1998–2003 (Beyer *et al.* 2006, p. 88), and it may be used in the future, but as with Wisconsin, suitable relocation sites are becoming rarer, and there is local opposition to the release of translocated depredators. Furthermore, none of the past translocated depredators have remained near their release sites, making this a questionable method to end the depredation behaviors of these wolves (MI DNR 2005a, pp. 3–4).

Lethal control of depredating wolves is likely to be the most common future response in situations when improved livestock husbandry and wolf behavior modification techniques (e.g., flashing lights, noise-making devices) are judged to be inadequate. As wolf numbers continue to increase on the UP, the number of verified depredations will also increase, and will probably do so at a rate that exceeds the rate of wolf population increase. This will occur as wolves increasingly disperse into and occupy areas of the UP with more livestock and more human residences, leading to additional exposure to domestic animals. In a recent application for a lethal take permit under section 10(a)(1)(A) of the Act, MI DNR requested authority to euthanize up to 10 percent of the late-winter wolf population annually (MI DNR 2005b, p. 1). However, based on 2003–2005 depredation data, it is likely that significantly less than 10 percent lethal control will be needed over the next several years.

The Michigan Wolf Management Roundtable has provided recommendations to guide management of various conflicts caused by wolf recovery, including depredation on livestock and pets, human safety, and public concerns regarding wolf impacts on other wildlife. We view the Roundtable's depredation and conflict control recommendations to be conservative, in that they recommend non-lethal depredation management whenever possible, oppose preventative wolf removal where problems have not yet occurred, encourage incentives for best management practices that decrease wolf-livestock practices without impacting wolves, and support closely monitored and enforced take by landowners of wolves ''in the act of livestock depredation'' or under limited permits if depredation is confirmed and non-lethal methods are determined to be ineffective. Based on these guiding principles for the revised MI Plan, the current MI Plan, and stated goals for maintaining wolf populations at or above recovery goals, the Service believes any wolf management changes will not be implemented in a manner

that results in significant reductions in Michigan wolf populations. At this time, MI DNR remains committed to ensuring a viable wolf population above a level that would trigger Federal relisting as either threatened or endangered in the future (Koch in litt. 2006a), and we do not see any indication from their Plan revision efforts that the DNR is departing from that commitment.

Similar to Wisconsin, Michigan livestock owners are compensated when they lose livestock as a result of a confirmed wolf depredation. Currently there are two complementary compensation programs in Michigan, one funded by the MI DNR and implemented by Michigan Department of Agriculture (MI DA) and another set up through donations (from Defenders of Wildlife and private citizens) and administered by the International Wolf Center (IWC), a non-profit organization. From the inception of the program to 2000, MI DA has paid 90 percent of full market value of depredated livestock value at the time of loss. The IWC account was used to pay the remaining 10 percent from 2000 to 2002 when MI DA began paying 100 percent of the full market value of depredated livestock. The IWC account continues to be used to pay the difference between value at time of loss and the full fall market value for depredated young of the year livestock, and together the two funds have provided nearly $20,000 in livestock loss compensation through 2005 (Beyer *et al.* 2006, p. 86). Neither of these programs provide compensation for pets or for veterinary costs to treat wolf-inflicted livestock injuries. The MI DNR plans to continue cooperating with MI DA and other organizations to maintain the wolf depredation compensation program (Pat Lederle pers. comm. 2004).

The complete text of the Wisconsin, Michigan, and Minnesota wolf plans, as well as our summaries of those plans, can be found on our Web site (see **FOR FURTHER INFORMATION CONTACT** section above).

Regulatory Mechanisms in Other States and Tribal Areas Within the WGL DPS

North Dakota and South Dakota

North Dakota lacks a State endangered species law or regulations. Any gray wolves in the State currently are classified as furbearers, with a closed season. North Dakota Game and Fish Department is unlikely to change the species' State classification immediately following Federal delisting. Wolves are included in the State's July 2004 list of 100 Species of Conservation Concern as a ''Level 3'' species. Level 3 species are those ''having a moderate level of conservation priority, but are believed to be peripheral or do not breed in North Dakota.'' Placement on this list gives species greater access to conservation funding, but does not afford any additional regulatory or legislative protection (Bicknell in litt. 2005).

Currently any wolves that may be in South Dakota are not State listed as threatened or endangered, nor is there a hunting or trapping season for them. Upon the effective date of Federal delisting gray wolves in eastern South Dakota will fall under general protections afforded all State wildlife. These protections require specific provisions—seasons and regulations—be established prior to initiating any form of legal take. Thus, the State could choose to implement a hunting, or trapping season for gray wolves east of the Missouri River; however, absent some definitive action to establish a season, wolves would remain protected. Following Federal delisting, any verified depredating wolves east of the Missouri will likely be trapped and killed by the USDA–APHIS–Wildlife Services program (Larson in litt. 2005). Non-depredating federally-delisted wolves in North and South Dakota will continue to receive protection by the States' wildlife protection statutes unless specific action is taken to open a hunting or trapping season or otherwise remove existing protections.

Post-Delisting Depredation Control in North and South Dakota

Since 1993, five incidents of verified wolf depredation have occurred in North Dakota, with one in September 2003 and two more in December 2005. There have been no verified wolf depredations in South Dakota in recent decades. Following Federal delisting we assume that lethal control of a small number of depredating wolves will occur in one or both of these States. Lethal control of depredating wolves may have adverse impacts on the ability of wolves to occupy any small areas of suitable or marginally suitable habitat that may exist in the States. However, lethal control of depredating wolves in these two States will have no adverse affects on the long-term viability of wolf populations in the WGL DPS as a whole, because the existence of a wolf or a wolf population in the Dakotas will not make a meaningful contribution to the maintenance of the current viable, self-sustaining, and representative metapopulation of wolves in the WGL DPS.

Other States in the Western Great Lakes DPS

This delisted DPS includes the portion of Iowa that is north of Interstate Highway 80, which is approximately 60 percent of the State. The Iowa Natural Resource Commission currently lists gray wolves as furbearers, with a closed season (Howell in litt. 2005). If the State retains this listing following Federal delisting of this DPS, wolves dispersing into northern Iowa will be protected by State law.

The portion of Illinois that is north of Interstate Highway 80, less than one-fifth of the State, is included in this DPS, and is part of the geographic area where wolves are now delisted and removed from Federal protection. Gray wolves are currently protected in Illinois as a threatened species under the Illinois Endangered Species Protection Act (520 ILCS 10). Thus, following this Federal delisting, wolves dispersing into northern Illinois will continue to be protected from human take by State law.

The extreme northern portions of Indiana and northwestern Ohio are included within this delisted DPS, and any wolves that are found in this area are no longer federally protected under the Act. The State of Ohio classifies the gray wolf as ''extirpated,'' and there are no plans to reintroduce or recover the species in the State. The species lacks State protection, but State action is likely to apply some form of protection if wolves begin to disperse into the State (Caldwell in litt. 2005). Indiana DNR lists the gray wolf as extirpated in the State, and the species would receive no State protection under this classification following this Federal delisting. The only means to provide State protection would be to list them as State-endangered, but that is not likely to occur unless wolves become resident in Indiana (Johnson in litt. 2005, in litt. 2006). Thus, federally delisted wolves that might disperse into Indiana and Ohio would lack State protection there, unless these two States take specific action to provide new protections.

Because the portions of Iowa, Illinois, Indiana, and Ohio within the WGL DPS do not contain suitable habitat or currently established packs, depredation control in these States will not have any significant impact on the continued viability of the WGL DPS wolf populations.

Tribal Management and Protection of Gray Wolves

Native American tribes and multi-tribal organizations have indicated to the Service that they will continue to

conserve wolves on most, and probably all, Native American reservations in the core recovery areas of the WGL DPS. The wolf retains great cultural significance and traditional value to many Tribes and their members (additional discussion is found in Factor E), and to retain and strengthen cultural connections, many tribes oppose unnecessary killing of wolves on reservations and on ceded lands, even following Federal delisting (Hunt in litt. 1998; Schrage in litt. 1998a; Schlender in litt. 1998). Some Native Americans view wolves as competitors for deer and moose, whereas others are interested in harvesting wolves as furbearers (Schrage in litt. 1998a). Many tribes intend to sustainably manage their natural resources, wolves among them, to ensure that they are available to their descendants. Traditional natural resource harvest practices, however, often include only a minimum amount of regulation by the Tribal government (Hunt in litt. 1998).

Although the Tribes with wolves that visit or reside on their reservations do not yet have management plans specific to the gray wolf, several Tribes have informed us that they have no plans or intentions to allow commercial or recreational hunting or trapping of the species on their lands after Federal delisting. The Service has recently provided the Little Traverse Bay Band of Odawa Indians (Michigan) with grant funding to develop a gray wolf monitoring and management plan. The Service has also awarded a grant to the Ho-Chunk Nation to identify wolf habitat on reservation lands.

As a result of many past contacts with, and previous written comments from, the Midwestern Tribes and their off-reservation natural resource management agencies—the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), the 1854 Authority, and the Chippewa Ottawa Treaty Authority—it is clear that their predominant sentiment is strong support for the continued protection of wolves at a level that ensures that viable wolf populations remain on reservations and throughout the treaty-ceded lands surrounding the reservations. While several Tribes stated that their members may be interested in killing small numbers of wolves for spiritual or other purposes, this would be carried out in a manner that would not impact reservation or ceded territory wolf populations.

The Tribal Council of the Leech Lake Band of Minnesota Ojibwe (Council) approved a resolution that describes the sport and recreational harvest of gray wolves as an inappropriate use of the animal. That resolution supports limited harvest of wolves to be used for traditional or spiritual uses by enrolled Tribal members if the harvest is done in a respectful manner and would not negatively affect the wolf population. The Council is revising the Reservation Conservation Code to allow Tribal members to harvest some wolves after Federal delisting (Googgleye, Jr. in litt. 2004). In 2005, the Leech Lake Reservation was home to an estimated 75 gray wolves, the largest population of wolves on a Native American reservation in the 48 conterminous States (Mortensen pers. comm. 2006; White in litt. 2003).

The Red Lake Band of Chippewa Indians (Minnesota) has indicated that it is likely to develop a wolf management plan that will be very similar in scope and content to the plan developed by the MN DNR. The Band's position on wolf management is ''wolf preservation through effective management,'' and the Band is confident that wolves will continue to thrive on their lands (Bedeau in litt. 1998). The Reservation currently has nine packs with an estimated 15–30 wolves within its boundaries (Huseby pers. comm. 2006).

The Fond du Lac Band (Minnesota) believes that the ''well being of the wolf is intimately connected to the well being of the Chippewa People'' (Schrage in litt. 2003). In 1998, the Band passed a resolution opposing Federal delisting and any other measure that would permit trapping, hunting, or poisoning of the gray wolf (Schrage in litt. 1998b, in litt. 2003). If this prohibition is rescinded, the Band's Resource Management Division will coordinate with State and Federal agencies to ensure that any wolf hunting or trapping would be ''conducted in a biologically sustainable manner'' (Schrage in litt. 2003).

The Red Cliff Band (Wisconsin) has strongly opposed State and Federal delisting of the gray wolf. Current Tribal law protects gray wolves from harvest, although harvest for ceremonial purposes would likely be permitted after Federal delisting (Symbal in litt. 2003).

The Keweenaw Bay Indian Community (Michigan) will continue to list the gray wolf as a protected animal under the Tribal Code following Federal delisting, with hunting and trapping prohibited (Mike Donofrio pers. comm. 1998). Furthermore, the Keweenaw Bay Community plans to develop a Protected Animal Ordinance that will address gray wolves (Donofrio in litt. 2003).

While we have not received any written comments from the Menominee Indian Tribe of Wisconsin, the Tribe has shown a great deal of interest in wolf recovery and protection in recent years. In 2002, the Tribe offered their Reservation lands as a site for translocating seven depredating wolves that had been trapped by WI DNR and Wildlife Services. Tribal natural resources staff participated in the soft release of the wolves on the Reservation and helped with the subsequent radio-tracking of the wolves. Although by early 2005 the last of these wolves died on the reservation, the tribal conservation department continued to monitor another pair that had moved onto the Reservation, as well as other wolves near the reservation (Wydeven in litt. 2006a). When that pair produced pups in 2006, but the adult female was killed, Reservation biologists and staff worked diligently with the WI DNR and the Wildlife Science Center (Forest Lake, Minnesota) to raise the pups in captivity in the hope that they could later be released to the care of the adult male. However, the adult male died prior to pup release, and they have been moved back to the Wildlife Science Center where they will likely remain in captivity (Pioneer Press 2006).

Several Midwestern tribes (e.g., the Bad River Band of Lake Superior Chippewa Indians and the Little Traverse Bay Bands of Odawa Indians) have expressed concern that Federal delisting will result in increased mortality of gray wolves on reservation lands, in the areas immediately surrounding the reservations, and in lands ceded by treaty to the Federal Government by the Tribes (Kiogama and Chingwa in litt. 2000). At the request of the Bad River Tribe of Lake Superior Chippewa Indians, we are currently working with their Natural Resource Department and WI DNR to develop a wolf management agreement for lands adjacent to the Bad River Reservation. The Tribe's goal is to reduce the threats to reservation wolf packs when they are temporarily off the reservation. Other Tribes have expressed interest in such an agreement. If this and similar agreements are implemented, they will provide additional protection to certain wolf packs in the midwestern U.S.

The GLIFWC has stated its intent to work closely with the States to cooperatively manage wolves in the ceded territories in the core areas, and will not develop a separate wolf management plan (Schlender in litt. 1998). Furthermore, the Voigt Intertribal Task Force of GLIFWC has expressed its support for strong protections for the wolf, stating '' [delisting] hinges on whether wolves are sufficiently restored and will be sufficiently protected to

ensure a healthy and abundant future for our brother and ourselves'' (Schlender in litt. 2004).

According to the 1854 Authority, ''attitudes toward wolf management in the 1854 Ceded Territory run the gamut from a desire to see total protection to unlimited harvest opportunity.'' However, the 1854 Authority would not ''implement a harvest system that would have any long-term negative impacts to wolf populations'' (Edwards in litt. 2003). In comments submitted for our 2004 delisting proposal for a larger Eastern DPS of the gray wolf, the 1854 Authority stated that the Authority does not have a wolf management plan for the 1854 Ceded Territory, but is ''confident that under the control of state and tribal management, wolves will continue to exist at a self-sustaining level in the 1854 Ceded Territory. Sustainable populations of wolves, their prey and other resources within the 1854 Ceded Territory are goals to which the 1854 Authority remains committed. As such, we intend to work with the State of Minnesota and other tribes to ensure successful state and tribal management of healthy wolf populations in the 1854 Ceded Territory'' (Myers in litt. 2004).

While there are few written Tribal protections currently in place for gray wolves, the highly protective and reverential attitudes that have been expressed by Tribal authorities and members have assured us that any post-delisting harvest of reservation wolves would be very limited and would not adversely impact the delisted wolf populations. Furthermore, any off-reservation harvest of wolves by Tribal members in the ceded territories would be limited to a portion of the harvestable surplus at some future time. Such a harvestable surplus would be determined and monitored jointly by State and Tribal biologists, and would be conducted in coordination with the Service and the Bureau of Indian Affairs, as is being successfully done for the ceded territory harvest of inland and Great Lakes fish, deer, bear, moose, and furbearers in Minnesota, Wisconsin, and Michigan. Therefore, we conclude that any future Native American take of delisted wolves will not significantly impact the viability of the wolf population, either locally or across the WGL DPS.

Federal Lands

The five national forests with resident wolves (Superior, Chippewa, Chequamegon-Nicolet, Hiawatha, and Ottawa National Forests) in Minnesota, Wisconsin, and Michigan are all operating in conformance with standards and guidelines in their management plans that follow the 1992 Recovery Plan's recommendations for the Eastern Timber Wolf (USDA FS 2004a, chapter 2, p. 31; USDA FS 2004b, chapter 2, p. 28; USDA FS 2004c, chapter 2, p. 19; USDA FS 2006a, chapter 2, p. 17; USDA FS 2006b, chapter 2, pp. 28–29). Delisting is not expected to lead to an immediate change in these standards and guidelines; in fact, the Regional Forester for U.S. Forest Service Region 9 is expected to maintain the classification of the gray wolf as a Regional Forester Sensitive Species for at least 5 years after Federal delisting (Moore in litt. 2003). Under these standards and guidelines, a relatively high prey base will be maintained, and road densities will be limited to current levels or decreased. For example, on the Chequamegon-Nicolet National Forest in Wisconsin, the standards and guidelines specifically include the protection of den sites and key rendezvous sites, and management of road densities in existing and potential wolf habitat (USDA 2004c, Chap. 2, p. 19). The trapping of depredating wolves would likely be allowed on national forest lands under the guidelines and conditions specified in the respective State wolf management plans. However, there are relatively few livestock raised within the boundaries of national forests in the upper midwest, so wolf depredation and lethal control of wolves is neither likely to be a frequent occurrence, nor constitute a significant mortality factor, for the WGL DPS. Similarly, in keeping with the practice for other state-managed game species, any public hunting or trapping season for wolves that might be opened in the future by the States would likely include hunting and trapping within the national forests (Lindquist in litt. 2005; Williamson in litt. 2005; Piehler in litt. 2005; Evans in litt. 2005). The continuation of current national forest management practices will be important in ensuring the long-term viability of gray wolf populations in Minnesota, Wisconsin, and Michigan.

Gray wolves regularly use four units of the National Park System in the WGL DPS and may occasionally use three or four other units. Although the National Park Service (NPS) has participated in the development of some of the State wolf management plans in this area, NPS is not bound by States' plans. Instead, the NPS Organic Act and the NPS Management Policy on Wildlife generally require the agency to conserve natural and cultural resources and the wildlife present within the parks. 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 state management plans. Management emphasis in National Parks after delisting will continue to minimize the human impacts on wolf populations. 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 gray wolf, the NPS Organic Act and NPS policies will continue to provide protection following Federal delisting.

Management and protection of wolves in Voyageurs National Park, along Minnesota's northern border is not likely to change after delisting. The park's management policies require that ''native animals will be protected against harvest, removal, destruction, harassment, or harm through human action.'' No population targets for wolves will be established for the NP (Holbeck in litt. 2005). To reduce human disturbance, temporary closures around wolf denning and rendezvous sites will be enacted whenever they are discovered in the park. Sport hunting is already prohibited on park lands, regardless of what may be allowed beyond park boundaries (West in litt. 2004). A radio telemetry study conducted between 1987–91 of wolves living in and adjacent to the park found that all mortality inside the park was due to natural causes (e.g., killing by other wolves or starvation), whereas the majority (60–80 percent) of mortality outside the park was human-induced (e.g., shooting and trapping) (Gogan *et al.* 2004, p. 22). If there is a need to control depredating wolves outside the park, which seems unlikely due to the current absence of agricultural activities adjacent to the park, the park would work with the State to conduct control activities where necessary (West in litt. 2004).

The wolf population in Isle Royale National Park is described above (*see* Michigan Recovery). The NPS has indicated that it will continue to closely monitor and study these wolves. This wolf population is very small and isolated from the other WGL DPS gray wolf populations; as described above, it is not considered to be significant to the recovery or long-term viability of the gray wolf (USFWS 1992, p. 28).

Two other units of the National Park System, Pictured Rocks National Lakeshore and St. Croix National Scenic Riverway, are regularly used by wolves. Pictured Rocks National Lakeshore is a

narrow strip of land along Michigan's Lake Superior shoreline. Lone wolves periodically use, but do not appear to be year-round residents of, the Lakeshore. If denning occurs after delisting, the Lakeshore would protect denning and rendezvous sites at least as strictly as the Michigan Plan recommends (Gustin in litt. 2003). Harvesting wolves on the Lakeshore may be allowed (i.e., if the Michigan DNR allows for harvest in the State), but trapping is not allowed. The St. Croix National Scenic Riverway, in Wisconsin and Minnesota, is also a mostly linear ownership. At least 18 wolves from 6 packs use the Riverway. The Riverway is likely to limit public access to denning and rendezvous sites and to follow other management and protective practices outlined in the respective State wolf management plans, although trapping is not allowed on NPS lands except possibly by Native Americans (Maercklein in litt. 2003).

Gray wolves occurring on NWRs in the WGL DPS will be monitored, and refuge habitat management will maintain the current prey base for them for a minimum of 5 years after delisting. Trapping or hunting by government trappers for depredation control will not be authorized on NWRs. Because of the relatively small size of these NWRs, however, most or all of these packs and individual wolves also spend significant amounts of time off of these NWRs.

Gray wolves also occupy the Fort McCoy military installation in Wisconsin. In 2003, one pack containing five adult wolves occupied a territory that included the majority of the installation; in 2004 and 2006, the installation had one pack with two adults; in 2005 there was a single pack with 4 wolves. Management and protection of wolves on the installation will not change significantly after Federal and/or State delisting. Den and rendezvous sites would continue to be protected, hunting seasons for other species (i.e. coyote) would be closed during the gun-deer season, and current surveys would continue, if resources are available. Fort McCoy has no plans to allow a public harvest of wolves on the installation (Nobles in litt. 2004; Wydeven *et al.* 2005a, p. 25; 2006a, p. 25).

At least one pair of wolves produced pups on Camp Ripley Army National Guard Training Facility in Minnesota since 1994. This military base currently hosts two packs that have the majority of their territories within the base boundaries. The population of the two packs generally ranges between 10 and 20 animals. Currently three wolves in each pack are being radio-tracked. There have been no significant conflicts with military training or with the permit-only public deer hunting program there, and no new conflicts are expected following delisting (Brian Dirks pers. comm. 2006).

The protection afforded to resident and transient wolves, their den and rendezvous sites, and their prey by five national forests, four National Parks, two military facilities, and numerous National Wildlife Refuges in Minnesota, Wisconsin, and Michigan would further ensure the conservation of wolves in the three States after delisting. In addition, wolves that disperse to other units of the National Refuge System or the National Park System within the WGL DPS will also receive the protection afforded by these Federal agencies.

In summary, following this Federal delisting of the WGL DPS of gray wolves, there will be varying State and Tribal classifications and protections provided to wolves. The wolf management plans currently in place for Minnesota, Wisconsin, and Michigan will be more than sufficient to retain viable wolf populations in each State that are above the Federal recovery criteria for wolf metapopulation subunits, and even for three completely isolated wolf populations. These State plans provide a very high level of assurance that wolf populations in these three States will not decline to nonviable levels in the foreseeable future. Furthermore, the 2006 Update to the Wisconsin Wolf Management Plan (WI DNR 2006a, pp. 3–4) demonstrates the State's commitment by retaining the previous management goal of 350 wolves, and it did not weaken any significant component of the original 1999 Plan. Similarly, current work on revising the Michigan wolf plan is being conducted in a manner that will maintain the State's commitments to maintain viable wolf populations after this Federal delisting. While these State plans recognize there may be a need to control or even reduce wolf populations at some future time, none of the plans include a public harvest of wolves.

Federally delisted wolves in Minnesota, Wisconsin, and Michigan will continue to receive protection from general human persecution by State laws and regulations. Michigan has met the criteria established in their management plan for State delisting and, subsequent to Federal delisting, intends to amend the Wildlife Conservation Order to grant ''protected animal'' status to the gray wolf. That status would ''prohibit take, establish penalties and restitution for violations of the Order, and detail conditions under which lethal depredation control measures could be implemented'' (Humphries in litt. 2004). Following Federal delisting, Wisconsin will fully implement a ''protected wild animal'' for the species, including protections that provide for fines of $1,000 to $2,000 for unlawful hunting. Minnesota DNR will consider population management measures, including public hunting and trapping, but this will not occur sooner than 5 years after Federal delisting and will maintain a wolf population of at least 1600 animals (MN DNR 2001, p. 2). In the meantime, wolves in Zone A could only be legally taken in Minnesota for depredation management or public safety, and Minnesota plans to increase its capability to enforce laws against take of wolves (MN DNR 2001, pp. 3–4).

Except for the very small portions of Indiana and Ohio, WGL DPS wolves are likely to remain protected by various state designations for the immediate future. States within the boundaries of the DPS either currently have mechanisms in place to kill depredating wolves (North Dakota and South Dakota) or can be expected to develop mechanisms following this Federal delisting of the DPS, in order to deal with wolf-livestock conflicts in areas where wolf protection is no longer required by the Act. Because these States constitute only about one-third of the land area within the DPS, and contain virtually no suitable habitat of sufficient size to host viable gray wolf populations, it is clear that even complete protection for gray wolves in these areas would neither provide significant benefits to wolf recovery in the DPS, nor to the long-term viability of the recovered populations that currently reside in the DPS. Therefore, although current and potential future regulatory mechanisms may allow the killing of gray wolves in these six States, these threats, and the area in which they will be manifest, will not impact the recovered wolf populations in the DPS now or in the foreseeable future.

Finally, although to our knowledge no Tribes have completed wolf management plans at this time, based on communications with Tribes and Tribal organizations, federally delisted wolves are very likely to be adequately protected on Tribal lands. Furthermore, the numerical recovery criteria in the Federal Recovery Plan would be achieved and maintained (based on the population and range of off-reservation wolves) even without Tribal protection of wolves on reservation lands. In addition, on the basis of information received from other Federal land management agencies in Minnesota, Wisconsin, and Michigan, we expect National Forests, units of the National

Park System, military bases, and National Wildlife Refuges will provide protections to gray wolves after delisting that will match, and in some will cases exceed, the protections provided by State wolf management plans and State protective regulations.

Therefore, we conclude that the regulatory mechanisms that will be in place subsequent to Federal delisting will preclude threats sufficient to cause the WGL DPS gray wolves to be in danger of extinction in the foreseeable future in all or a significant portion of the range within the WGL DPS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Taking of Wolves by Native Americans for Religious, Spiritual, or Traditional Cultural Purposes

As noted elsewhere in this final rule, the wolf has great significance to many Native Americans in the Western Great Lakes area, especially to Wolf Clan members, and has a central role in their creation stories. The wolf, Ma''ingan, is viewed as a brother to the Anishinaabe people, and their fates are believed to be closely linked. Ma''ingan is a key element in many of their beliefs, traditions, and ceremonies, and wolf pack systems are used as a model for Anishinaabe families and communities. We are not aware of any takings of wolves in the Midwest for use in these traditions or ceremonies while the wolf has been listed as a threatened or endangered species. While wolves have been listed as threatened in Minnesota, we have instructed Wildlife Services to provide, upon request, gray wolf pelts and other parts from wolves killed during depredation control actions to Tribes in order to partially serve these traditional needs.

Some Tribal representatives, as well as the GLIFWC, have indicated that following delisting there is likely to be interest in the taking of small numbers of wolves for traditional ceremonies (King in litt. 2003; White in litt. 2003). This take could occur on reservation lands where it could be closely regulated by a Tribe to ensure that it does not affect the viability of the reservation wolf population. Such takings might also occur on off-reservation treaty lands on which certain Tribes retained hunting, fishing, and gathering rights when the land was ceded to the Federal Government in the 19th Century. Native American taking of wolves from ceded lands would be limited to a specified portion of a harvestable surplus of wolves that is established by the States in coordination with the Tribes, consistent with past Federal court rulings on treaty rights. Such taking will not occur until such time as a harvestable surplus has been documented based on biological data, and regulations and monitoring have been established by the States and Tribes to ensure a harvest can be carried out in a manner that ensures the continued viability of the wolf population in that State. Previous court rulings have ensured that Native American treaty harvest of fish or wildlife species have not risked endangering the resource.

If requested by the Tribes, multitribal natural resource agencies, and/or the States, the Service or other appropriate Federal agencies will work with these parties to help determine if a harvestable surplus exists, and if so, to assist in devising reasonable and appropriate methods and levels of harvest for delisted wolves for traditional cultural purposes.

We conclude that small number of wolves that may be taken by Native Americans will not be a threat sufficient to cause the WGL DPS gray wolves to be in danger of extinction in the foreseeable future in all or a significant portion of the range within the WGL DPS.

Public Attitudes Toward the Gray Wolf

An important determinant of the long-term status of gray wolf populations in the United States will be human attitudes toward this large predator. These attitudes are based on the conflicts between human activities and wolves, concern with the danger the species may pose to humans, its symbolic representation of wilderness, the economic effect of livestock losses, the emotions regarding the threat to pets, the perceived competition with hunters for deer and moose, the conviction that the species should never be a target of sport hunting or trapping, wolf traditions of Native American tribes, and other factors.

We have seen indications of a change in public attitudes toward the wolf over the last few decades. Public attitude surveys in Minnesota and Michigan (Kellert 1985, pp. 157–163; 1990, pp. 100–102; 1999, pp. 400–403), as well as the citizen input into the wolf management plans of Minnesota, Wisconsin, and Michigan, have indicated strong public support for wolf recovery if the adverse impacts on recreational activities and livestock producers can be minimized (MI DNR 1997, pp. 13–14, 50–56; MN DNR 1998, p. 2; WI DNR 1999, pp. 51–55; WI DNR 2006c, pp. 9–11). However, more recent surveys of Michigan residents may show that attitudes are changing now that the wolf recovery has succeeded and long-term wolf management is required. Although the majority of Michigan residents still support wolf recovery efforts, UP residents' support for wolf recovery has declined substantially since the 1990 Kellert survey (Mertig 2004, p. 37). At the same time, respondents from across the State have increased their support for killing individual problem wolves; support for lethal control of problem wolves ranges from 70 percent in the Southern Lower Peninsula to 85 percent in the UP (Mertig 2004, p. 40). In Wisconsin, a number of recent surveys, when taken together, provide strong evidence of support for a Wisconsin wolf population of 250–350 wolves or more (Naughton-Treves *et al.* 2003; Schanning and Vazquez 2005; Naughton *et al.* 2005 unpublished report; WI DNR 2006a, p. 9).

Once this delisting is in effect, States and tribes will have increased flexibility to deal with wolf human conflicts, including the use of lethal control of problems wolves, as specified in their current wolf management plans. It is unclear whether such flexibility of wolf control will affect public attitudes towards wolves (i.e., diminish opposition to the local presence of wolves), due to the strong influence of other factors.

The Minnesota DNR recognizes that to maintain public support for wolf conservation it must work to ensure that people are well informed about wolves and wolf management in the State. Therefore, MN DNR plans to provide ''timely and accurate information about wolves to the public, to support and facilitate wolf education programs, and to encourage wolf ecotourism,'' among other activities (MN DNR 2001, p. 29–30). Similarly, the Wisconsin and Michigan wolf management plans emphasize the need for long-term cooperative efforts with private educational and environmental groups to develop and distribute educational and informational materials and programs for public use (MI DNR 1997, p. 20; WI DNR 1999, pp. 26–27). We fully expect organizations such as the International Wolf Center (Ely, MN), the Timber Wolf Alliance (Ashland, WI), Timber Wolf Information Network (Waupaca, WI), the Wildlife Science Center (Forest Lake, MN), and other organizations to continue to provide educational materials and experiences with wolves far into the future, regardless of the Federal status of wolves.

In summary, we conclude that there is evidence showing strong public support for current wolf population levels in the

WGL DPS, especially if problem wolves, and to a lesser extent wolf numbers, are controlled. This support is a key component in our assessment of threats to the WGL DPS. Notwithstanding a small but significant societal segment who is opposed to the current level of wolf recovery and which may resort to illegal actions if problem wolves and the overall wolf population is not adequately managed, we believe that delisting while public support for wolves is still strong, followed by more intensive management of wolf populations by the States, is the best way to reduce the level of threat caused by human-induced mortality. We conclude that public attitudes towards wolves now and in the foreseeable future will not be threats sufficient to cause the WGL DPS gray wolves to be in danger of extinction in the foreseeable future in all or a significant portion of the range within the WGL DPS.

Summary of Our Five-Factor Analysis of Potential Threats

As required by the Act, we considered the five potential threat factors to assess whether wolves are threatened or endangered throughout all or a significant portion of their range in the WGL DPS and, therefore, whether the WGL DPS should be listed as threatened or endangered. While wolves historically occurred over most of the DPS, large portions of this area are no longer significant, and the wolf population in the WGL DPS will remain centered in Minnesota, Michigan, and Wisconsin.

While we recognize that gray wolves in the WGL DPS do not occupy all portions of their historical range, including some disjunct but potentially suitable areas with low road and human density and a healthy prey base within the WGL DPS, wolves in this DPS no longer meet the definition of a threatened or endangered species. Although there may be historical habitat within the DPS that remains unoccupied, many of these areas are no longer suitable. None of these historical areas are significant portions of the range of the WGL DPS.

We have based our determinations on the current status of, and future threats likely to be faced by, existing wolf populations within the WGL DPS in the foreseeable future.

The number of wolves in the WGL DPS greatly exceeds the recovery criteria (USFWS 1992, p. 24–26) for (1) a secure wolf population in Minnesota, and (2) a second population of 100 wolves for 5 successive years. Based on the criteria set by the Eastern Wolf Recovery Team in 1992 and reaffirmed in 1997 and 1998 (Peterson in litt. 1997, in litt. 1998), and endorsed by the peer reviewers, the DPS contains sufficient wolf numbers and distribution to ensure their long-term survival within the DPS. The maintenance and expansion of the Minnesota wolf population has maximized the preservation of the genetic diversity that remained in the WGL DPS when its wolves were first protected in 1974. Furthermore, the Wisconsin-Michigan wolf population has even exceeded the numerical recovery criterion for a completely isolated population. Therefore, even if this two-State population was to become totally isolated and wolf immigration from Minnesota and Ontario completely ceased, it would still remain a viable wolf population for the foreseeable future, as defined by the Recovery Plan (USFWS 1992, p. 25–26). Finally, the wolf populations in Wisconsin and Michigan each have separately exceeded 200 animals for 8 and 7 years respectively, so if they each somehow were to become isolated, they are already above viable population levels, and each State has committed to manage its wolf population at or above viable population levels. The wolf's numeric and distributional recovery criteria in the WGL DPS clearly have been exceeded in both magnitude and duration. The wolf's recovery in numbers and distribution in the WGL DPS, together with the status of the remaining threats, indicates that the WGL DPS of the gray wolf is not in danger of extinction, nor likely to become an endangered species, within the foreseeable future throughout all or a significant portion of its range.

Post-delisting wolf protection, management, and population and health monitoring by the States, Tribes, and Federal land management agencies—especially in Minnesota Zone A, Wisconsin Zones 1 and 2, and across the UP of Michigan, which constitute the significant portion of the species' range—will ensure the continuation of viable wolf populations above the Federal recovery criteria for the foreseeable future. Post-delisting threats to wolves in Zone B in Minnesota, Zones 3 and 4 in Wisconsin, and in the Lower Peninsula of Michigan—all areas that are not significant portions of the range of the WGL DPS—will be more substantial, and may preclude the establishment of wolf packs in most or all of these areas in Wisconsin and Michigan. Similarly, the lack of sufficient areas of suitable habitat in those parts of North Dakota, South Dakota, Iowa, Illinois, Indiana, and Ohio that are within the WGL DPS are expected to preclude the establishment of viable populations in these areas, although dispersing wolves and packs may temporarily occur in some of these areas. However, these areas are not SPR and wolf numbers in these areas will have no impact on the continued viability of the recovered WGL DPS. Reasonably foreseeable threats to wolves in all parts of the WGL DPS are not likely to threaten wolf population viability in the WGL DPS in the foreseeable future.

In summary, we find that the threat of habitat destruction or degradation or a reduction in the range of the gray wolf; utilization by humans; disease, parasites, or predatory actions by other animals or humans; regulatory measures by State, Tribal, and Federal agencies; or other threats will not individually or in combination be likely to cause the WGL DPS of the gray wolf to be in danger of extinction in the foreseeable future in all or a significant portion of the species' range. Ongoing effects of recovery efforts over the past decade, which resulted in a significant expansion of the occupied range of wolves in the WGL DPS, in conjunction with future State, Tribal, and Federal agency wolf management across that occupied range, will be adequate to ensure the conservation of the SPR of the WGL DPS. These activities will maintain an adequate prey base, preserve denning and rendezvous sites and dispersal corridors, monitor disease, restrict human take, and keep wolf populations well above the numerical recovery criteria established in the Federal Recovery Plan for the Eastern Timber Wolf (USFWS 1992, pp. 25–28).

After a thorough review of all available information and an evaluation of the previous five factors specified in section 4(a)(1) of the Act, as well as consideration of the definitions of ''threatened'' and ''endangered'' contained in the Act and the reasons for delisting as specified in 50 CFR 424.11(d), we conclude that removing the WGL DPS from the List of Endangered and Threatened Wildlife (50 CFR 17.11) is appropriate. Gray wolves have recovered in the WGL DPS as a result of the reduction of threats as described in the analysis of the five categories of threats.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices.

Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The final rule removes these Federal conservation measures for all gray wolves within the WGL DPS.

Effects of the Rule

This rule removes the protections of the Act for the WGL DPS by removing the wolves in that DPS from the List of Endangered and Threatened Wildlife. Elsewhere in today's **Federal Register**, we also identify the Northern Rocky Mountain (NRM) DPS and remove the gray wolves in that DPS from the List of Endangered and Threatened Wildlife, except for the gray wolves in Wyoming, a significant portion of the NRM DPS range, which will continue to be listed as an experimental population. As the Service is taking these regulatory actions with respect to the WGL DPS and the NRM DPS at the same time, this final rule includes regulatory revisions under § 17.11(h) that reflect the removal of the protections of the Act for both the WGL DPS and most of the NRM DPS, and reflect that gray wolves in Wyoming, a significant portion of the NRM DPS range, continue to be listed as an experimental population. However, only that portion of the revised gray wolf listing in § 17.11(h) that pertains to the WGL DPS is attributable to this final rule.

The separate experimental population listing in portions of Arizona, New Mexico, and Texas continues unchanged.

This final rule removes the special regulations under section 4(d) of the Act for wolves in Minnesota. These regulations currently are found at 50 CFR 17.40(d).

Critical habitat was designated for the gray wolf in 1978 (43 FR 9607, March 9, 1978). That rule (codified at 50 CFR 17.95(a)) identifies Isle Royale National Park, Michigan, and Minnesota wolf management zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(1), as critical habitat. Wolf management zones 1, 2, and 3 comprise approximately 25,500 sq km (9,845 sq mi) in northeastern and north-central Minnesota. This final rule removes the designation of critical habitat for gray wolves in Minnesota and on Isle Royale, Michigan.

This notice does not apply to the listing or protection of the red wolf (*C. rufus*). Furthermore, the remaining protections of the gray wolf under the Act do not extend to gray wolf-dog hybrids.

Post-Delisting Monitoring

Section 4(g)(1) of the Act, added in the 1988 reauthorization, requires us to implement a system, in cooperation with the States, to monitor for not less than 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 purpose of this post-delisting monitoring (PDM) is to verify that a species delisted due to recovery remains secure from risk of extinction after it no longer has the protections of the Act. To do this, PDM generally focuses on evaluating (1) demographic characteristics of the species, (2) threats to the species, and (3) implementation of legal and/or management commitments that have been identified as important in reducing threats to the species or maintaining threats at sufficiently low levels. We are to make prompt use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well-being of any recovered species. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also will seek active participation of other entities that are expected to assume responsibilities for the species' conservation, after delisting.

We are developing a PDM plan for the gray wolves in the WGL DPS with the assistance of the Eastern Gray Wolf Recovery Team. Once completed, we will make that document available on our Web site (See **FOR FURTHER INFORMATION CONTACT** section). At this time, we anticipate the PDM program will be a continuation of State monitoring activities similar to those which have been conducted by Minnesota, Wisconsin, and Michigan DNRs in recent years. These States comprise the core recovery areas within the DPS, and therefore the numerical recovery criteria in the Recovery Plan apply only to them. These activities will include both population monitoring and health monitoring of individual wolves. During the PDM period, the Service and the Recovery Team will conduct a review of the monitoring data and program. We will consider various relevant factors (including but not limited to mortality rates, population changes and rates of change, disease occurrence, range expansion or contraction) to determine if the population of gray wolves within the DPS warrants expanded monitoring, additional research, consideration for relisting as threatened or endangered, or emergency listing.

Minnesota, Wisconsin, and Michigan DNRs have monitored wolves for several decades with significant assistance from numerous partners, including the U.S. Forest Service, National Park Service, USDA–APHIS–Wildlife Services, Tribal natural resource agencies, and the Service. To maximize comparability of future PDM data with data obtained before delisting, all three State DNRs have committed to continue their previous wolf population monitoring methodology, or will make changes to that methodology only if those changes will not reduce the comparability of pre- and post-delisting data.

In addition to monitoring wolf population numbers and trends, the PDM will evaluate post-delisting threats, in particular human-caused mortality, disease, and implementation of legal and management commitments. If at any time during the monitoring period we detect a substantial downward change in the populations or an increase in threats to the degree that population viability may be threatened, we will evaluate and change (intensify, extend, and/or otherwise improve) the monitoring methods, if appropriate, and/or consider relisting the WGL DPS, if warranted.

This monitoring program will extend for 5 years beyond the effective delisting date of the DPS. At the end of the 5-year period we and the Recovery Team will conduct another review and post the results on our Web site. In addition to the above considerations, the review will determine whether the PDM program should be terminated or extended.

Required Determinations

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).

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 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. The Service 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 include any collections of information that require approval by OMB under the Paperwork Reduction Act. As proposed under the *Post-delisting Monitoring* section above, gray wolf populations in the Western Great Lakes DPS will be monitored by the States of Michigan, Minnesota, and Wisconsin in accordance with their gray wolf State management plans. There may also be additional voluntary monitoring activities conducted by a small number of tribes in these three States. 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 standardized information from 10 or more non-Federal individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this final 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 512 DM 2, we have coordinated the proposed rule and this final rule with the affected Tribes. Throughout several years of development of earlier related rules and the proposed rule, we have endeavored to consult with Native American tribes and Native American organizations in order to both (1) provide them with a complete understanding of the proposed changes, and (2) to understand their concerns with those changes. We have fully considered their comments during the development of this final rule. If requested, we will conduct additional consultations with Native American tribes and multitribal organizations subsequent to this final rule in order to facilitate the transition to State and tribal management of gray wolves within the WGL DPS.

References Cited

A complete list of all references cited in this document is available upon request from the Ft. Snelling, Minnesota, Regional Office and is posted on our Web site (see **FOR FURTHER INFORMATION CONTACT** section above).

Author

The primary author of this final rule is Laura J. Ragan, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota, Regional Office (*see* **FOR FURTHER INFORMATION CONTACT** section above). The majority of this final rule is based on the February 8, 2007 final rule for which the primary author was Ronald L. Refsnider, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota, Regional Office).

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 set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by revising the entry for ''Wolf, gray'' under ''MAMMALS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A., conterminous (lower 48) States, except: (1) Where listed as an experimental population below; (2) Minnesota, Wisconsin, Michigan, eastern North Dakota (that portion north and east of the Missouri River upstream to Lake Sakakawea and east of the centerline of Highway 83 from Lake Sakakawea to the Canadian border), eastern South Dakota (that portion north and east of the Missouri River), northern Iowa, northern Illinois, and northern Indiana (those portions of IA, IL, and IN north of the centerline of Interstate Highway 80), and northwestern Ohio (that portion north of the centerline of Interstate Highway 80 and west of the Maumee River at Toledo); (3) MT, ID, WY (however, see experimental population designation below), eastern WA (that portion of WA east of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA east of the centerline of Highway 395 south of Mesa), eastern OR (portion of OR east of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR east of the centerline of Highway 95 south of Burns Junction), and north central UT (that portion of UT east of the centerline of Highway 84 and north of Highway 80). Mexico.	E	1, 6, 13, 15, 35	N/A	N/A
.....do	.....do	.....do	U.S.A. (portions of AZ, NM, and TX—see § 17.84(k)).	XN	631	N/A	17.84(k) 17.84(i).
Wolf, gray [Northern Rocky Mountain DPS].	*Canis lupus*	U.S.A. (MT, ID, WY, eastern WA, eastern OR, and north central UT).	U.S.A. (WY—see § 17.84(i) and § 17.84(n)).	XN	561, 562	N/A	17.84(n).
*	*	*	*	*	*		*

§ 17.40 [Amended]

■ 3. Amend § 17.40 by removing and reserving paragraph (d).

§ 17.95 [Amended]

■ 4. Amend § 17.95(a) by removing the critical habitat entry for ''Gray Wolf (*Canis lupus*).''

Dated: March 10, 2009.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–5981 Filed 4–1–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0008; 92220–1113–0000; ABC Code: C6]

RIN 1018–AW37

Endangered and Threatened Wildlife and Plants; Final Rule To Identify the Northern Rocky Mountain Population of Gray Wolf as a Distinct Population Segment and To Revise the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), identify a distinct population segment (DPS) of the gray wolf (*Canis lupus*) in the Northern Rocky Mountains (NRM) of the United States and revise the List of Endangered and Threatened Wildlife by removing gray wolves within NRM DPS boundaries, except in Wyoming. The NRM gray wolf DPS encompasses the eastern one-third of Washington and Oregon, a small part of north-central Utah, and all of Montana, Idaho, and Wyoming. Our current estimate for 2008 indicates the NRM DPS contains approximately 1,639 wolves (491 in Montana; 846 in Idaho; 302 in Wyoming) in 95 breeding pairs (34 in Montana; 39 in Idaho; 22 in Wyoming). These numbers are about 5 times higher than the minimum population recovery goal and 3 times higher than the minimum breeding pair recovery goal. The end of 2008 will mark the ninth consecutive year the population has exceeded our numeric and distributional recovery goals.

The States of Montana and Idaho have adopted State laws, management plans, and regulations that meet the requirements of the Act and will conserve a recovered wolf population into the foreseeable future. In our proposed rule (72 FR 6106, February 8, 2007), we noted that removing the Act's protections in Wyoming was dependant upon the State's wolf law (W.S. 11–6–302 *et seq.* and 23–1–101, *et seq.* in House Bill 0213) and wolf management plan adequately conserving Wyoming's portion of a recovered NRM wolf population. In light of the July 18, 2008, U.S. District Court order, we reexamined Wyoming law, its management plans and implementing regulations, and now determine they are not adequate regulatory mechanisms for the purposes of the Act.

We determine that the best scientific and commercial data available demonstrates that (1) the NRM DPS is 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 represents a significant portion of range where the species remains in danger of extinction because of inadequate regulatory mechanisms. Thus, this final rule removes the Act's protections throughout the NRM DPS except for Wyoming. Wolves in Wyoming will continue to be regulated as a non-essential, experimental population per 50 CFR 17.84(i) and (n).

DATES: This rule becomes effective on May 4, 2009.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov*. Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for inspection, by appointment, during normal business hours, at our Montana office, 585 Shepard Way, Helena, Montana 59601. Call (406) 449–5225, extension 204 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (see **ADDRESSES**) or telephone (406) 449–5225, extension 204. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

Gray wolves (*C. 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 region (Mech 1974, p. 1). In the NRM, adult male gray wolves average over 45 kg (100 lb), but may weigh up to 60 kg (130 lb). Females weigh slightly 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). 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).

Wolves primarily prey on medium and large mammals. Wolves normally live in packs of 2 to 12 animals. In the NRM, pack sizes average about 10 wolves in protected areas, but a few complex packs have been substantially bigger in some areas of Yellowstone National Park (YNP) (Smith *et al.* 2006, p. 243; Service *et al.* 2008, Tables 1–3). Packs typically occupy large distinct territories from 518 to 1,295 square kilometers (km^2) (200 to 500 square miles (mi^2)) and defend these areas from other wolves or packs. Once a given area is occupied by resident wolf packs, it becomes saturated and wolf numbers become regulated by the amount of available prey, intra-species conflict, other forms of mortality, and dispersal. Dispersing wolves may cover large areas (*See* Defining the Boundaries of the NRM DPS) 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 the top-ranking (''alpha'') male and female in each pack breed and produce pups (Packard 2003, p. 38; Smith *et al.* 2006, pp. 243–4; Service *et al.* 2008, 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. Litters are typically born in April and range from 1 to 11 pups, but average around 5 pups (Service *et al.* 1989–2007, Tables 1–3). Most years, four of these five pups survive until winter (Service *et al.* 1989–2008, Tables 1–3). Wolves can live 13 years (Holyan *et al.* 2005, p. 446), but the average lifespan in the NRM 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 (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. After severe declines, wolf populations can more than double in just 2 years if mortality is reduced; increases of nearly 100 percent per year have been documented in low-density suitable habitat (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2008, 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 conterminous U.S. (2003 Reclassification Rule) (68 FR 15804).

Previous Federal Actions

In 1974, we listed two subspecies of gray wolf as endangered: The NRM gray wolf (*C. l. irremotus*) and the eastern timber wolf (*C. l. lycaon*) in the Great Lakes region (39 FR 1171, January 4, 1974). We listed a third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*) as endangered on April 28, 1976, (41 FR 17740) in Mexico and the southwestern U.S. On June 14, 1976 (41 FR 24064), we listed the Texas gray wolf subspecies (*C. l. monstrabilis*) as endangered in Texas and Mexico.

In 1978, we published a rule (43 FR 9607, March 9, 1978) relisting the gray wolf as endangered at the species level (*C. lupus*) throughout the conterminous 48 States and Mexico, except for Minnesota, where the gray wolf was reclassified to threatened. At that time, we designated critical habitat in Minnesota and Isle Royale, Michigan. In the NRM, we completed a recovery plan in 1980 and revised in 1987. In the Great Lakes Region, we completed a recovery plan in 1978 and revised in 1992. In the Southwest, we completed a recovery plan in 1982.

On November 22, 1994, we designated portions of Idaho, Montana, and Wyoming as two nonessential experimental population areas for the gray wolf under section 10(j) of the Act, 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 reintroduction projects in central Idaho and in the Greater Yellowstone Area (GYA). In 2005 and 2008, we revised these regulations to provide increased management flexibility for this recovered wolf population in States 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 wolf population achieved its numerical and distributional recovery goals at the end of 2000 (Service *et al.* 2008, Table 4). The temporal portion of the recovery goal was achieved in 2002 when the numerical and distributional recovery goals were exceeded for the 3rd successive year (Service *et al.* 2008, Table 4). To meet the Act's requirements Idaho, Montana, and Wyoming needed to develop post-delisting wolf management plans to ensure that adequate regulatory mechanisms would exist should the Act's protections be removed. 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. However, we found the 2003 Wyoming legislation and plan inadequate to conserve Wyoming's share of a recovered NRM gray wolf population (Williams 2004). Wyoming challenged this determination but the Federal district court in Wyoming dismissed the case (360 F. Supp 2nd 1214, D. Wyoming 2005). Wyoming appealed that decision and on April 3, 2006, the Tenth Circuit Court of Appeals upheld the district court ruling (442 F. 3rd 1262).

On July 19, 2005, we received a petition from the Office of the Governor, State of Wyoming and the Wyoming Game and Fish Commission (WGFC) 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). On August 1, 2006, we announced a 12-month finding that the petitioned action (delisting in all of Montana, Idaho, and Wyoming) was not warranted because the 2003 Wyoming State law and wolf management plan did not provide the necessary regulatory mechanisms to ensure that Wyoming's numerical and distributional share of a recovered NRM wolf population would be conserved (71 FR 43410). Wyoming challenged this finding in Federal District Court. On February 27, 2008, Federal District Judge issued an order dismissing the case (Wyoming U.S. District Court Case Number 2:06–CV–00245).

On February 8, 2007, we proposed to identify the NRM DPS of the gray wolf and to delist all or most portions of the NRM DPS (72 FR 6106). Specifically, we proposed to delist wolves in Montana, Idaho, and Wyoming, and parts of Washington, Oregon, and Utah. The proposal noted that the Act's protections would be retained in significant portions of the range in Wyoming in the final rule if adequate regulatory mechanisms were not developed to conserve Wyoming's portion of a recovered wolf population into the foreseeable future. Under this scenario, wolves in portions of Wyoming would continue to be regulated under the Act as a non-essential, experimental population per 50 CFR 17.84(i) and (n).

On July 6, 2007, the Service extended the comment period in order to consider a 2007 revised Wyoming wolf management plan and State law that we believed, if implemented, could allow the wolves in all of Wyoming to be removed from the List of Endangered and Threatened Wildlife (72 FR 36939). On November 16, 2007, the WGFC unanimously approved the 2007 Wyoming Plan (Cleveland 2007, p. 1). We then determined this plan provided adequate regulatory protections to conserve Wyoming's portion of a recovered wolf population into the foreseeable future (Hall 2007, p. 2). On February 27, 2008, we issued a final rule recognizing the NRM DPS and removing all of this DPS from the List of Endangered and Threatened Wildlife (73 FR 10514). This rule determined that Wyoming's regulatory mechanisms were adequate.

On April 28, 2008, 12 parties filed a lawsuit challenging the identification and delisting of the NRM DPS. The plaintiffs also moved to preliminarily enjoin the delisting. On July 18, 2008, the U.S. District Court for the District of Montana granted the plaintiffs' motion for a preliminary injunction and enjoined the Service's implementation of the final delisting rule for the NRM DPS of the gray wolf. The court stated that we acted arbitrarily in delisting a wolf population that lacked evidence of genetic exchange between subpopulations. The court also stated that we acted arbitrarily and capriciously when we approved Wyoming's 2007 statute and wolf management plan because the State failed to commit to managing for at least 15 breeding pairs and Wyoming's 2007 statute allowed the WGFC to diminish the trophy game area if it ''determines the diminution does not impede the delisting of gray wolves and will facilitate Wyoming's management of wolves.'' The court's preliminary injunction order concluded that the Plaintiffs were likely to prevail on the

merits of their claims. In light of the district 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 vacated the final delisting rule and remanded it back to the Service for further consideration.

Similarly, on February 8, 2007, we recognized a Western Great Lakes (WGL) DPS and removed it from the list of the List of Endangered and Threatened Wildlife (72 FR 6052). Several groups challenged this rule in court, arguing that the Service may not identify a DPS within a broader pre-existing listed entity for the purpose of delisting the DPS (*Humane Society of the United States* v. *Kempthorne*, Civil Action No. 07–0677 (PLF) (D.D.C.)). On September 29, 2008, the court vacated the WGL DPS final rule and remanded it to the Service. The court found that the Service had made that decision based on its interpretation that the plain meaning of the Act authorizes the Service to create and delist a DPS within an already-listed entity. The court disagreed, and concluded that the Act is ambiguous as to whether the Service has this authority. The court accordingly remanded the final rule so that the Service can provide a reasoned explanation of how its interpretation is consistent with the text, structure, legislative history, judicial interpretations, and policy objectives of the Act.

Given the above court rulings, on October 28, 2008 (73 FR 63926), we reopened the comment period on our February 8, 2007, proposed rule (72 FR 6106). Specifically, we sought information, data, and comments from the public regarding the 2007 proposal with an emphasis on new information relevant to this action, the issues raised by the Montana District Court, and the issues raised by the September 29, 2008, ruling of the U.S. District Court for the District of Columbia with respect to the WGL gray wolf DPS. The notice also asked for public comment on what portions of Wyoming need to be managed as a trophy game area and what portions of Wyoming constitute a significant portion of the NRM DPS's range. After further analysis, we determined that Wyoming's regulatory framework did not meet the requirements of the Act. On January 15, 2009 Wyoming's Governor was notified that Wyoming no longer had a Service-approved wolf management plan (Gould 2009). Wolf management in all of Wyoming (except the Wind River Tribal Lands because the tribe had a Service-approved plan) again became immediately under the less flexible provisions of the 1994 experimental population rules [17.84 (i)].

We are required to rely upon the best scientific information currently available. Therefore, this final rule reflects new data and information primarily concerning wolf population numbers, livestock depredations and wolf control, and genetic exchange that were received after the 2008 public comment period. This new data and information are consistent with and did not change our conclusions stated in the preamble to the proposed rule and in the notice for the reopened comment period.

For detailed information on previous Federal actions also see the 2003 Reclassification Rule (68 FR 15804, April 1, 2003), the Advanced Notice of Proposed Rulemaking (ANPR) (71 FR 6634, February 8, 2006), the 12-month finding on Wyoming's petition to delist (71 FR 43410, August 1, 2006), and the February 8, 2007, proposed rule to designate the NRM population of gray wolf as a DPS and remove this DPS from the List of Endangered and Threatened Wildlife (72 FR 6106).

Distinct Vertebrate Population Segment Policy Overview

Pursuant to the Act, we consider if information is sufficient to indicate that listing, reclassifying, or delisting any species, subspecies, or, for vertebrates, any DPS of these taxa may be warranted. To interpret and implement the DPS provision of the Act and congressional guidance, the Service and the National Marine Fisheries Service published a policy regarding the recognition of distinct vertebrate population segments under the Act (61 FR 4722, February 7, 1996). Under this policy, the Service considers two factors to determine whether the population segment is a valid DPS—(1) discreteness of the population segment in relation to the remainder of the taxon, and (2) the significance of the population segment to the taxon to which it belongs. If a population meets both tests, it is a DPS, and the Service then evaluates the population segment's conservation status according to the standards in section 4 of the Act for listing, delisting, or reclassification (i.e., is the DPS endangered or threatened).

Defining the Boundaries of the NRM DPS

We defined the geographic boundaries for the area to be evaluated for DPS status based on discreteness and significance as defined by our DPS policy. The DPS policy allows an artificial (e.g., State line) or manmade (e.g., road or highway) boundary to be used as a boundary of convenience for clearly identifying the geographic area for a DPS. The NRM DPS includes all of Montana, Idaho, and Wyoming, the eastern third of Washington and Oregon, and a small part of north central Utah. Specifically, the DPS includes that portion of Washington east of Highway 97 and Highway 17 north of Mesa and that portion of Washington east of Highway 395 south of Mesa. It includes that portion of Oregon east of Highway 395 and Highway 78 north of Burns Junction and that portion of Oregon east of Highway 95 south of Burns Junction. Finally, the DPS includes that portion of Utah east of Highway 84 and north of Highway 80. The centers of these roads are deemed the boundary of the DPS (See Figure 1).

This DPS is consistent with over 30 years of recovery efforts in the NRMs in that: (1) The DPS approximates the U.S. historic range of the NRM gray wolf subspecies (*C. l. irremotus*) (Service 1980, p. 3; Service 1987, p. 2) which was the originally listed entity in 1974 (39 FR 1171, January 4, 1974); (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 (EIS) (Service 1994, Ch. 1 p. 3); and (3) the DPS is inclusive of the entire Central-Idaho and Yellowstone Non-essential Experimental Population areas (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 50 CFR 17.84 (i) & (n)).

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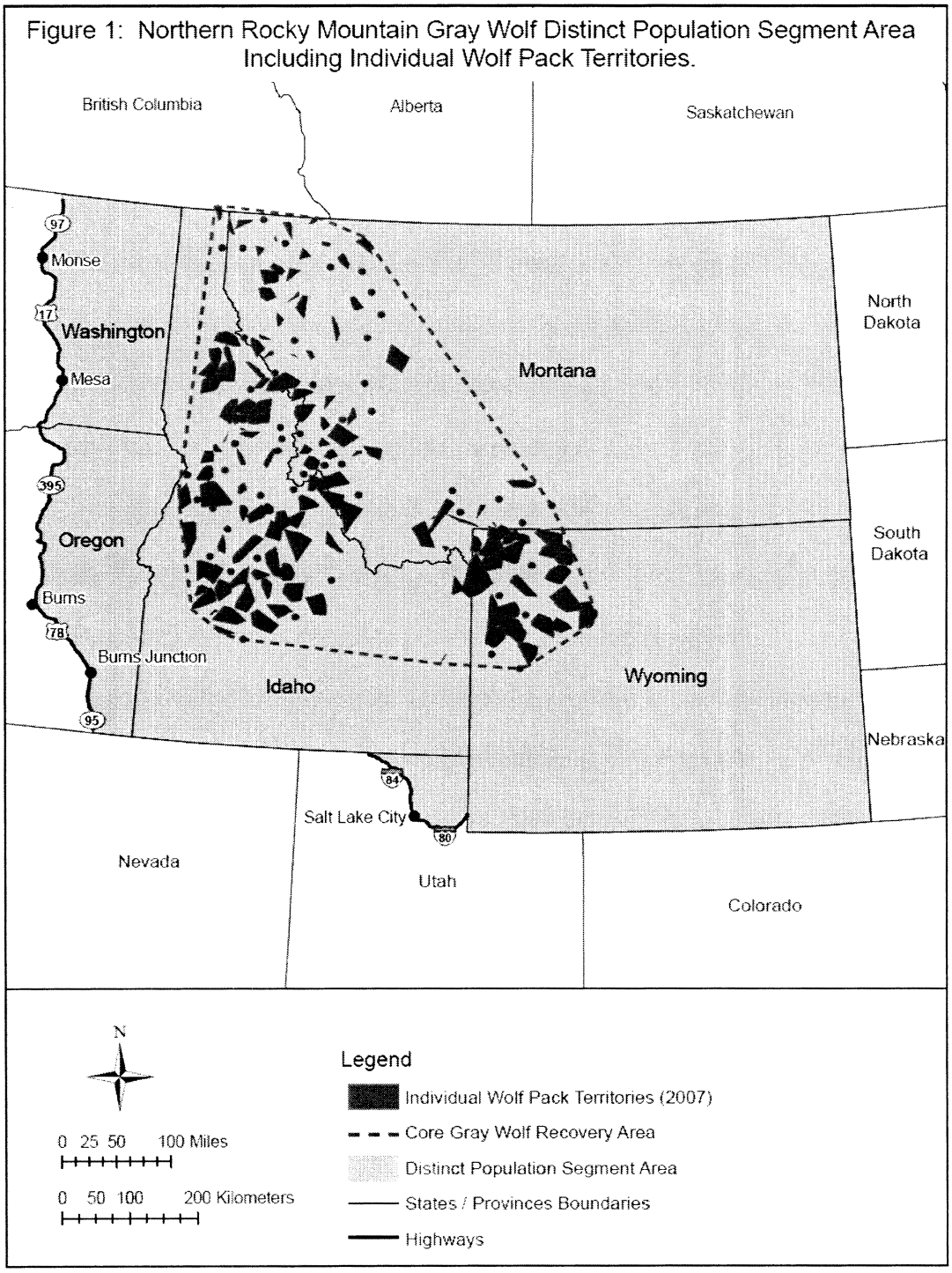


One factor we considered in defining the boundaries of the NRM DPS was the current distribution of known wolf packs in 2007 (Service *et al.* 2008, Figure 1) (except four packs in northwestern Wyoming that did not persist). We also examined the annual distribution of wolf packs from 2002 (the first year the population exceeded the recovery goal) through 2008 (Service *et al.* 2003–2009, Figure 1; Bangs *et al.* in press). Because outer distribution changed little in these years, we used the 2004 data because it had already been analyzed in the February 8, 2006 ANPR (71 FR 6634).

Dispersal distances also played a key role in determining the boundaries for the DPS. We examined the known dispersal distances of over 200 marked dispersing wolves from the NRM from 1993 through 2005 (Boyd *et al.* 2007; Jimenez *et al.* 2008d). These data indicate that the average dispersal distance of wolves from the NRM was about 97 km (60 mi) (Boyd and Pletscher 1999, p. 1094; Boyd *et al.* 2007; Thiessen 2007, p. 33; Jimenez *et al.* 2008d). We determined that 290 km (180 mi), three times the average dispersal distance, was a breakpoint in our data for unusually long-distance dispersal out from existing wolf pack territories (Jimenez *et al.* 2008, Figures 2 and 3). Only 11 wolves (none of which subsequently bred) have dispersed

farther outside the core population areas and remained in the U.S. None of these wolves returned to the core population in Montana, Idaho, or Wyoming. Only dispersal from the NRM packs to areas within the U.S. was considered in these calculations because we were trying to determine the appropriate DPS boundaries within the U.S. Dispersers to Canada were not considered in our calculation of average dispersal difference because the distribution of suitable habitat and level of human persecution in Canada is significantly different than in the U.S., potentially affecting wolf dispersal patterns. We plotted average dispersal distance and three times the average dispersal distance from existing wolf pack territories in the NRM. The resulting map indicated a wide area where wolf dispersal was common enough to support intermittent additional pack establishment from the core wolf population given the availability of patches of nearby suitable habitat. Our specific data on wolf dispersal in the NRM may not be applicable to other areas of North America (Mech and Boitani 2003, pp. 13–16).

We also examined suitable wolf habitat in Montana, Idaho, and Wyoming (Oakleaf *et al.* 2005, pp. 555–558) and throughout the western U.S. (Carroll *et al.* 2003, p. 538; Carroll *et al.* 2006, pp. 27–30) by comparing the biological and physical characteristics of areas currently occupied by wolf packs with the characteristics of adjacent areas that remain unoccupied by wolf packs. The basic findings and predictions of those models (Oakleaf *et al.* 2005, p. 559; Carroll *et al.* 2003, p. 541; Carroll *et al.* 2006, p. 32) were similar in many respects. Suitable wolf habitat in the NRM DPS is typically characterized by public land, mountainous forested habitat, abundant year-round wild ungulate populations, lower road density, lower numbers of domestic livestock that were only present seasonally, few domestic sheep (*Ovis sp.*), low agricultural use, and low human populations (*see* Factor A). The models indicate that a large block of suitable wolf habitat exists in central Idaho and the GYA, and to a smaller extent in northwestern Montana. These findings support the recommendations of the 1987 wolf recovery plan (Service 1987) that identified those three areas as the most likely locations to support a recovered wolf population and are consistent with the actual distribution of all wolf breeding pairs in the NRM since 1986 (Bangs *et al.* 1998, Figure 1; Service *et al.* 1999–2009, Figures 1–4, Tables 1–3). The models indicate little habitat is suitable for pack persistence within the portion of the NRM DPS in eastern Montana, southern Idaho, eastern Wyoming, Washington, Oregon, or northcentral Utah although dispersing wolves may utilize these areas (See Factor A).

Unsuitable habitat also was important in determining the boundaries of our DPS. Model predictions by Oakleaf *et al.* (2006, p. 559) and Carroll *et al.* (2003, pp. 540–541; 2006, p. 27) and our observations during the past 20 years (Bangs *et al.* 2004, p. 93; Service *et al.* 2008, Figures 1–4, Table 4) indicate that non-forested rangeland and croplands associated with intensive agricultural use (prairie and high desert) preclude wolf pack establishment and persistence. This unsuitability is due to high rates of wolf mortality, high densities of livestock compared to wild ungulates, chronic conflict with livestock and pets, local cultural intolerance of large predators, and wolf behavioral characteristics that make them vulnerable to human-caused mortality in open landscapes (See Factor A). We looked at the distribution of large expanses of unsuitable habitat that would form a broad boundary separating the NRM population from both the southwestern and Midwestern wolf populations and from the core of any other possible wolf population that might develop in the foreseeable future in the western U.S.

We included the eastern parts of Washington and Oregon and a small portion of north central Utah within the NRM DPS, because—(1) these areas are within 97 to 300 km (60 to 190 mi) from the core wolf population where dispersal is likely; (2) lone dispersing wolves have been documented in these areas more than once in recent times (Boyd *et al.* 2007; Jimenez *et al.* 2008d); (3) these areas contain some suitable habitat (*see* Factor A); (4) the potential for connectivity exists between the relatively small and fragmented patches of suitable habitat in these areas with larger blocks of suitable habitat in the NRM DPS; and (5) most of the area lies within the historic range of the NRM gray wolf subspecies (*C. l. irremotus*) (Service 1980, p. 3; Service 1987, p. 2) originally listed under the Act in 1974 (39 FR 1171, January 4, 1974). If wolf breeding pairs establish in these areas, habitat suitability models indicate these nearby areas would likely be more connected to the core populations in central Idaho and northwestern Wyoming than to any future wolf populations that might become established in other large blocks of potentially suitable habitat farther beyond the NRM DPS boundary. As noted earlier, large swaths of unsuitable habitat would isolate any wolf breeding pairs within the DPS from other large patches of suitable habitat to the west or south (Carroll *et al.* 2003, p. 541).

Although we have received reports of individual and wolf packs in the North Cascades of Washington (Almack and Fitkin 1998, pp. 7–13), agency efforts to confirm them have been unsuccessful and to date no individual wolves or packs have been confirmed there (Boyd and Pletscher 1999, p. 1096; Boyd *et al.* 2007). However, a wolf pack (2 adults and 6 pups) was discovered near Twisp, Washington (just east of the North Cascades), in July 2008. Their territory is west of the NRM DPS boundary. Genetic analysis indicated the two adults did not come from the wolf population in the NRM DPS. Instead, they likely originated from southcentral British Columbia (Allen 2008). This confirms the appropriateness of our western DPS boundary and our conclusion that intervening unsuitable habitat makes it unlikely that wolves have or will disperse between the North Cascades and the NRM population. However, if additional wolves disperse into the North Cascades, they will remain protected by the Act as endangered because it is outside of the NRM DPS.

We include all of Wyoming, Montana, and Idaho in the NRM DPS because (1) their State regulatory frameworks apply Statewide; and (2) expanding the DPS beyond a 300 km (190 mi) band of likely dispersal distances to include extreme eastern Montana and Wyoming adds only areas unsuitable habitat for pack persistence and does not effect the distinctness of the NRM DPS. DPS boundaries that include all of Wyoming, Montana, and Idaho are also consistent with the 1994 designations of the Central-Idaho and Yellowstone Non-essential Experimental Population areas (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 50 CFR 17.84 (i) & (n)). Although including all of Wyoming in the NRM DPS results in including portions of the Sierra Madre, the Snowy, and the Laramie Ranges, we do not consider these areas to be suitable wolf habitat for pack persistence because of their size, shape, and distance from a strong source of dispersing wolves. Oakleaf *et al.* (2006, pp. 558–559; Oakleaf 2006) chose not to analyze these areas of southeast Wyoming because they are fairly intensively used by livestock and are surrounded with, and interspersed by, private land, making pack establishment and persistence unlikely. While Carroll *et al.* (2003, p. 541; 2006, p. 32) optimistically predicted these areas

were suitable habitat, the model predicted that under current conditions these areas were largely sink habitat (i.e., a habitat in which the species' mortality exceeds reproductive success) and that by 2025 (within the foreseeable future) they were likely to be ranked as low occupancy because of human population growth and road development.

We chose not to extend the NRM DPS boundary east beyond Montana and Wyoming, because those adjacent portions of North Dakota, South Dakota, and Nebraska are far outside the predicted routine dispersal range of NRM wolves. Given the available information on potentially suitable habitat, expansion of the DPS to include Colorado or larger portions of Utah to the south and west would have included large areas of potentially suitable but unoccupied habitat in those States (Carroll *et al.* 2003, p. 541). Given the current distribution of the NRM wolf population to suitable habitat, we concluded that a smaller DPS containing occupied suitable habitat, the adjacent areas of largely unsuitable habitat where routine wolf dispersal could be expected, and that was distinct from other large contiguous blocks of potentially suitable habitat to the west and south was more biologically appropriate. This DPS is also reflective of areas of recovery focus over the last 30 years (39 FR 1171, January 4, 1974; Service 1980; Service 1987; Service 1994; 59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 50 CFR 17.84 (i) & (n)).

Analysis for Discreteness

Under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions—(1) is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Markedly Separated from Other Populations of the Taxon—The eastern edge of the NRM DPS (Figure 1) is about 644 km (400 mi) from the western edge of the area currently occupied by the WGL wolf population (eastern Minnesota) and is separated from it by hundreds of miles of unsuitable habitat (see Factor A). The southern edge of the NRM DPS boundary is about 724 km (450 mi) from the nonessential experimental populations of wolves in the southwestern U.S. with vast amounts of unoccupied marginal or unsuitable habitat separating them. While one dispersing wolf was confirmed east and two south of the DPS boundary, no wolf packs have ever been found there. No wolves from other U.S. wolf populations are known to have dispersed as far as the NRM DPS.

Until recently, no wild wolves had been confirmed west of the DPS boundary (although we occasionally got unconfirmed reports and 2 wolves were killed close to that boundary). Then, in July 2008, a wolf pack (2 adults and 6 pups) was discovered near Twisp, Washington (just east of the North Cascades and west of the DPS boundaries). These wolves did not originate from the NRM DPS; instead they likely originated from southcentral British Columbia (Allen 2008). The pack's territory is outside the NRM DPS and remains discrete from the NRM gray wolf population. The pack is being monitored via radio telemetry by Washington Department of Fish and Wildlife. Should this pack persist and other wolves follow, they would remain separated from the NRM DPS by unsuitable wolf habitat.

Although wolves can disperse over 1,092 km (680 mi) (with actual travel distances exceeding 10,000 km (6,000 mi)) (Fritts 1983, pp. 166–167; Missouri Department of Conservation 2001, pp. 1–2; Ream *et al.* 1991, pp. 351–352; Boyd and Pletscher 1999, p. 1094; Boyd *et al.* 2007; Wabakken *et al.* 2007, p. 1631), the average dispersal of NRM wolves is about 97 km (60 mi) (Boyd and Pletscher 1999, p. 1100; Boyd *et al.* 2007; Jimenez 2008d; Thiessen 2007, p. 72). Only 11 of over 200 confirmed NRM wolf dispersal events from 1992 through 2005 have been over 300 km (190 mi) and outside the core population (Boyd and Pletscher. 1999, p. 1094; Boyd *et al.* 2007). Undoubtedly many other dispersal events have occurred but not been detected because only 30 percent of the NRM wolf population has been radio-collared. All but three of these known U.S. long-distance dispersers remained within the proposed DPS. None of them found mates or survived long enough to form packs or breed in the U.S. (Boyd *et al.* 2007; Jimenez 2008d).

The first wolf confirmed to have dispersed (within the U.S.) beyond the boundary of the NRM DPS was killed by a vehicle collision along Interstate 70 in north-central Colorado in spring 2004. Although not confirmed, in early 2006, video footage of a black wolf-like canid was taken near Walden in northern Colorado, suggesting another dispersing wolf had traveled into Colorado. The subsequent status or location of that animal is unknown. On March 7, 2009, a dispersing wolf from the Yellowstone area was located by GPS radio-telemetry near Vail, Colorado. Finally, in spring 2006, the carcass of a male black wolf was found along Interstate 90 in western South Dakota. Genetic testing confirmed it was a wolf that had dispersed from the Yellowstone area.

No other unusual wolf dispersal events were documented in the NRM DPS in 2008. A radio-collared wolf from central Idaho continues to live in the GYA. It formed a new pack and bred in 2009. A report of a pack of wolves in northeastern Utah east of Flaming Gorge Reservoir (outside the NRM DPS) was investigated in spring 2008. The existence of this pack was not confirmed. A report of a wolf pack with pups in northeastern Oregon (inside the NRM DPS) was investigated in August 2008. The existence of this pack was not confirmed. A photograph of a black wolf-like canid taken in late 2008 in the central Cascade Range in Oregon (outside the NRM DPS) but its origin and fate remain unknown.

We expect that occasional lone wolves will continue to disperse between and beyond the currently occupied wolf habitat areas in Montana, Idaho, and Wyoming, as well as into States adjacent to the NRM DPS. However, pack development and persistence outside the NRM DPS is unlikely because wolves disperse as individuals that typically have low survival (Pletscher *et al.* 1997, p. 459) and suitable habitat is limited and distant (Carroll *et al.* 2003, p. 541) from the NRM wolf population.

No connectivity currently exists between the NRM wolf population and any other U.S. wolf packs or populations. While it is theoretically possible that a lone wolf might travel between the NRM wolf population and other U.S. packs or populations, such movement has never been documented and is likely to be rare because of both the distance and the intervening areas of unsuitable habitat.

Furthermore, the DPS policy does not require complete separation of one DPS from other U.S. packs or populations, but instead requires ''marked separation.'' Thus, if occasional individual wolves or packs disperse among populations, the NRM DPS could still display the required discreteness. Based on the information presented

above, we have determined that NRM gray wolves are markedly separated from all other gray wolf populations in the U.S.

Differences Among U.S. and Canadian Wolf Populations—The DPS policy allows us to use international borders to delineate the boundaries of a DPS if there are differences in control of exploitation, conservation status, or regulatory mechanisms between the countries. Significant differences exist in management between U.S. and Canadian wolf populations. About 52,000 to 60,000 wolves occur in Canada, where suitable habitat is abundant (Boitani 2003, p. 322). Because of this abundance, wolves in Canada are not protected by Federal laws and are only minimally protected in most Canadian provinces (Pletscher *et al.* 1991, p. 546). In the U.S., unlike Canada, Federal protection and intensive management has been necessary to recover the wolf (Carbyn 1983). If delisted, States in the NRM would carefully monitor and manage to retain populations at or above the recovery goal (*see* Factor D). Therefore, we will continue to use the U.S.-Canada border to mark the northern boundary of the DPS due to the difference in control of exploitation, conservation status, and regulatory mechanisms between the two countries.

Analysis for Significance

If we determine a population segment is discrete, we next consider available scientific evidence of its significance to the taxon to which it belongs. Our DPS policy states that this consideration may include, but is not limited to, the following factors: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and/or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. Below we address factors 1 and 2. Factors 3 and 4 do not apply to the NRM DPS and thus are not included in our analysis for significance.

Unusual or Unique Ecological Setting—Within the range of holarctic species, the NRM has amongst the highest diversity of large predators and native ungulate prey species, resulting in complex ecological interaction between the ungulate prey, predator and scavenger groups, and vegetation (Smith *et al.* 2003, p. 331). In the NRM DPS, gray wolves share habitats with black bears (*Ursus americanus*), grizzly bears (*U. arctos horribilis*), cougars (*Felis concolor*), lynx (*Lynx canadensis*), wolverine (*Gulo gulo*), coyotes (*Canis latrans*), foxes (*Vulpes vulpes*), badgers (*Taxidea taxus*), bobcats (*Felis rufus*), fisher (*Martes pennanti*), and marten (*Martes americana*). The unique and diverse assemblage of native prey include elk (*Cervus canadensis*), mule deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), moose (*Alces alces*), woodland caribou (*Rangifer caribou*), bighorn sheep (*Ovis canadensis*), mountain goats (*Oreamnos americanus*), pronghorn antelope (*Antilocapra americana*), bison (*Bison bison*) (only in the GYA), and beaver (*Castor canadensis*). This complexity leads to dramatic and unique ecological cascades in pristine areas, such as in YNP. While these effects likely still occur at varying degrees elsewhere they are increasingly modified and subtle the more an area is affected by humans (Smith *et al.* 2003, pp. 334–338; Robbins 2004, pp. 80–81; Campbell *et al.* 2006, pp. 747–753; Hebblewhite *et al.* 2005, p. 2135; Garrott *et al.* 2005, p. 1245). For example, wolves appear to be changing elk behavior and elk relationships and competition with other native ungulates in YNP. These complex interactions may increase streamside willow production and survival (Ripple and Beschta 2004, p. 755), that in turn can affect beaver and nesting by riparian birds (Nievelt 2001, p. 1). This suspected pattern of wolf-caused changes also may be occurring with scavengers, whereby wolf predation is providing a year-round source of food for a diverse variety of carrion feeders (Wilmers *et al.* 2003, p. 996; Wilmers and Getz 2005, p. 571). The wolf population in the NRM has extended the southern range of the contiguous gray wolf population in western North America nearly 400 miles (640 km) into a much more diverse, ecologically complex, and unique assemblage of species than is found elsewhere within occupied wolf habitat in most of the northern hemisphere.

Significant Gap in the Range of the Taxon—Wolves once lived throughout most of North America. Wolves have been extirpated from most of the southern portions of their historic North American range. The loss of the NRM wolf population would represent a significant gap in the species' holarctic range in that this loss would create a 15-degree latitudinal or over 1,600 km (1,000 mi) gap across the Rocky Mountains between the Mexican wolf and wolves in Canada. If this potential gap were realized, substantial cascading ecological impacts would occur in the NRM, most noticeably in the most pristine and wildest areas (Smith *et al.* 2003, pp. 334–338; Robbins 2004, pp. 80–81; Campbell *et al.* 2006, pp. 747–753; Hebblewhite and Smith in press, pp. 1–6).

Given the wolf's historic occupancy of the conterminous U.S. and the portion of the historic range the conterminous U.S. represents, recovery in portions of the lower 48 States has long been viewed as important to the taxon (39 FR 1171, January 4, 1974; 43 FR 9607, March 9, 1978). The NRM DPS is significant in achieving this objective, as it is 1 of only 3 populations of wolves in the lower 48 States and currently constitutes nearly 25 percent of all wolves in the lower 48 States.

We conclude, based on our analysis of the best available scientific information, that the NRM DPS is significant to the taxon in that NRM wolves exist in a unique ecological setting and their loss would represent a significant gap in the range of the taxon. Therefore, the NRM DPS meets the criterion of significance under our DPS policy. Because the NRM gray wolf population is both discrete and significant, it is a valid DPS.

Agency's Past Practice and History of Using DPSs

Of the over 370 native vertebrate ''species'' listed under the Act, 77 are listed as less than an entire taxonomic species or subspecies (henceforth referred to as populations) under one of several authorities including the DPS language in the definition of ''species''. Of these 77 listed populations 32 predate the 1996 DPS policy (61 FR 4722); therefore, the final listing determinations for these populations did not include formal DPS analyses per the 1996 DPS policy. Specifically, the 77 populations encompass 51 different species or subspecies. During the history of the Act, the Service and NMFS have taken actions with respect to populations in 98 listing, reclassification, and delisting actions. The majority of those actions identified a classification other than a taxonomically recognized species or subspecies at the time of listing. In several instances, however, the agencies have identified a DPS and, as appropriate, revised the list of Threatened and Endangered Wildlife in a single action. For example, we (1) established a DPS of the grizzly bear (*Ursus arctos horribilis*) for the Greater Yellowstone Area and surrounding area,

within the existing listing of the grizzly bear in the lower 48 States, and removed this DPS from the List of Threatened and Endangered Wildlife (March 29, 2007; 72 FR 14865); (2) established two DPSs of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*): The Douglas County DPS and the Columbia River DPS; and removed the Douglas County DPS from the List of Threatened and Endangered Wildlife (July 24, 2003; 68 FR 43647); (3) removed the brown pelican (*Pelecanus occidentalis*) in the Southeastern United States from the List of Endangered and Threatened Wildlife and continued to identify the brown pelican as endangered throughout the remainder of its range (February 4, 1985; 50 FR 4938); (4) identified the American crocodile (Crocodylus acutus) in Florida as a DPS within the existing endangered listing of the American crocodile in the United States and reclassified the Florida DPS from endangered to threatened (March 20, 2007; 71 FR 13027); and (5) amended the List of Endangered and Threatened Wildlife and Plants by revising the entry for the gray whale (Eschrichtius robustus) to remove the eastern North Pacific population from the List while retaining the western North Pacific population as endangered (June 16, 1994; 59 FR 31094)). We also proposed in 2000 to identify four DPSs within the existing listing of the gray wolf in the lower 48 States and to reclassify three of the DPSs from endangered to threatened (July 13, 2000; 65 FR 43450). As described above under ''Previous Federal Action,'' the final rule we issued in 2003 identified three gray wolf DPSs and reclassified two of the DPSs from endangered to threatened (April 1, 2003; 68 FR 15804). Although courts subsequently invalidated these DPSs, they did not question the Service's authority to identify and reclassify DPSs within a larger pre-existing listing. Identifying and delisting the Western Great Lakes DPS of gray wolves is consistent with the Service's past practice and does not represent a change in agency position.

Recovery

Recovery Planning and the Selection of Recovery Criteria—Shortly after listing we formed the interagency wolf recovery team to complete a recovery plan for the NRM population (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). Recovery plans are not regulatory documents and 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 be learned 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.

The 1980 recovery plan's objective was to re-establish and maintain viable populations of the NRM wolf (*C. l. irremotus*) in its former range where feasible (Service 1980, p. iii) but there were no recovery goals. The 1980 plan covered an area similar to the NRM DPS, as it was once believed to be the range of the 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 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 NRMs. Consistent with the 1980 plan it also recommended focusing recovery actions on the large blocks on public land in the NRM. The 1987 plan specified a recovery criterion 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 that connectivity between them be somehow encouraged. However, no attempts were made to prevent wolf pack establishment outside of the recovery areas unless chronic conflict required resolution (Service 1994, p. 1–15, 16; Service 1999, p. 2).

The 1994 EIS on wolf reintroduction reviewed wolf recovery in the NRM and the adequacy of the recovery goals because we were concerned that the 1987 goals might be insufficient (Service 1994, pp. 6:68–78). We were particularly concerned about the 1987 definition of a breeding pair, since any male and female wolf are 'capable' of producing offspring and lone wolves may not have territories. We also believed the relatively small 'hard' recovery areas 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. The Service 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 Service's EIS and in a peer-reviewed paper (Service 1994, Appendix 8 & 9; Fritts and Carbyn 1995, pp. 26–38). Our 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 2 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 pair 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 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, p. 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.

Since 1994, we have believed movement of individuals between the metapopulation segements could occur either naturally or by human-assisted migration management (Service 1994, p. 7–67). Specifically, we stated ''The importance of movement of individuals between sub-populations 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 sub-populations should develop genetic or demographic problems. (We saw) no reason why migration management should be viewed negatively. It will be a necessity in other wolf recovery programs. Some, however, may view such management intervention as 'unnatural' '' (Service 1994, p. 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. The goal is somewhat conservative, however, and should be considered minimal. The addition of a few extra pairs would add security to the population and should be considered in the post-EIS management planning. That could always be done as a periodic infusion if deemed necessary'' (Service 1994, p. 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 survey 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/or conservation biology. In total 53 people provided their expert opinion regarding a wide range of issues related to the NRM recovery goal. We also reviewed a wide range of literature, including wolf population viability analysis 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 thought 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 that our 1994 conclusions represented a viable wolf population, they also tended to believe that wolf population viability was enhanced by higher rather than lower population levels and longer than shorter demonstrated time frames. Five hundred wolves and five years were common minority recommendations. A slight majority indicated that even the 1987 recovery goal of only 10 breeding pairs (defined as a male and female capable of breeding) in each of three distinct recovery areas may be viable, given the persistent of other small wolf populations in other parts of the world. The results of previous population viability analysis for other wolf populations varied widely, and as we had concluded in our 1994 analysis, reviewers in 2002 concluded theoretical results were strongly dependent on the variables and assumptions used in such models and conclusions often predicted different outcomes than actual empirical data had conclusively demonstrated. Based on that review, we reaffirmed our more relevant and stringent 1994 definition of wolf breeding pairs, population viability, and recovery (Service 1994, p. 6:75; Bangs 2002, p. 1–9).

The 2002 reevaluation of the 1994 wolf recovery goal by a broader spectrum of experts in wolf conservation also repeatedly recognized connectivity among the core recovery areas as critical, but this connectivity could be achieved through naturally dispersing wolves and/or by human-assisted migration management. Specifically, we stated ''Connectivity was the single issue brought up most often by reviewers. Many commented that wolves are unusually good dispersers and movement between core recovery areas was probably not going to be a significant wolf conservation issue in the NRM. Several believed that wolves would soon colonize neighboring states. Nearly everyone commented that the interchange of individuals between the sections of the metapopulation and more importantly maintenance of connection to the Canadian population. Several comments emphasized the importance of maintaining some minimum number of wolves in northwestern Montana to maintain the connection to the Canadian population. Other reviewers noted that such connectivity could be easily maintained by management actions (such as translocation) rather than natural dispersal. Movement into the GYA was mentioned as a specific concern by some because that was the only recovery area where wolf movement from other recovery areas appeared it could be a concern, and it was the southern-most tip of a much larger connected North American wolf population. A majority believed the Service's proposal defined a viable wolf population but others believed it needed to be improved by providing a measurable definition of connectivity. Others believed that documenting successful reproduction was an important measure of population viability and liked the concept used in the 1994 EIS definition. The importance of future wolf management (state or tribal management), primarily in maintaining human-caused mortality below a level that would cause extirpation and management that would foster some connectivity (either natural or man-induced) were the most critical components of determining long-term population viability * * * The true test of wolf population viability will be determined by subsequent management practices. Past management practices—such as (1) reintroduction of wolves

from two Canadian sources (Alberta and British Columbia) and from numerous packs in each area, (2) subsequent management relocations between all three recovery areas, (3) the natural dispersal capabilities of wolves and proximity of core recovery areas to one another, (4) documented routine interchange with Canadian wolf populations and between Idaho and northwestern Montana, (5) a young population age structure with successful pup production and survival, and (6) the establishment of wolf populations in and around core refugia (central Idaho Wilderness, YNP, Glacier National Park and associated public lands to these areas) have produced a robust and viable wolf population that currently has very high genetic and demographic diversity that occupies core refugia in the highest quality wolf habitat in the NRM of Montana, Idaho, and Wyoming. Maintenance of those conditions in the wolf population will depend solely on long-term future management to (1) regulate human-caused mortality and (2) maintain genetic connectivity among population segments, including Canada, either through deliberate relocation of wolves and/or encouraging sufficient natural dispersal'' (Bangs 2002, pp. 3–4, 8–9).

Development of the Service's recovery goal clearly recognized that the key to wolf recovery was establishing a viable demographically and genetically diverse wolf population in the core recovery areas of the NRM. We would ensure its future connectivity by promoting natural dispersal and genetic connectivity between the core recovery segments and/or by human-assist migration management in the unlikely event it was ever required (Fritts and Carbyn 1995; Groen *et al.* 2008).

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 an adult male and an adult female and that raised at least 2 pups until December 31) to describe successfully reproducing packs (Service 1994, p. 6:67; Bangs 2002, pp. 7–8; Mitchell *et al.* 2008). The breeding pair metric includes most of the important biological concepts in wolf conservation. Specifically, we thought it was important for breeding pairs to have: Both male and female member together going into the February breeding season; successful occupation of a distinct territory (generally 500–1,300 km^2 (200–500 mi^2) and almost always in suitable habitat); enough pups to replace two adults; off-spring that become yearling dispersers; at least 4 wolves following the point in the year with the highest mortality rates (summer and fall); all social structures and age classes represented within a wolf population; and adults that can raise and mentor younger wolves.

Often we do not know if a specific pack actually contains an adult male, adult female, and two pups in winter; however, group size has proven to have a strong correlation with breeding pair status (Mitchell *et al.* 2008). Research indicates a pack size of around 9 equates to one breeding pair (large packs have complex age classes—pups, yearlings and older adults). In the future, the States may be able to use pack size in winter as a surrogate to help reliably identify each pack's contribution toward meeting our breeding pair recovery criteria and to better predict the effect of managing for certain pack sizes on wolf population recovery.

We also have determined that an essential part of achieving recovery is an equitable distribution of wolf breeding pairs and individual wolves among the three States and the three recovery zones. 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. While uniform distribution is not necessary, a well-distributed population with no one State/recovery area maintaining a disproportionately low number of packs or number of individual wolves is needed to maintain wolf distribution in and adjacent to core recovery areas and other suitable habitat throughout the NRM and to 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.* 2003–2009, 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. 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. Management by State would still maintain a robust wolf population in each core recovery area because they each contain manmade or natural refugia from human-caused mortality (e.g., National Parks, wilderness areas, and remote Federal lands) that guarantee those areas remain the stronghold for wolf breeding pairs and source of dispersing wolves 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 and promote a minimum level of potential natural dispersal to and from each population segment. 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.* 2005, p. 554; vonHoldt *et al.* 2007, p. 19).

The numerical component of the recovery goal represents the minimum number of breeding pairs and individual wolves needed to achieve and maintain recovery. To ensure that the NRM wolf population always exceeds the recovery goal of 30 breeding pairs and 300 wolves, wolves in each State shall be managed for at least 15 breeding pairs and at least 150 wolves in mid-winter. This and other steps, including human-assisted migration management if required (discussed below), will maintain the NRM DPS's current metapopulation structure. Further buffering our minimum recovery goal is the fact that Service data since 1986 indicate that, within the NRM DPS, each breeding pair has corresponded to 14 wolves in the overall NRM wolf population in mid-winter (including many wolves that travel outside these recognized breeding pairs) (Service *et al.* 2008, Table 4). Thus, managing for 15 breeding pairs per State will result in substantially more than 150 wolves in each State (>600 in the NRM). Additionally, because the recovery goal components are measured in mid-winter when the wolf population is near its annual low point, the average annual wolf population will be much higher than these minimal goals.

We further improved, provided additional safety margins, and assured that the minimum recovery criteria would always be exceeded in our 2009 post-delisting monitoring plan. Three scenarios could lead us to initiate a status review and analysis of threats to

determine if relisting is warranted including: (1) If the wolf population for any one State falls below the minimum NRM wolf population recovery level of 10 breeding pairs of wolves and 100 wolves in either Montana, Idaho, and Wyoming at the end of the year; (2) if the portion of the wolf population in Montana, Idaho, or Wyoming 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. Overall, we believe the NRM wolf population will be managed for over 1,000 wolves including over 300 wolves and 30 breeding pairs in the GYA (in 2008 there were 35 breeding pairs and 449 wolves in the GYA). This far exceeds post-delisting management targets of at least 45 breeding pairs and more than 450 wolves in the NRM. The NRM wolf population: (1) Has at least this number of reproductively successful packs and this number of individual wolves each winter (near the low point in the annual cycle of a wolf population); (2) is equitably distributed within the 250,000 km^2 (100,000 mi^2) area containing 3 areas of large core refugia (National Parks, wilderness areas, large blocks of remote secure public land) and at least 170,228 km^2 (65,725 mi^2) of suitable wolf habitat; and (3) is genetically diverse and has demonstrated successful genetic exchange through natural dispersal and human-assisted migration management between all three core refugia. It therefore no longer needs the protections of the Act and is a viable and fully recovered wolf population.

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. 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; 73 FR 10514, February 27, 2008; and this final rule). After evaluating all available information, we conclude the best scientific and commercial information available continues to support the ability of these recovery goals to ensure the population does not again become in danger of extinction.

Genetic Diversity Relative to our Recovery Criteria—Currently, genetic diversity throughout the NRM is very high (Forbes and Boyd 1996, p. 1084; Forbes and Boyd 1997, p. 226; vonHoldt *et al.* 2007, p. 19). Wolves in northwestern Montana and both the reintroduced populations are as genetically diverse as their source populations in Canada; thus, inadequate genetic diversity is not a wolf conservation issue in the NRM at this time (Forbes and Boyd 1997, p. 1089; vonHoldt *et al.* 2007, p. 19). Genetic connectivity resulting from natural dispersal alone, even in the GYA, appears adequate to prevent genetic drift and inbreeding depression that could threaten the wolf population. As a result, there is currently no need for management activities designed to further increase genetic diversity anywhere in the NRM DPS. However, should genetic problems ever materialize, an outcome we view as extremely unlikely, the States will utilize agency assisted genetic management to address the issue. Because genetic changes happen very slowly, the States would have many years, perhaps decades, to design and implement appropriate remedial actions. In short, the NRM wolf population is not now and will not ever be threatened by genetic diversity issues. This issue is discussed further in our response to comments and in Factor E below.

Recovery and Genetics issues raised by the July 18, 2008 federal court injunction—The July 18, 2008, U.S. District Court for the District of Montana preliminary injunction order heavily cited vonHoldt *et al.* (2007). This study concluded ''if the YNP wolf population remains relatively constant at 170 individuals (estimated to be YNP's carrying capacity), the population will demonstrate substantial inbreeding effects within 60 years,'' resulting in an ''increase in juvenile mortality from an average of 23 to 40%, an effect equivalent to losing an additional pup in each litter.'' The court also cited previous Service statements that call for ''genetic exchange'' among recovery areas. The court further stated that dispersal of wolves between the GYA and the northwestern Montana and central Idaho core recovery areas was ''a precondition to genetic exchange.'' The preliminary injunction order cited our 1994 EIS (Service 1994) and vonHoldt *et al.* (2007) to support its conclusion that a metapopulation had not been demonstrated in the NRM.

The vonHoldt *et al.* (2007) paper did an excellent job of analyzing the empirical data regarding the pedigree for YNP wolves. That data proved the ''almost complete'' natural selection for outbreeding by wolves and the high genetic diversity of wolves in YNP. We appreciate their recognition of our deliberate efforts to conserve genetic diversity. Specifically vonHoldt *et al.* (2007) stated that ''Overall, our findings demonstrate the effectiveness of the reintroduction in preserving genetic diversity over the first decade of wolf recovery in Yellowstone'' (vonHoldt *et al.* 2007, p. 19). Furthermore, we agree that any totally isolated wildlife population that is never higher than 170 individuals which randomly breeds will lose genetic diversity over time. It is also true that high levels of inbreeding can sometimes, but not always, result in demographic issues such as reduced survival or reduced fertility. Such outcomes sometimes, but not always, result in demographic problems that threaten population viability.

However, we question many of the assumptions that underpin the predictive modeling portion of vonHoldt *et al.* (2007) study's conclusions. First, while the study found no evidence of genetic exchange into YNP (8,987 km^2 (3,472 mi^2)), the Park is only a small portion of the GYA (63,700 km^2 (24,600 mi^2)). Further limiting the study's ability to detect genetic exchange among subpopulations is the fact that most wolves that disperse to the GYA tend to avoid areas with existing resident packs or areas with high wolf densities, such as YNP. Moreover, even among the YNP wolves the study was limited to a subsample of Park wolves from 1995–2004 (i.e., the radio collared wolves). Thus, not surprisingly, subsequent analysis of additional wolves across the GYA has demonstrated gene flow among the GYA and the other recovery areas (vonHoldt *et al.* 2008; Wayne 2009, pers. comm.).

It is also important to consider that our ability to detect genetic exchange within the NRM population is further limited by the genetic similarity of the NRM subpopulations. Specifically, because both the central Idaho and GYA subpopulations originate from a common source, only first and possible second generation offspring of a dispersing wolf can be detected. Additional genetic analysis of wolves from throughout the NRM population, including a larger portion of the GYA than just YNP, is ongoing.

Second, the vonHoldt *et al.* (2007) prediction of eventual inbreeding in YNP relies upon several unrealistic assumptions. One such assumption limited the wolf population analysis to YNP's (8,987 km^2 (3,472 mi^2)) carrying capacity of 170 wolves, instead of the more than 300 wolves likely to be managed for in the entire GYA (63,700 km^2 (24,600 mi^2)) by Montana, Idaho, and Wyoming. The vonHoldt *et al.*, (2007) predictive model also capped the

population at the YNP population's winter low point, rather than at higher springtime levels when pups are born. Springtime levels are sometimes double the winter low. Most importantly, the vonHoldt *et al.* (2007) assumed no gene flow into the area; an assumption now proven incorrect. This issue is fully explained in Factor E below.

Conclusion of a reanalysis of the wolf recovery goals for the NRM DPS—In its July 18, 2008 preliminary injunction order, the District Court concluded that the Plaintiffs were likely to succeed on their claim that the NRM had not achieved its recovery goal because genetic exchange was 'promised' by the recovery criteria but had not occurred between wolves in the GYA area and the other recovery areas. The court cited a recent genetic study of wolves in YNP (vonHoldt *et al.* 2007). The court also suggested that higher rates of mortality associated with State management would further reduce the future opportunity for genetic exchange and ultimately threatened the wolf population. As a result of the court ruling we have reevaluated our wolf recovery goal for the NRM DPS and determined it is still scientifically valid, represents the minimum wolf population that would not be threatened or endangered in the foreseeable future, and all the biological conditions associated with the recovery goal have been completely achieved. Our reasoning is detailed below and in our discussion of Factor E.

The wolf recovery goal for the NRM has been repeatedly reevaluated and improved as new scientific information warranted. Modifications of the 1987 recovery plan goals based on recent information, further analysis, and new scientific thinking were made in 1994 (Service 1994), 1999 (Service 1999), 2002 (Bangs 2002), 2008 (73 FR 10514, February 27, 2008), and in this rule. As a result of the court ruling, we have carefully reevaluated our recovery goal again and reaffirmed 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 of suitable habitat, to be viable for the long-term (Service 1994, p. 6:75). The vast majority of wolf experts throughout the world who were contacted believed the NRM wolf recovery goal represented the minimum criteria to describe a viable and recovered wolf population (Service 1994, p. 6–75; Bangs 2002).

Genetic studies in the NRM are continuing. While that work demonstrates that both human-assisted and natural genetic exchange has occurred in the GYA, the rate at which this exchange has naturally occurred in the GYA is being determined. However, vonHoldt *et al.* (2008) reported that ''Based on migrant detection and assignment test our results suggest that adequate genetic connectivity exists between central Idaho and northwestern Montana populations, there is limited effective dispersal between central Idaho or northwestern Montana to GYA (although 15 unknown GYA individuals need to be resolved) and there have been no migrants genetically detected that have (naturally) dispersed into the YNP portion of the GYA.'' They went on to state ''Since this analysis only includes samples up to 2004, and due to sample size limitations in some areas (GYA outside of YNP), adding more samples and including samples up to 2008 may alter interpretation. Specifically, genetic connectivity may be higher between GYA and other recovery areas than currently believed.'' We concurred with that determination. Indeed subsequent analysis confirmed offspring from some wolves that naturally dispersed into the GYA, as well as the wolf pups that were relocated into YNP in 1997, have been detected as additional samples were analyzed (Wayne 2009, pers. comm.). We will continue to collect and analyze genetic samples to monitor the genetic health of the NRM wolf population (Groen *et al.* 2008).

Regardless of the outcome of those ongoing genetic studies—

(1) Ongoing or confirmed genetic exchange was never required by our recovery goal, although it has now been documented. The recovery goal assumed that the presence of dispersing wolves from other recovery areas alone was enough evidence of the likelihood of 'genetic' exchange among recovery areas (the reason wolves disperse is to find mates and breeding opportunities). Sixty-eight percent of relocated (human-assisted dispersal) wolves in the NRM became breeders (Bradley *et al.* 2005). The presence of individual natural dispersing wolves in every recovery segment, including the GYA, indicates that the NRM has a metapopulation structure and that no segment is completely isolated from the others.

(2) Because GYA and central Idaho wolves share a recent common genetic history (siblings released in each area), it is very difficult to detect anything beyond first or second generation offspring from long range dispersing wolves. Significant changes in genetic health generally take place over many generations and decades not years.

(3) A metapopulation is one where no segment is totally isolated from the others. A metapopulation does not require a certain level of natural or human-assisted migration management during a specified time period to meet the definition of a metapopulation. We have proven human-assisted migration management is easy to do with wolves. However, at least for decades, there should be no genetic or demographic reasons to move more wolves or their genes between the subpopulations and/or Canada. However, it is also common sense that a wolf population in three equal subpopulations managed near the minimum levels of 500 wolves would be far more likely to require future human-assisted migration management than a wolf population managed at over 1,000 wolves in mid-winter.

(4) The assertion that successful recovery can only depend on solely natural processes is not accurate. If that were the case management of any wolf population, including the ongoing red wolf and Mexican wolf programs, as well as in any other potential wolf recovery programs in the U.S. (or in many parts of the world) could never lead to recovery. In addition, nearly all recovery programs under the Act and the subsequent management of those populations after delisting will require human intervention such as captive breeding, relocations, population augmentations, control of exotics or predators, maintenance or preservation of important habitat through prescribed fire, control of fire, flooding, and etc. In addition, most routine State and federal management programs for common wildlife species still require continued human management intervention by: Human control by agencies or by public hunts to raise management funding, limit property damage, and foster public tolerance; reintroductions, augmentation and captive breeding/rearing; habitat manipulation (fire and firefighting, logging, crops, water control structures, etc.); control of exotics, invasive species, or pests; and many other common wildlife management tools.

(5) The Service's recovery goal never required that offspring from long distance dispersing wolves and resident wolves be proven for the recovery goal to be met. Relocations or mere presence of dispersing wolves was believed to be adequate proof of connectivity.

''Recovered Wolf Population—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 wolf movement between areas'' (Service 1994, pp. 6–7). However, regardless of the 1994 definition, natural dispersal and human-assisted migration management has resulted in documented genetic exchange between dispersing and resident wolves among all three recovery areas, including the GYA.

(6) The level of natural dispersal that has been documented to date makes it highly unlikely that further human-assisted migration management would ever be required—even in the GYA, by far the most isolated recovery area in the NRM, especially if populations are managed at higher (>1,000 wolves) rather than lower (<500 wolves) numbers.

(7) There are currently absolutely no genetic or demographic problems in any of the core recovery segments, including the GYA. The proximity of the three NRM recovery segments and the natural dispersal abilities of wolves represent a classic wolf metapopulation structure that will be maintained into the foreseeable future. The States, except Wyoming, committed to initiate migration management, should it ever needed, and their commitment completely resolves a highly unlikely theoretical future genetic inbreeding problem (that would still not threaten or endanger the NRM wolf population) by a guaranteed proven solution to genetic inbreeding; namely human-assisted migration management (Groen *et al.* 2008).

(8) The States (except Wyoming, which declined to sign the 2008 Genetics Memorandum of Understanding (MOU) (Groen *et al.* 2008) and Service have committed to maintain that natural metapopulation structure of the NRM wolf population to the extent possible by encouraging natural dispersal and effective migrants and have implemented management practices that should foster both (maintaining the wolf population at higher rather than minimum levels, greater rather than more restricted pack distribution throughout suitable habitat, and reducing human-caused wolf mortality during key dispersing and reproductive time periods, and maintain the integrity of the core recovery areas/refugia (largely National Parks and wilderness areas)). In addition the States and Service and other federal agencies and have committed to monitor wolf genetics over time and should data suggest it is appropriate, conduct human-assisted migration management, which we believe is extremely unlikely to be necessary (Groen *et al.* 2008).

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.* 1989–2009, p. 1). The Working Group conducted four basic recovery tasks (Service *et al.* 1989–2009, pp. 1–2), 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 non-lethal 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.

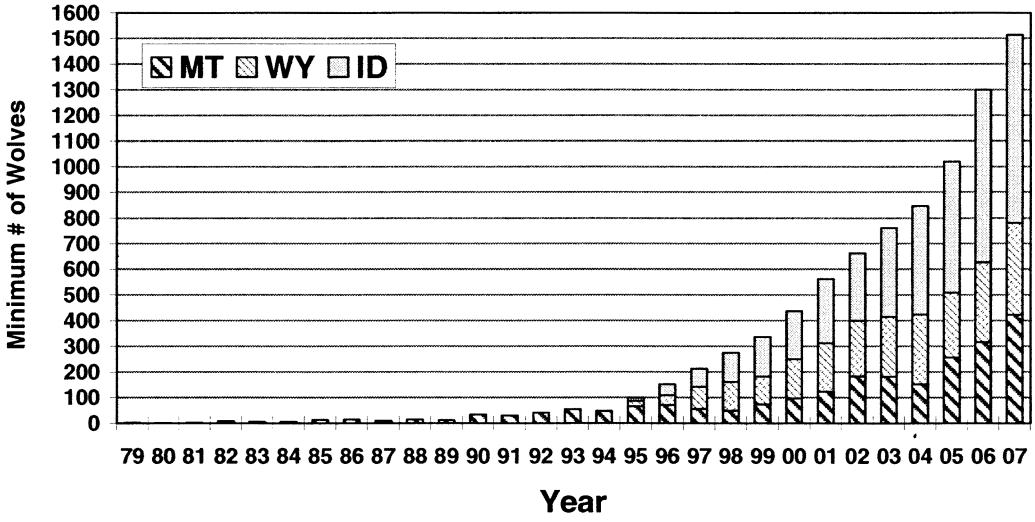
The size and distribution of the wolf population is estimated by the Working Group each year and, along with other information, is published in an interagency annual report (Service *et al.* 1989–2009, Table 4, Figure 1). Since the early 1980s, the Service and our cooperating partners have radio-collared and monitored over 1,100 wolves in the NRM to assess population status, conduct research, and to reduce/resolve conflict with livestock. The Working Group's annual population estimates represent the best scientific and commercial data available regarding year-end NRM gray wolf population size and trends, as well as distributional and other information.

Recovery by State—At the end of 2000, the NRM population first met its overall numerical and distributional recovery goal of a minimum of 30 breeding pairs and over 300 wolves well-distributed among Montana, Idaho, and Wyoming (68 FR 15804, April 1, 2003; Service *et al.* 2001, 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 663 wolves and 49 breeding pairs were present (Service *et al.* 2003, Table 4). By the end of 2008, the NRM wolf population will have achieved its numerical and distributional recovery goal for 9 consecutive years (Service *et al.* 2001–2009, Table 4; Service 2008; 68 FR 15804, April 1, 2003; 71 FR 6634, February 8, 2006).

By the end of 2008, the NRM gray wolf population included approximately 1,639 NRM wolves (491 in Montana; 846 in Idaho; 302 in Wyoming) in 95 breeding pairs (34 in Montana; 39 in Idaho; 22 in Wyoming). The wolf population estimate for 2008 is slightly higher than that for 2007, indicating a declining rate of increase as suitable habitat becomes increasingly saturated with resident wolf packs.

From 1995 to 2008, the NRM wolf population increased an average of about 22 percent annually with increases ranging from 8 to 50 percent (Service *et al.* 2009, Table 4). In 2008 the overall population increased at the slowest rate since 1995. Figure 2 illustrates wolf population trends by State from 1979 to 2007.

Figure 2. Northern Rocky Mountain Wolf Population Trends by State 1979-2007



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.* 2003–2009, Table 4). However, because the original recovery plan 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.* 2009, Table 4).

Recovery in the Northwestern Montana Recovery Area—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 an endangered species. Wolves naturally recolonized this area from Canada. Reproduction first occurred in northwestern Montana in 1986 (Ream *et al.* 1989). The natural ability of wolves to find and quickly recolonize empty habitat (Mech and Boitani 2003, p. 17–19), the interim control plan (Service 1988, 1999), and the interagency recovery program combined to effectively promote an increase in wolf numbers (Bangs 1991, p. 7–13). By 1996, the number of wolves had grown to about 70 wolves in 7 known breeding pairs. However, since 1997, the estimated number of breeding pairs and wolves has fluctuated, partly due to actual population size and partly due to monitoring effort. It varied from 4 to 23 breeding pairs and from 49 to 276 wolves (Service *et al.* 2009, Table 4), but generally increased. By the end of 2008, we estimated 276 wolves in 18 breeding pairs in the northwestern Montana recovery area (Service *et al.* 2009, 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 more fragmented (Oakleaf *et al.* 2005, p. 560; Smith *et al.* 2008, p. 1). Some of the variation in our wolf population estimates for northwestern Montana is 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 lowers the chances of a pack being detected (Bangs *et al.* 1998, p. 878). Increased monitoring efforts in northwestern Montana by Montana Fish, Wildlife and Parks (MFWP) since 2005 were likely responsible for some of the higher 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.* 2009, Table 4). By the end of 2009, this recovery area will contain over 10 breeding pair and 100 wolves for the fourth consecutive year (2005–2008), and probably has done so for the last seven years (2002–2008) (Service *et al.* 2009, 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. 547–8; Boyd and Pletscher 1999, pp. 1105–1106; Sime 2007, p. 4; Jimenez *et al.* 2008d). 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 (Boyd *et al.* 2007; 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.* 2008; Thiessen 2007, p. 50; Sime 2007, p. 4; Jimenez *et al.* 2008d).

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 central Idaho or the GYA. However, that population segment has persisted for nearly 20 years, is robust today, and habitat there is capable of supporting over 200 wolves (Service *et al.* 2008, Table 4). State management, pursuant to the Montana State wolf management plan (2003), will ensure this population segment continues to thrive (see Factor D).

Recovery in the Central Idaho Recovery Area—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 southwest 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.* 2005, 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 wolf population estimate was due to an increased monitoring effort by Idaho Department of Fish and Game (IDFG). At the end of 2008, we estimated 914 wolves in 42 breeding pairs in the central Idaho recovery area (Service *et al.* 2009, Table 4). By the end of 2008, this recovery area will have contained at least 10 breeding pair and 100 wolves for 11 consecutive years (1998–2008) (Service *et al.* 2009; Service 2008).

Recovery in the GYA—The GYA recovery area (63,700 km^2 [24,600 mi^2]) includes YNP; the Absaroka Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas (the National Park/Wilderness units); adjacent public and private lands in Wyoming; and adjacent parts of Idaho and Montana (Service 1994, p. iv). The wilderness portions of the GYA are primarily 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.* 2008, Figure 3). 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 5-month old pups removed from northwestern Montana in a wolf control action were released in YNP in the spring of 1997 (Bangs *et al.* 1998, p. 787). Only 2 of these 10 pups survived past 9 months of their release, but both became breeding adults and their genetic signature is common both in YNP and the GYA (VonHoldt 2008). By the end of 2008, we estimated 449 wolves in 35 breeding pairs in the GYA (Service *et al.* 2008). By the end of 2008, this recovery area had at least 10 breeding pair and 100 wolves for 9 consecutive years (2000–2008) (Service *et al.* 2009; Service 2008).

Wolf numbers in the GYA were stable in 2005, but known breeding pairs dropped by 30 percent to only 20 pairs (Service *et al.* 2006, Table 4). The population recovered in 2006, primarily because numbers outside YNP in Wyoming grew to about 174 wolves in 15 breeding pairs (Service *et al.* 2008). Most of this decline occurred in YNP which declined from 171 wolves in 16 known breeding pairs in 2004 to 118 wolves in 7 breeding pairs in 2005 (Service *et al.* 2005, 2006, Tables 1–4). This decline 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) a suspected 2005 outbreak of disease (canine parvovirus (CPV) or canine distemper (CD)) reduced that years' pup survival to 20 percent (Service *et al.* 2006, Table 2; Smith *et al.* 2006, p. 244; Smith and Almberg 2007, pp. 17–20). By the end of 2007, the YNP wolf population had rebounded and was estimated to contain 171 wolves in 10 breeding pairs (Service *et al.* 2008). In 2008, we saw a relatively high number of wolves killing other wolves and a high mortality rate among pups (this may be due to a disease outbreak, but the NPS will not be sure until winter when park biologists capture wolves and test their blood for antibodies). At the current time the YNP wolf population may be 124 wolves in 12 packs and only 6 breeding pairs (Service *et al.* 2009). Additional significant growth in the National Park/Wilderness portions of the Wyoming wolf population above 200 wolves is very unlikely because suitable wolf habitat is saturated with resident wolf packs. Maintaining wolf populations safely above recovery levels and promoting demographic and genetic exchange in the GYA segment of the NRM area will depend on wolf packs living outside the National Park/Wilderness portions of northwestern Wyoming and southwestern Montana.

For further information on the history of NRM wolf recovery, recovery planning (including defining appropriate recovery criteria), population monitoring (through the end of 2008), and cooperation and coordination with our partners in achieving recovery, see the ''Recovery'' section of the August 1, 2006, 12-month status review (71 FR 43410), Service weekly wolf reports (1995–2008), and the Rocky Mountain Wolf Recovery Interagency Annual Reports (Service *et al.* 1989–2009) at *http://westerngraywolf.fws.gov*.

Summary of the demographic characteristics of the NRM wolf population—In late 2008, the NRM wolf population was estimated to contain about 1,639 wolves in nearly 200 packs (two or more wolves with a territory); 95 of these packs also classified as breeding pairs (packs with an adult male, adult female, and at least 2 pups on December 31). After delisting it will be managed by the States, National Park Service, and Service to average over 1,100 wolves, fluctuating around 400 wolves in Montana, 500 in Idaho, and 200 to 300 in Wyoming. The NRM wolf population is a three part metapopulation, composed of core areas of suitable habitat and refugia in northwestern Montana, central Idaho and the GYA. The most isolated subpopulation in the NRM is the GYA. The territories of persistent breeding pairs in GYA and central Idaho are 160 km (100 mi) apart, but packs and occasionally breeding pairs are often within 100 km (60 mi) of each other. The GYA had 449 wolves as of Dec 31, 2008, but will likely be managed above 300 wolves in portions of Montana, Idaho, and Wyoming in the long term. Central Idaho and northwest Montana are connected by routine dispersal events to the contiguous western Canadian wolf population that contains 12,000 wolves in British Columbia and Alberta. Collectively, the NRM is distinct in the lower 48 United States because it is surrounded by large expanses of unsuitable habitat in Washington, Oregon, Nevada, Utah, Colorado, and the Dakotas.

Average dispersal distance by wolves in the NRM is 100 km (60 mi) and drops off sharply past 300 km (190 mi). Several individuals have gone >600km (>400 mi), but none of these long distant dispersers in the United States are known to have survived long enough to breed. Comparing a model of theoretical suitable wolf habitat in the NRM (Oakleaf *et al.* 2005, p. 559) with the distribution of wolf packs since 2002 indicates most suitable habitat is filled with resident packs (Service *et al.* 2003–2009, Figure 1). The outer boundary of the entire NRM wolf population has not changed much (a minimum convex polygon of 280,000 km^2 (~110,000 mi^2) since 2002 (Figure 1)). Nearly all wolf population growth has occurred within the suitable habitat area within the past 6 years. Suitable habitat is typically forested, public land, seasonally grazed by livestock (mainly cattle), and has abundant wild ungulates (primarily elk, deer, and moose). Wolf packs have not persisted in unsuitable habitat (open

prairie and high desert, more human activity & access, abundant livestock throughout the year, fewer wild ungulates) even under the Act's most protective designation as ''endangered''.

The two major causes of mortality are agency control of problem wolves and illegal killing—each one causing on average about a 10% mortality rate annually (3% unintentional human-caused and 3% natural). Average radio-collared wolf (n = ~940 wolves) annual survival was 74 percent, and varied from 80 percent in national parks and remote wildness areas down to 60 percent in areas more developed by humans (Murray *et al.* 2008; Smith *et al.* 2008). There is an average of just over five pups per pack, but that decreased to an average of about 4 pups by winter. Periodically there are as few as 2 surviving pups in packs in a few localized areas (YNP) due to outbreaks of canine diseases (largely canine distemper). Only about 60% of all wolf packs classified as breeding pairs each year and adult and pup survival, rather than reproduction, was the key determinate on a pack's final status. Those packs that did not qualify either were not surveyed intensively enough to document final status, did not raise at least 2 pups, were not confirmed to contain both an adult male and female on Dec 31, or contact with them was lost (missing, killed, radio-collar loss, etc) before winter. Therefore, the breeding pair estimate represents a minimum and conservative measure of the number of wolf packs that actually meet the breeding pair metric.

The NRM population grew at an average annual rate of 22 percent per year from 1995–2008 (Service *et al.* 2009, Table 4). The NRM population in 2008 grew slowly, indicating it could be approaching the carrying capacity of suitable habitat. Wolf populations regulate their distribution by their social territoriality. Packs defend exclusive areas of 200 to 500 square miles and defend those areas from other lone wolves and packs. Wolves regulate their density depending on food availability. If food is limited pack territories are larger meaning fewer can fit into a limited space. If prey is abundant packs can fulfill their needs in a smaller area and therefore more packs can fit into a smaller area. In the NRM, with its limited suitable habitat and relatively fixed prey base, the wolf population has grown by having wolves in more places within suitable habitat not by having more wolves in the same space or packs beginning to occupy unsuitable habitat. We believe that scientific evidence such as the well documented self regulation of wolf populations by prey density and social strife (Fuller *et al.* 2003); stagnant overall distribution of packs since 2002 (Figure 1); limited amount of suitable habitat in the NRM (Oakleaf *et al.* 2006); high mortality of wolves in unsuitable habitat due to chronic conflicts with people (Smith *et al.* 2008); increase livestock depredations and more control (in many areas); and slowly of wolf population growth rates in recent years (Service *et al.* 2009); all indicate that the NRM wolf population maybe approaching its carrying capacity in suitable habitat. Maintaining wolf numbers above 1,500 maybe difficult as the rate of conflicts per wolf would increase greatly if packs tried to occupy unsuitable habitat. Movement and breeding by dispersing wolves between northwestern Montana, central Idaho and southwest Canada appears common. GYA is the most distinct area, but between radio telemetry data (1995–2008) and genetic analysis (1995–2004) it appears that there is about one natural dispersing wolf entering the GYA per year and a little more than one effective migrant per generation (a 'new' wolf that breeds every four years) in the GYA system. Contemporary statistics for genetic diversity from 2002–2004 for central Idaho, northwestern Montana, and the GYA, respectively are; n = 85, 104, 210; allelic diversity = 9.5, 9.1, 10.3; observed heterozygosity = 0.723, 0.650, 0.708; expected heterozygosity = 0.767, 0.728, 0.738. (vonHoldt *et al.* 2008). These levels have not diminished since 1995. The small differences between expected and observed heterozygosity around 0.70 on a scale of zero (no diversity) to 1 (maximum possible diversity, which is very unlikely to be encountered in a wild population) and high allelic (alleles are the different forms of a gene) diversity averaging over 9 alleles per locus (location of a gene on a chromosome) demonstrate all subpopulations within the NRM wolf populations have high standing levels of genetic variability. By all measures the NRM wolf population is extremely demographically and genetically diverse, will remain so, and is completely biologically recovered.

Public Comments Solicited

In our proposed rule, we requested that all interested parties submit information, data, comments or suggestions (72 FR 6106, February 8, 2007). The comment period was open from February 8, 2007 through May 9, 2007 (72 FR 6106, February 8, 2007; 72 FR 14760, March 29, 2007), from July 6, 2007 through August 6, 2007 (72 FR 36939, July 6, 2007), and from October 28, 2008 through November 28, 2008 (73 FR 63926, October 28, 2008). We also held eight public hearings and eight open houses on the proposal (72 FR 6106, February 8, 2007; 72 FR 14760, March 29, 2007; 73 FR 36939, July 6, 2007). During the 150-day comment period, we received over 520,000 comments including approximately 240,000 comments during our most recent comment period. Comments were submitted by a wide array of parties, including the general public, environmental organizations, sportsman and outfitter groups, agricultural agencies and organizations, and Tribal, Federal, State, and local governments.

Peer Review

In accordance with our Interagency Policy for Peer Review in Endangered Species Act Activities (59 FR 34270, July 1, 1994) and the Office of Management and Budget's (OMB) Final Information Quality Bulletin for Peer Review, we solicited independent review of the science in the proposed delisting rule from eight well-published North American scientists with extensive expertise in wolf biology. All eight peer reviewers submitted comments on the proposed delisting rule during the initial 90-day comment period (72 FR 6106, February 8, 2007; 72 FR 14760, March 29, 2007). Five of those experts reviewed the proposal again after we reopened the comment period (73 FR 36939, July 6, 2007) to allow consideration of Wyoming's revised wolf management plan and its impact upon our proposal. Finally, on October 29, 2008, we provided these eight experts and nine others the opportunity to review and comment on our February 8, 2007 (72 FR 6106) delisting proposal and our October 28, 2008 (73 FR 63926) notice reopening the comment period. None offered any additional comments on the rule making, although several offered comments on our draft genetics MOU (Groen *et al.* 2008).

Generally, the reviewers agreed with our conclusion that the wolf population in the NRM DPS is biologically recovered and is no longer threatened as long as the States adequately regulate human-caused mortality. The reviewers provided many valuable thoughts, questions, and suggestions for improving the document. Issues identified by a majority of reviewers included suggestions to expand the discussion related to: The recovery criteria (connectivity, foreseeable future, metapopulation, and breeding pairs); the adequacy of State wolf management plans and their future commitments; how the DPS boundary and criteria for suitable habitat were developed; options to retain the Act's protections in

portions of Wyoming; and the effect of human-caused mortality on the wolf population.

Summary of Public Comments

We reviewed and considered all comments in this final decision. Substantive comments received during the comment periods and all 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 nearly every part 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 edited the rule to make its purpose and rationale clearer. We shortened and condensed several sections by not repeating information that was already contained in the references cited. Several other sections were expanded to better explain our position.

The literature used and recommended by the peer reviewers and others has been considered and incorporated, as appropriate, in this final rule. We also reviewed and added literature in development and in press to our reference list when it represents the best scientific and commercial data available. The list of literature cited in this rule will be posted on our Web site (*http://westerngraywolf.fws.gov/*).

Compliance With Laws, Regulations and Policy

Issue 2: Numerous parties suggested that delisting the NRM DPS does not comply with our legal, regulatory, and policy responsibilities.

Response 2: We have carefully reviewed the legal requirements of the Act, its implementing regulations, and relevant case law, all relevant Executive, Secretarial, and Director Orders, Departmental and Service policy, and other Federal policies and procedures. We believe this rule and the process by which it was developed fully satisfies all of our legal, regulatory, and policy responsibilities. Issues relating to specific concerns such as identifying a DPS, using State boundaries as part of the DPS boundary, retaining the Act's protections in significant portions of the NRM DPS, legal criteria for judging adequate regulatory mechanisms, adequacy of the public comment process, clarity of our proposal, and several other legal requirements are each specifically addressed elsewhere in this rule. Furthermore, on December 12, 2008 a formal opinion was issued by the Solicitor of the Department of the Interior, ''U.S. Fish and Wildlife Service Authority Under Section 4(c)(1) of the Endangered Species Act to Revise Lists of Endangered and Threatened Species to 'Reflect Recent Determinations' '' (U.S. DOI 2008). The Service fully agrees with the analysis and conclusions set out in the Solicitor's opinion. This action is consistent with the opinion. The complete text of the Solicitor's opinion can be found at *http://www.fws.gov/midwest/wolf/*.

Issue 3: Some commenters suggested that a new NEPA analysis on the 1995 reintroduction was needed because wolves have exceeded levels analyzed in the 1994 Environmental Impact Statement (EIS). Others suggested NEPA compliance on the delisting was needed for other reasons.

Response 3: The 1994 EIS was limited to the NRM wolf reintroduction efforts and is not applicable to the delisting process. As noted in the proposed rule, NEPA compliance documents, such as environmental assessments or environmental impact statements, need not be prepared in connection with actions adopted pursuant to section 4(a) of the Act (listings, delistings, and reclassifications). A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Issue 4: Some commenters suggested that we did not adequately consult with Native American Tribes, as required by Secretarial Order 3206 and our Native American Policy.

Response 4: During the development of the proposal and this final rule, we endeavored to consult with Native American Tribes and Native American organizations to provide them information concerning the proposal and gain an understanding of their perspectives. We made additional efforts to contact and inform Tribes during the comment period, including providing the opportunity for informational meetings with Tribal representatives before the open houses and hearings on the delisting proposal. As we have become aware of Native American concerns, we have tried to address those concerns to the extent allowed by the Act, the Administrative Procedures Act, and other Federal statutes. Specifically, we worked closely with and fund the Nez Perce Tribe's wolf management program, assisted the Wind River Tribes in developing a Tribal Wolf Management Plan (Wind River Tribes 2007) that we approved in June 2007, and coordinated with the Salish and Kootenai and Blackfeet Tribes regarding wolf management on their Tribal lands.

Recovery Goals, Recovery Criteria, and Delisting

Issue 5: Some commenters suggested that we should not use numerical quotas in reclassification or delisting decisions for the gray wolf. Commenters offered a multitude of reasons why delisting is warranted/not warranted or premature/overdue.

Response 5: The Act specifies that objective and measurable criteria be developed for recovering listed species. For a detailed discussion of the NRM wolf recovery criteria see the Recovery section. This final delisting determination is based upon the species' status relative to the Act's definition of threatened or endangered and considers potential threats to the species as outlined in section 4(a)(1) of the Act. Population numbers and status provide useful information for assessing the species' vulnerability to these factors. As described in detail in this rule, the species no longer meets the definition of threatened or endangered in all of its range, thus, delisting across most of the NRM DPS is warranted.

Issue 6: Some commenters requested that we further explain the recovery criteria. These commenters expressed confusion over the current recovery goal because recent modifications have not been accomplished through the recovery planning process.

Response 6: The Service's 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 2 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). Step-down recovery targets require Montana, Idaho, and Wyoming to each maintain at least 10 breeding pairs and 100 wolves by managing for a safety margin of at least 15 breeding pairs and at least 150 wolves in mid-winter. Genetic exchange can be natural or, if necessary, agency managed. The rule now provides a fuller explanation of the recovery goals and their evolution over time (see the Reclassification and Recovery Goals section).

Issue 7: Several commenters used the higher numbers of wolves required for recovery of wolves in the WGL DPS as evidence that the NRM wolf population is too low to delist.

Response 7: The recovery goals for the WGL DPS and the NRM DPS differ because the biological circumstances (such as prey type and density, wolf density, habitat suitability, terrain, other ecological conditions, the history of recovery and planning efforts, and potential for human conflict) in each area differ. The WGL can support more and higher densities of wolves because of high white-tailed deer density, homogenous and more contiguous suitable habitat, different patterns of livestock density, distribution, and management, and different patterns of human access. However, the standards for achieving recovery have the same biological foundation. Each set of recovery goals required a metapopulation structure, numerical and distribution delisting criteria to be exceeded for several years, State plans that would adequately regulate wolf mortality, and sufficient elimination or reduction of threats to the population. The standards for achieving recovery in the WGL DPS and NRM DPS are both scientifically valid and realistically reflect the biological similarities and differences between each area.

Within the NRM DPS, most of the 170,227 km^2 (65,725 mi^2) of suitable habitat for pack persistence is occupied and likely at or above long-term carrying capacity. The occupied portions of the NRM DPS have remained constant since 2002. Given limitations in available suitable habitat for pack persistence, significant expansion of the wolf population into new areas of the NRM DPS is unlikely. We believe maintaining the NRM gray wolf population at or above 1,500 wolves in currently occupied areas would slowly reduce wild prey abundance in suitable wolf habitat. This would result in a gradual decline in the number of wolves that could be supported in suitable habitat. Higher rates of livestock depredation in these and surrounding areas would follow. This too would reduce the wolf population because problem wolves are typically controlled.

The Great Lakes wolf population also grew until it saturated suitable habitat. Wolves in the Minnesota portion of the Great Lakes regions have not increased their distribution and numbers in the past ten years. In both the Great Lakes region and the NRM DPS, we set recovery targets at approximately one-third of carrying capacity, while the States plan to manage at about two-thirds of carrying capacity. We believe the biological carrying capacity of suitable habitat is set by wild prey distribution and density, ability of packs to persist, raise young and provide dispersers back into the population, level of conflict with people, overall rate of reproduction and morality, and a density and distribution of wolves and wolf packs necessary to maintain a viable metapopulation.

Issue 8: Some commenters felt that the 1994 recovery goal was inadequate to ensure the continued viability of the NRM DPS. Specifically, they stated that the 1994 EIS could not properly evaluate the recovery goals because predicting the number of wolves the two then-unoccupied recovery zones might support was not possible. Some thought that the wolf recovery goals should be reevaluated given historic or current wolf numbers and distribution. Others thought that additional protection of the ecosystem, such as reduced livestock grazing, eliminating roads, and increasing restrictions on human development, on which the NRM wolves depend would be necessary to accomplish successful recovery in areas of historic occupancy. Some commenters stated that 2,000 to 6,000 or more wolves were necessary to maintain a viable and recovered wolf population. Others indicated that the wolf population was growing out of control and should be reduced to the minimum recovery goal of 300 wolves in 30 breeding pairs.

Response 8: We do not dispute the fact that the NRM can support a wolf population that is several times higher than the minimum numerical recovery goal necessary to meet the Act's requirements. However, under the Act, species recovery is considered to be the return of a species to the point where it is no longer threatened or endangered. Recovery under the Act does not require restoring a species to historic levels or even maximizing possible density, distribution, or genetic diversity. The Service has reviewed the NRM wolf recovery goal to ensure it is adequate and that it has been fully achieved (see discussion in Recovery section). We have modified it when scientific evidence warranted. We determined that a 3-State wolf metapopulation that requires maintenance of at least 10 breeding pairs and at least 100 wolves in mid-winter per State by managing for a safety margin of at least 15 breeding pairs and at least 150 wolves in mid-winter per State is biologically recovered. Montana and Idaho have committed to maintain the NRM wolf population well above their minimum numerical and distributional share of the NRM wolf population. In Wyoming, the continuation of National Park Service and Service wolf management will assure that Wyoming's share of the NRM wolf population is maintained well above recovery levels. Collectively, these commitments indicate that the entire NRM wolf population is likely to consist of 973 to 1,302 wolves in 77 to 104 breeding pairs (See Recovery Planning and Factor D).

Commenters provided no convincing scientific evidence that at least 2,000 to 6,000 wolves are required in a wolf population for it to be recovered to meet the Act's purposes. Wolf populations in many parts of the world have remained viable at much lower levels unless they were deliberately extirpated by people. Furthermore, not only is the current population of 1,639 wolves far above minimum recovery levels, we have concluded that there is not enough suitable habitat in the NRM DPS to support 2,000 to 6,000 wolves over the long term without tolerating rates of livestock depredation and impacts to big game populations many times higher than has occurred in the past twenty years. Additional habitat protections in suitable habitat will not meaningfully increase carrying capacity of the NRM DPS. Restoration into areas currently considered unsuitable for pack persistence would require massive Federal and State programs to reduce or eliminate livestock on Federal, State, Tribal and, mostly, private property. Such an approach is unnecessary and unwarranted to remove the threat of extinction to the NRM DPS for the foreseeable future. Specifically, we do not believe there is a need for additional habitat protections in the NRMs as the DPS contains sufficient quality and quantity of habitat to maintain a healthy and viable wolf population in the long-term (as discussed in Factor A below). To the extant that a larger population is desired by some to sustain biological viability, the NRM wolf population 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.

While some commenters felt that the NRM wolf population should be reduced to minimum recovery levels, the Act does not require or authorize the Service to manage a listed species to keep it from surpassing minimum recovery goals. States are also unlikely to accommodate this request as they have agreed to manage for a wolf population at least 50 percent above minimum recovery levels and will likely manage for a population of over 1,000 wolves, well above even this minimum level. Due to smaller safety margins to account for stochastic events, it would require much more intensive and costly monitoring and management to assure the future conservation of a

recovered wolf population that was composed of less than 500 wolves than it would for the greater than 1,000 wolves that will be maintained in the NRM by the States and Service after delisting.

Issue 9: Some commenters questioned the objectivity of the peer review process for the recovery goals.

Response 9: We used an extensive unbiased scientific peer review and public review process and our own expertise to help investigate, and modify as necessary, the recovery goals. We purposely invited reviews from experts with widely divergent philosophies to increase the range of opinions and perspectives. While the comments of some former litigants selected quotes from one end of the bell curve of all the diversity of opinion that was offered on wolf recovery goals to support their perspective (Fallon 2008), a review of the peer review comments in their entirety reveal the wide diversity of opinion (Bangs 2002). We continue to conclude, as did over three-fourths of the experts contacted, that the recovery goal is adequate to ensure wolves in the NRM do not again become threatened or endangered. Additionally, peer reviews of the State wolf management plans and the rulemaking process also confirmed the adequacy of the recovery goals to maintain a recovered wolf population in the NRM DPS. See the discussion in the recovery section for more details.

Issue 10: We received numerous comments related to the recovery objective of having genetic exchange between subpopulations, the isolation of the GYA recovery area, and a perceived failure to meet the recovery goal because of the lack of successful migrants into the GYA. Many commenters expressed opinions on available options to achieve the genetic exchange mentioned in the recovery goal. Some commenters stated that only natural connectivity and gene flow constituted recovery. Some of these individuals believed the July 18, 2008, District Court preliminary injunction order mandated natural connectivity. Numerous commenters opined that agency-managed genetic exchange (moving individual wolves or their genes into the affected population segment) was ''a government dating program'' and did not constitute ''true recovery'' under the Act. Other commenters believed that it was biologically immaterial to wolf population status and genetic vigor whether such exchange occurred solely by natural dispersal or by human-assisted migration management. Others stated that while natural connectivity was desirable to reduce the need for management intervention and cost, human-assisted migration management was an important safeguard, if ever needed. Still other commenters concluded that even if the GYA was totally isolated, biological problems are unlikely to materialize at a meaningful level. These commenters pointed to wolf biology, strong recovery standards for the ecosystem, and actual real world cases of isolated wolf populations to support their position. Opinions and theoretical predictions varied on what level of gene flow was required and if State management practices would increase or decrease those opportunities. Finally, commenters provided thoughts on our draft memorandum of understanding regarding the protection of genetic diversity of NRM gray wolves. Some commenters stated there was no need for the MOU as State wolf management plans already committed potential signees to manage the issue. Other commenters stated that a promise of future action by the States was not legally sufficient to resolve future genetic concerns and allow delisting. Some said the MOU guaranteed genetic connectivity would never threaten the NRM wolf population.

Response 10: Currently, genetic diversity throughout the NRM DPS is very high (Forbes and Boyd 1996, p. 1084; Forbes and Boyd 1997, p. 226; vonHoldt *et al.* 2007, p. 19; vonHoldt *et al.* 2008). Wolves in northwestern Montana and both the reintroduced populations are as genetically diverse as their vast, secure, healthy, contiguous, and connected source populations in Canada; thus, inadequate genetic diversity is not a wolf conservation issue in the NRM at this time (Forbes and Boyd 1997, p. 1089; vonHoldt *et al.* 2007, p. 19). This genetic health is the result of deliberate management actions by the Service and its cooperators since 1995. It is misleading to compare the large, connected, and genetically robust NRM wolf population to very small, very inbred and very isolated wolf populations in order to forecast theoretical problems the NRM population may have with genetic diversity, let alone to an extent that could threaten the viability of the NRM wolf population. Dr. L.D. Mech, the world's foremost authority on wolves, responded to our inquiry about ways we might guarantee to ensure the future genetic health of the NRM wolf population (Fuller *et al.* 2003, p. 189–190; Groen *et al.* 2008) as ''I consider this a nonissue.'' Genetic issues are discussed further in Factor E below.

We agree that a portion of the Service's recovery goal calls for ''genetic exchange between subpopulations'' (see the Recovery section above). Genetic exchange was also a major focus of the July 18, 2008, District Court preliminary injunction order. The Recovery section of this rule now clarifies the Service's recovery goal, including the genetic exchange portion of it, to correct any misunderstandings or alternative interpretations of what constitutes biological wolf recovery in the NRM. This section provides wording from past documents to demonstrate that the Service recovery goal was never dependent on natural connectivity or proven multi-generation genetic exchange within any recovery segment. Instead, the primary purpose of this portion of the recovery goal was to ensure that no recovery area was totally isolated. The 1994 EIS (Service 1994, p. 6–7) defined a ''Recovered wolf population'' as ''10 breeding pairs of wolves in each of 3 areas for 3 successive years with some level of movement between areas.'' Natural dispersal and successful reproduction of radio-collared wolves has been documented between all three subpopulation.

Some commenters provided scientific papers that dealt with potential wildlife conservation problems resulting from low genetic diversity and inbreeding, or that such problems were unlikely to be resolved by only one immigrant. We appreciate those papers and perspectives and recognize low genetic diversity can have costs to population health. However, the problems resulting from low genetic diversity and inbreeding cited were in wildlife populations that started from very few founders and remained at low levels for long periods of time, remained isolated, existed in small fragmented habitats, and no management was taken to resolve problems. But even those populations grew very rapidly in suitable habitat after human-caused mortality was regulated. These examples have virtually no relevance to the NRM wolf population. The NRM wolf population is large. It started from many diverse founders, grew rapidly, has very high genetic diversity, is not isolated, and it is attached to a Canadian population composed of 12,000 wolves. Wolves in the NRM live in 3 genetically and demographically connected areas of secure suitable habitat covering an area of nearly 240,000 km^2 (100,000 mi^2) and management actions have been and will continue to be used to resolve any actual genetic problems that might develop in the future. In addition, the purpose of the Act is not to maximize genetic diversity or to quibble about

genetic theory or the results of theoretical models and their assumptions. The Act is intended to prevent species from becoming extinct and clearly the NRM wolf population will never be threatened by low genetic diversity, genetic drift, or inbreeding. See Factor E for a detailed discussion of this issue.

Implementation of the recently finalized Genetics MOU (Groen *et al.* 2008), which was improved by public and peer review comment, makes it even more unlikely that agency-managed genetic exchange would be necessary in the foreseeable future. This MOU recognizes that genetic diversity is currently very high throughout the NRM DPS and commits to establish and maintain a monitoring protocol to ensure that necessary levels of gene flow occur so that the population retains high levels of genetic and demographic diversity (Groen *et al.* 2008). The number of effective migrants needed to maintain genetic diversity in any one recovery area is a function of its overall population size, the number of dispersers that successfully breed, and the demographic parameters of that population segment. As noted above, we believe current levels of natural connectivity are sufficient to address any theoretical genetic issues. However, we recognize work on this issue is ongoing. The MOU ensures this issue will be appropriately managed into the foreseeable future by the NRM DPS's State and Federal partners as new information comes to light (Groen *et al.* 2008). Should genetic or demographic issues ever materialize that could threaten the NRM wolf population, an outcome we believe is extremely unlikely, the MOU ensures States will implement techniques to facilitate agency-managed genetic exchange (moving individual wolves or their genes into the affected population segment) (Groen *et al.* 2008).

We believe Wyoming must institute additional protections to facilitate natural genetic exchange. Specifically, the State's regulatory framework should minimize take of non-problem wolves in all suitable habitat and across all of Wyoming's potential migration routes among NRM subpopulations. Statewide trophy game status will assist in this regard as migrating wolves use the current predator area. This measure is particularly important during peak dispersal, breeding, and pup rearing periods. In addition to requiring that Wyoming manage for at least 15 breeding pairs and at least 150 wolves in mid-winter in their State, Wyoming must also manage for at least 7 breeding pairs and at least 70 wolves in Wyoming outside the National Parks. Such requirements are necessary to provide adequate buffers to prevent the population from falling below recovery levels. This secondary goal will provide dispersing wolves more social openings and protection from excessive human-caused mortality. This will also maintain a sufficiently large number of wolves in the GYA; larger population size is a proven remedy to genetic inbreeding. Until Wyoming develops adequate regulatory mechanisms, continued Federal management of the Wyoming wolf population will maximize potential for genetic exchange.

Future Wolf Numbers

Issue 11: Many commenters pointed out that the States will manage for fewer wolves than currently exist. Some commenters thought that fewer wolves would reduce the number of dispersing wolves and limit natural connectivity among the subpopulations. Others recommended that we recognize and take into account the fact that wolf numbers can fluctuate dramatically.

Response 11: The delisted NRM DPS wolf population is likely to be reduced from its current levels of around 1,639 wolves by State management. Below carrying capacity (the current carrying capacity of suitable habitat in the NRM may be around 1,500 wolves), the population is likely to continue to reproduce at high rates. However, attempts to maintain the population above 1,500 wolves may be difficult because suitable habitat will be fully occupied and packs attempting to colonize unsuitable habitat would cause chronic conflict with livestock. Regardless, wolf populations in the three States containing most of the occupied and most of the suitable habitat in the NRM DPS will be managed for at least 15 breeding pairs and at least 150 wolves so that the population never goes below recovery levels. The entire NRM wolf population is likely to consist of 973 to 1,302 wolves in 77 to 104 breeding pairs. Specifically, State projections indicate the NRM wolf population in Montana and Idaho will likely be managed for around 673 to 1,002 wolves in 52 to 79 breeding pairs (See Recovery Planning and Factor D). In Wyoming, the Act's protections will remain in place, thus, Wyoming is likely to maintain a wolf population of about 300 wolves in 22 breeding pairs. We believe maintenance well above the minimum recovery goal is more than sufficient to maintain wolf recovery in the NRM.

We recognize that the planned reduction in overall population numbers could reduce dispersal and connectivity among subpopulations. If the population is managed for over a thousand wolves, as expected, we believe the impact on dispersal and connectivity will be negligible. If the population is managed to the minimum recovery target of 150 wolves per State, dispersal would be noticeably impacted, which could require costly and intensive management to mitigate. However, even when wolf populations were low in number and throughout the period when mortality averaged 23 percent of the population annually, some dispersal events occurred between all three recovery areas. We expect some dispersal will continue regardless of the number managed for. State and Tribal management in Montana and Idaho, in combination with continued Federal management of Wyoming, will continue to focus on this issue, especially in regards to the GYA. We believe these efforts will ensure sufficient levels of connectivity among the subpopulations. Should genetic issues that could threaten the population ever materialize, an outcome we believe is extremely unlikely, agency-managed genetic exchange will be used to correct the issue.

We and our State partners recognize that all wildlife populations, including wolves, can fluctuate widely over a relatively short period of time. By managing for at least 50 percent above the minimal recovery levels, and likely for over one thousand wolves, State and Federal management provide an adequate safety margin. This margin, combined with the State's commitment to adaptively manage the species as needed, adequately addressed concerns about population fluctuations.

Additional Recovery Efforts

Issue 12: Several commenters thought that the Service should have modified our recovery planning and implementation efforts after revising the listing to a single lower 48-State listing in 1978. Commenters requested we develop a single recovery plan for the lower 48-State listed entity before delisting any portion of it. Other commenters thought that the Service should use subspecies to identify DPSs across the gray wolf's historical range, and these DPSs should replace or supplement the current recovery zones. Still others expressed their opinion that additional recovery efforts across the entire lower 48-States were unwise and unnecessary. The adjacent States of California, Nevada, Colorado, Utah, Oregon, and Washington were mentioned most frequently for additional recovery programs. Other

commenters recommended wolves be reintroduced into places such as Central Park in New York City or the National Mall in Washington, DC.

Response 12: We believe possible future wolf recovery efforts are beyond the scope of this rulemaking as such actions are not necessary to ensure that the NRM DPS remains unlikely to become endangered in the foreseeable future throughout all or a significant portion of its range.

Nevertheless, let us clarify our position on this issue. As noted in the 1978 reclassification rule, we replaced the previous subspecies listings with a single conterminous 48-State entity in order to ''most conveniently'' handle the gray wolf listing. Our 1978 reclassification rule provided assurances that we would continue to recognize valid biological subspecies for purposes of our research and conservation programs (39 FR 1171, January 4, 1974). The NRM DPS approximates the U.S. historic range of the purported NRM gray wolf subspecies (*C. l. irremotus*) (Service 1980, p. 3; Service 1987, p. 2; 39 FR 1171, January 4, 1974). We never intended, nor do we think it is realistic, to recover the species across the entire lower 48-States.

Finally, we believe we have satisfied our statutory responsibilities for recovery planning. Section 4(f)(1) of the Act instructs us to develop plans for the conservation and survival of threatened and endangered species. The Act further states that priority be given to species that are most likely to benefit from such plans. To this end, we have prioritized gray wolf recovery planning efforts to focus on the NRM, the Great Lakes Region, and the Southwest. We completed a recovery plan for the NRM in 1980 and revised it in 1987. In the Great Lakes Region, we completed a recovery plan in 1978 and revised it in 1992. In the Southwest, a recovery plan was completed in 1982. Any additional planning is discretionary. At this time the Service's resources will be focused on delisting the recovered wolf populations in the Midwest and NRM, and recovering gray wolves in the southwest and red wolves (*Canis rufus*) in the southeast.

Issue 13: Several commenters thought that wolf recovery should require recolonization of all historical range or, at least, the portions of the historical range that could be made suitable. Some recommended that wolves remain listed to promote wolf restoration within unoccupied portions of the species' historic range, both in and beyond the NRM DPS. Others indicated that the concepts of resiliency, redundancy, and representation need to be addressed over a much broader area. Some believed that our interpretation of recovery led us to focus on occupied habitat and controlling excessive rates of human-caused mortality rather than ''true recovery.'' It was stated that ''true recovery'' requires natural connectivity or linkage, protection and enhancement of existing population levels, widespread habitat protection and restoration, and protective regulatory mechanisms.

Response 13: We believe these recommendations would expand the purpose of the Act. The Act defines conservation as the use of all methods and procedures necessary to bring any endangered or threatened species to the point where the measures provided pursuant to the Act are no longer necessary. According to our implementing regulations (50 CFR 424.11), 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.

Restoration of historically occupied areas can play a role in achieving the goal of recovery. In this case, occupancy has been restored and will be maintained across the vast majority of the suitable habitat with the NRM DPS. Maintained occupancy across most suitable habitat in Montana and Idaho ensures that the NRM DPS remains unlikely to become endangered in the foreseeable future throughout all of its range. Continued Federal protections in Wyoming ensure this significant portion of the NRM DPS will be maintained. Occupancy across large portions of the historical range, unless required to preclude the NRM DPS from again becoming threatened or endangered, are beyond the requirements of the Act.

Reintroducing wolves to areas of highly unsuitable habitat outside the NRM was not considered relevant to this rule. Furthermore, most historic wolf habitat in the contiguous United States has been so modified by people that it is currently unsuitable for wolves.

Resiliency, redundancy, and representation (described in detail in the Conclusion of the 5-Factor Analysis section below) are important factors in the long-term conservation status of any species (Shaffer and Stein 2000). Within the NRM DPS, each of the States and each of the recovery areas meaningfully contributes to its resiliency, redundancy, and representation. Across the lower 48-States, the three wolf populations in the lower 48-States (WGL DPS, NRM DPS, and Mexican wolf) provide the necessary resiliency, redundancy, and representation. These three populations also represent all the genetic diversity remaining in wolves south of Canada after their widespread extirpation during European colonization (Leonard *et al.* 2005, p. 9). Additionally, the species remains abundant in many areas of the northern hemisphere. Collectively, this information shows that these principles of conservation biology are satisfied.

We dispute the assertion that we have inappropriately focused our recovery efforts on occupied habitat and mortality control. In fact, we have focused recovery efforts on wolf population levels, distribution, habitat, connectivity, all forms of mortality, wolf/human conflicts, diseases and parasites, predation, human attitudes, genetics, and dispersal (Service *et al.* 2002–8). We have worked to maintain public tolerance of wolves by limiting damage to private property. These recovery efforts led to significant increases in wolf numbers and range, allowing wolves to reoccupy habitats they were absent from since the 1930s. Our efforts also provided demographic, genetic, and habitat security. Wolf packs now occupy most of the large blocks of suitable habitat within the DPS. This comprehensive approach to recovery will be continued under State management in Montana and Idaho in the future. Additional recovery actions necessary to achieve a more widely distributed and numerically abundant population are not necessary to meet the definition of recovered under the Act.

Issue 14: Many commenters thought that we failed to recognize the ecological importance of trophic cascades (the ripple effect in predator, herbivore, plant, and scavenger communities caused by restoring a keystone species like wolves) and ecological effects emanating from wolf restoration in the NRM. Some commenters stated that the Act mandates that a species be ''ecologically effective.'' Still other commenters thought we should use an ''ecosystem approach'' when implementing recovery. Finally, some commenters suggested delisting does not fulfill parts of the Service mission which includes, ''working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit to the American people.''

Response 14: We recognize that wolf recovery appears to have caused trophic cascades and ecological effects 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 likely

still occur at varying degrees elsewhere, they are increasingly modified and subtle the more an area is affected by humans (Smith *et al.* 2003, pp. 334–338; Robbins 2004, pp. 80–81; Campbell *et al.* 2006, pp. 747–753; Hebblewhite *et al.* 2005, p. 2135; Garrott *et al.* 2005, p. 1245). While some believe we should stall delisting until these cascading ecological effects are restored throughout the DPS or beyond, this approach is not a requirement of the Act. Instead, 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. Similarly, the Act does not require that we achieve or maintain ''ecological effectiveness'' (i.e., occupancy with densities that maintain critical ecosystem interactions and help ensure against ecosystem degradation) (Soule *et al.* 2003, p. 1239).

Service policy intends that we apply an ecosystem approach in carrying out our programs for fish and wildlife conservation (National Policy Issuances 95–03 and 96–10; 59 FR 34274, July 1, 1994). The goal of such an approach is to strive to contribute to the effective conservation of natural biological diversity through perpetuation of dynamic, healthy ecosystems when carrying our various mandates and functions. Preserving and recovering endangered and threatened species is one of the more basic aspects of an ecosystem approach to conservation. Successful recovery of a rare species requires that the necessary components of its habitat and ecosystem be conserved, and that diverse partnerships be developed to ensure the long-term protection of those components. Thus, the recovery success demonstrated for gray wolves, a keystone or ''highly interactive species'' (as defined by Soule *et al.* 2003), also is a demonstration of the ecosystem approach.

Finally, we believe delisting portrays successful adherence to our mission statement. Gray wolf recovery programs involve many partners in the private and public sector, at all levels of government, and include numerous other State and Federal agencies. The wolf recovery successes described in this rule resulted from working with others to conserve, protect, and enhance gray wolf populations in the NRM. That success has now reached a point where the NRM wolf population, except Wyoming, no longer qualifies for protection under the Act, so we are delisting most of the NRM DPS. Long-term maintenance of a recovered gray wolf population will provide a continuing benefit to the American people.

Issue 15: Some commenters suggested that we should delist gray wolves in areas outside of the proposed DPS because: Wolves are common elsewhere (in other areas of the lower 48 States or in Alaska and Canada); wolves have recovered (in that area or elsewhere); wolves are extirpated in many areas and could be delisted on the basis of extinction in those areas; keeping wolves listed where there is little or no suitable habitat results in irresolvable conflicts; and a State can manage a resident species better than the Federal government.

Response 15: The Federal status of wolves under the Act outside of the NRM DPS is beyond the scope of this action. An evaluation of these areas for either delisting or additional recovery efforts will be forthcoming in a separate effort.

Identifying the NRM Distinct Population Segment

Issue 16: Some commenters suggested that we improperly recognized the NRM DPS. Some asserted that the Service may not identify a DPS within a broader pre-existing listed entity for the purpose of delisting the DPS. Other held the opposite view, that a DPS-level delisting was allowed. These commenters also noted that the NRM population met the DPS policy's criteria for discreteness and significance, thus, should be recognized as DPS. They suggested that precluding delisting until entire lower 48-State entity was recovered would punish the States that had recovered the species. Some opined that a DPS could not be created and delisted in the same listing action.

Response 16: As described above, we have determined the NRM DPS is biologically based, appropriate, and was developed in accordance with the Act and the Distinct Vertebrate Population Segment Policy. Our ability to identify a DPS within a broader pre-existing listed entity was the subject of a recent decision of the U.S. District Court for the District of Columbia (*Humane Society of the United States* v. *Kempthorne*, Civil Action No. 07–0677 (PLF) (D.D.C., Sept. 29, 2008)). This order remanded and vacated our February 7, 2008, final rule that identified the WGL DPS of gray wolves and determined that these wolves should be delisted (72 FR 6052). The court found that the Service had made that decision based on its interpretation that the plain meaning of the Act authorizes the Service to create and delist a DPS within an already-listed entity. The court disagreed, and concluded that the Act is ambiguous as to whether the Service has this authority. The court accordingly remanded the final rule so that the Service could provide a reasoned explanation of how its interpretation is consistent with the text, structure, legislative history, judicial interpretations, and policy objectives of the Act.

While the Service acknowledges that the ESA is arguably ambiguous on the ''precise question'' posed by the court, it notes that the court's question does not accurately describe what we did in the Final Rule. What we actually did, under the precise language of the Act, was to determine, pursuant to section 4(a)(1), that gray wolves in the Western Great Lakes area constituted a DPS and that the DPS was neither endangered nor threatened, and then revised the list of endangered and threatened species, pursuant to section 4(c)(1), to reflect those determinations. Our conclusion is that we had clear authority to make the determinations and the revisions. We did not delist a previously unlisted species; rather, we revised the existing listing of a species (the gray wolf in the lower 48 States) to reflect a determination that a sub-part of that species (the Western Great Lakes DPS) was healthy enough that it no longer needed the ESA's protections and such action is the same as the action we are taking today regarding the NRM DPS when we determine that wolves in most of the NRM DPS no longer need ESA protections and that the List of Threatened and Endangered Wildlife should be revised to reflect the current status of these wolves. Our authority to make these determinations and to revise the list accordingly is found in the precise language of the ESA. Moreover, even if that authority was not clear, our interpretation of this authority to make determinations under section 4(a)(1) and to revise the endangered and threatened species list to reflect those determinations under section 4(c)(1) is reasonable and fully consistent with the ESA's text structure, legislative history, relevant judicial interpretations, and policy objectives.

As stated previously, on December 12, 2008, a formal opinion was issued by the Solicitor, ''U.S. Fish and Wildlife Service Authority Under Section 4(c)(1) of the Endangered Species Act to Revise Lists of Endangered and Threatened Species to 'Reflect Recent Determinations' '' (U.S. DOI 2008). This opinion represents the views of the Service and fully supports the Service's position that it is authorized in a single action to identify a DPS within a larger listed entity, determine that the DPS is neither endangered nor threatened, and then revise the List of Endangered and

Threatened Wildlife to reflect those determinations. The opinion also notes that, although the term ''delist'' is not used in the Act, it is used extensively in the regulations implementing the section 4 listing provisions of the Act, such as 50 CFR 424.11(d). As explained in footnote 8 to the Solicitor's opinion, ''As used by FWS, ''delisting'' applies broadly to any action that revises the lists either to remove an already-listed entity from the appropriate list in its entirety, or to reduce the geographic or taxonomic scope of a listing to exclude a group of organisms previously included as part of an already-listed entity (as was the case with the Western Great Lakes DPS of gray wolves).'' The Service fully agrees with the analysis and conclusions set out in the Solicitor's opinion and this action is consistent with the opinion. The complete text of the Solicitor's opinion can be found at *http://www.fws.gov/midwest/wolf/*.

In regard to the NRM wolves, such an approach is further supported by the fact that the DPS is consistent with over 30 years of recovery efforts in the NRMs in that: (1) The DPS approximates the U.S. historic range of the NRM gray wolf subspecies (*C. l. irremotus*) (Service 1980, p. 3; Service 1987, p. 2) which was the originally listed entity in 1974 (39 FR 1171, January 4, 1974); (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 (EIS) (Service 1994, Ch. 1 p. 3); and (3) the DPS is inclusive of the entire Central-Idaho and Yellowstone Non-essential Experimental Population areas (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 50 CFR 17.84 (i) & (n)).

Issue 17: Some commenters suggested that the NRM gray wolf population is not a DPS because all populations in the lower 48 States were once connected. Thus, the population should not be considered discrete.

Response 17: A comprehensive evaluation of the NRM gray wolf population's discreteness is included in the ''Analysis for Discreteness'' section of the rule above. Historical distribution has no bearing on the NRM population's current discreteness. The boundaries of the NRM DPS consider likely dispersal distances and surrounding unsuitable habitat. We believe a continuous uninterrupted population throughout the lower 48-States, as existed historically, is not achievable. The best scientific and commercial information available indicates the NRM population will remain markedly separated from other gray wolf populations in the lower 48-States. Occupancy in the intervening areas is unsustainable because the areas have been too modified by people for wolves to survive.

Issue 18: Several people stated that the DPS policy is to be used only in listing decisions and that using it in a delisting decision violates Congressional intent and the legislative and statutory structure of the Act.

Response 18: The Act, its implementing regulations, and our DPS policy provide no support for this interpretation. Section 4(a)(1) of the Act directs the Secretary of the Interior to determine whether ''any species'' is endangered or threatened. Numerous sections of the Act refer to adding and removing ''species'' from the list of threatened or endangered plants and animals. Section 3(15) defines ''species'' to include any subspecies ''* * * and any DPS of any species of vertebrate fish or wildlife * * *'' The Act directs us to list, reclassify, and delist species, subspecies, and DPSs of vertebrate species. It contains no provisions requiring, or even allowing, DPSs to be treated in a different manner than species or subspecies when carrying out the listing, recovery, and delisting functions mandated by section 4. Furthermore, our DPS Policy states that the policy is intended for ''the purposes of listing, delisting, and reclassifying species under the Act'' (61 FR 4722, February 7, 1996), and that it ''guides the evaluation of distinct vertebrate population segments for the purposes of listing, delisting, and reclassifying under the Act'' (61 FR 4725, February 7, 1996).

These comments also overlook the untenable situation that would arise if DPSs could be listed, but could never be delisted, after they have been successfully recovered. Clearly Congress did not envision such an outcome when amending the definition of species to include vertebrate DPSs.

Issue 19: Some commenters pointed out that the recognition of the NRM DPS created a remnant population. Some commenters suggested this violates the Act as the Act allows us to ''consider listing only an entire species, subspecies, or DPS'' (*Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154, 1162 (D. Or. 2001)); therefore, we cannot declare part of a listed species a DPS without also identifying the remaining listed species as DPS(s).

Response 19: While in some situations it may be appropriate to recognize multiple DPSs simultaneously, the Act does not require it. This flexibility allows the Service to subsequently list or delist additional DPSs when additional information becomes available or as the conservation status of the taxon changes. Importantly, a court stated that the Act allows this flexibility. In *National Wildlife Federation* v. *Norton* (385 F. Supp. 2d 553, 565 (D. Vt. 2005), the court found that ''Nowhere in the Act is the Secretary prevented from creating a 'non-DPS remnant,' especially when the remnant area was already listed * * *'' Our current identification of a NRM DPS, while retaining the remaining other wolves listed as endangered or nonessential experimental, is consistent with this aspect of the District Court's ruling.

Furthermore, just as the NRM DPS is discrete from the remaining populations in the lower 48 States, the remaining populations are discrete from the NRM DPS. The amended lower 48 State listing is discrete from Canadian populations of gray wolf as delineated by the United States/Canadian international boundary, with significant differences in control of exploitation, management of habitat, conservation status, and regulatory mechanisms. The amended lower 48 State listing is significant in that its loss would result in a significant gap in the range of the taxon (*C. lupus*). Therefore, the amended lower 48 State listing is discrete and significant.

Issue 20: Some commenters felt that a wolf dispersing outside of the DPS boundaries (e.g., into Colorado) may create confusion among State, Federal, and Tribal agencies regarding the status of that wolf. To address this confusion, some believed that any wolf originating from the NRM DPS should be considered part of that DPS, regardless of where it is geographically.

Response 20: Consistent with Section 4(c) of the Act, the status of individual members of a species, subspecies, or DPS is dependent on their geographic location. We used easily identifiable boundaries, such as the center line of major highways or State borders, to minimize management confusion. Once this rule goes into effect, if a wolf goes beyond the NRM DPS boundary, it attains the listing status of the area it has entered (i.e., endangered in much of the lower 48 States, except where listed as nonessential experimental or delisted). Similarly, if a wolf enters the NRM DPS, except Wyoming, it would not be listed and would be managed according to the relevant State management plan. If a wolf enters Wyoming, it will be regulated as a non-essential, experimental population per 50 CFR 17.84 (i) and (n). State and Federal agencies across the region are aware of and understand the

management implications of this action. While we believe that future dispersal and conflicts outside the DPS will be rare, we will continue to work with any affected States or Tribes to resolve them.

Issue 21: Numerous commenters suggested the boundary of the DPS was improperly developed. Some commenters suggested the DPS should have been larger, while others thought it should have been smaller. Some opined that the size of the NRM DPS prevents wolf dispersal outside the DPS to other areas of suitable habitat, thus the unsuitable habitat at the edges of the DPS became a barrier to dispersal. Some believe that because the boundaries were mainly highways or State borders, they were arbitrary and not based on sound biological principles or natural features like rivers. Montana recommended a DPS of only Montana, Idaho, and Wyoming based on the presence of a wolf population and State regulations guiding post-delisting wolf management. The adjacent States requested that the NRM DPS boundary be changed to include most of Utah, Nevada, and Oregon, western North and South Dakota, and none of Washington.

Response 21: The boundary of the NRM DPS was determined by analyzing the distribution of potentially suitable and unsuitable habitat for wolves in the NRM and the documented dispersal distances of radio-collared wolves. These factors are the most likely to influence a split between the NRM DPS and other potential areas of occupancy. A smaller DPS might split the biological entity. A larger DPS might split a neighboring biological entity, should one ever be established.

The boundary of the DPS was determined by the dispersal distances of wolves. The Service does not proactively prevent wolf dispersal in Montana, Idaho, or Wyoming. Likewise, Washington and Oregon State laws are, in general, as protective of wolves as the Act's experimental population regulations so the potential dispersal of wolves in those states is unaffected by delisting. Utah law also protects dispersing wolves, but such a small part of Utah will be delisted that it is unlikely to significantly affect dispersal into the endangered parts of Utah. Delisting simply means the federal legal framework for wolf conservation transitions to State law and regulation, not that wolves become unprotected. We conclude that the DPS boundary is unlikely to significantly affect the overall rate or survival of long distance dispersers. However, it will still remain unlikely that enough wolves will disperse outside the NRM DPS to start new populations because of the distances involved and the large amount of contiguous unsuitable habitat that is between NRM wolf breeding pairs and the closest theoretical suitable habitat capable of supporting wolf breeding pairs outside the NRM DPS.

According to our DPS policy, an artificial or manmade boundary (such as Interstate, Federal, and State highways, State borders) may be used as a boundary of convenience in order to clearly identify the geographic area included within the DPS. We believe such use of easily understood boundaries will promote public understanding of the listing and ease in future management. In this case, the NRM DPS boundaries were defined along easily identifiable boundaries that represent the most appropriate DPS for this population (see DPS discussion in this rule for our rationale). While some suggested ''more biological'' boundaries like rivers or geological features, we do not believe such boundaries are of any greater biological meaning to wolves given their ability to cross such geographic features. In our view, the biological factors considered are likely to have the greatest influence on separation among populations.

Defining Suitable Habitat

Issue 22: Some thought we should explain why some historically occupied lands were excluded from our definition of suitable habitat. Many commenters questioned our finding that peripheral portions of the DPS were insignificant. These commenters felt that this approach prevents further recovery by prematurely delisting unoccupied areas. These commenters requested that delisting in unoccupied areas should be precluded until threats are resolved in these areas and occupancy is secured. These commenters also contended that delisting such areas severed critical dispersal corridors. Some commenters cited wolf establishment in ''unsuitable'' portions of Oregon as evidence our position was in error.

Response 22: Our identification of suitable habitat was based on the best scientific and commercial information available regarding pack persistence. Many areas of historic wolf habitat are no longer capable of supporting packs. Most of these areas have been so modified by human activities as to be unsuitable for wolves. This issue is discussed in more detail in Factor A below.

We based our predictions of suitable and unsuitable habitat on the best scientific and commercial information as of the time of this rule. Oakleaf *et al.'s* (2006, p. 558) depiction of suitable habitat has been remarkably accurate when compared to wolf pack distribution over the past 6 years (Service *et al.* 2008, Figure 1). Carroll's *et al.* 2006) model was similar to Oakleaf's and it predicted some suitable habitat in northeast Oregon. We expect that someday a wolf pack will be confirmed in that area.

A hundred years ago, people decided that wolves cannot live near livestock or people and so they exterminated all the wolves. Today, some people use the belief that wolves cannot live near livestock as a justification for removing all the livestock. It is true that wolves are such resilient animals that unsuitable habitat (e.g., mainly private prairie used for livestock grazing or human developments) could be transformed to suitable habitat by removing livestock, people, and human developments. However, this scenario is not realistic or necessary because far more than enough suitable habitat (e.g., mainly federal parks or forests containing abundant wild ungulates) exists to support many times over the minimum requirements of a recovered and viable wolf population. Such extreme measures are not reasonable and are not warranted or necessary to achieve wolf recovery in the NRM.

Issue 23: Some commenters felt that we improperly considered more than biological criteria in defining suitable habitat by allowing the definition of suitable to consider human tolerance. Others stated that we misinterpreted the habitat suitability models because they only present probabilities of successful occupation by wolves under current conditions.

Response 23: Suitable habitat for pack persistence considered a variety of factors, including, but not limited to, mortality. Suitable wolf habitat in the NRM is generally characterized 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 is not capable of supporting persistent packs. In the NRM, unsuitable habitat is generally considered to have the characteristics: 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. When wolves occur in places with high levels of human activity, they experience an increased mortality risk. The level of impact from such mortality is directly related to the

location and numbers of humans and their activities. We recognize that areas unsuitable for pack persistence may still be occasionally traversed by wolves. Thus, some minimal level of protection is necessary in these areas.

In terms of suitable habitat models, we recognize that none of the available models are exact indicators of what is ''suitable.'' Each model only identifies areas with a 50 percent or greater chance of being suitable. Thus, we made our determination based upon a number of factors including, but not limited to, these models.

Foreseeable Future

Issue 24: Some folks believed that limiting foreseeable future to 30 years was inappropriate.

Response 24: We revised our definition of foreseeable future to take into account the variability of what is foreseeable for each threat factor. For some threat factors, a time horizon of more than 30 years may be appropriate. For example, for our consideration of genetics (discussed under Factor E below), we reviewed a paper that looked 100 years into the future (vonHoldt *et al.* 2007).

Potential Threats to the NRM DPS

Issue 25: A number of commenters disputed our analysis of the five listing factors, suggesting alternative scenarios where the NRM wolf population would be threatened in the future.

Response 25: We updated and augmented the final rule's five-factor analysis to address specific issues raised. Our analysis of all of meaningful potential threat factors revealed that: (1) The NRM DPS is not threatened or endangered throughout ''all'' of its range (i.e., not threatened or endangered throughout all of the DPS); but (2) the Wyoming portion of the range represents a significant portion of range where the species remains in danger of extinction because of inadequate regulatory mechanisms. Thus, this final rule removes the Act's protections throughout the NRM DPS except for Wyoming. Wolves in Wyoming will continue to be regulated as a non-essential, experimental population.

Issue 26: Some commenters felt that we did not fully evaluate or acknowledge the potential impacts from oil and gas development or other human development on the wolf population. Other habitat issues in the NRM that required additional consideration included rapid human population growth and the resulting increase in houses, roads, recreation, and wolf/human conflicts.

Response 26: These issues are now considered under Factor A below.

Issue 27: Some commenters thought that the Service should reduce the future threat to wolves by requiring that livestock be reduced or eliminated on public lands.

Response 27: Wolves and livestock, primarily cattle and horses, 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. Through active management, most wolves learn that livestock can not be successfully attacked and do not view them as prey. However, when wolves and livestock mix, some livestock and some wolves will be killed. Furthermore, when wolves learn to attack livestock, the behavior is quickly learned by other wolves if it is not stopped. Because wild ungulates commonly winter on private property, even wolves that prey exclusively on wild ungulates will be in proximity to livestock during some portion of the year. Wolf recovery has occurred and will be maintained without substantial modification of traditional western land-use practices and without requiring the removal of livestock from public grazing allotments. Public lands in the NRM can have both large predators and seasonal livestock grazing. Livestock grazing practices on public and private lands do not need to be modified because wolf recovery is not threatened by the current levels of these activities. We believe State management will continue to successfully balance traditional livestock grazing practices, open space, and wolf conservation. If the wolf population were to expand significantly beyond its current outer boundaries, we anticipate that the level of livestock depredation would significantly increase. See Response 22.

Issue 28: Some commenters were concerned about humane treatment of wolves and were opposed to certain methods of take, particularly aerial gunning and poisoning. Numerous parties suggested that the Service should not allow public hunting of wolves. Others suggested that we should require the use of non-lethal control tools to reduce conflict with livestock.

Response 28: After delisting, the State, Tribal, and Federal entities will regulate take in a manner that will not threaten the wolf population. Wolves listed as a game animal (i.e., all wolves within the NRM DPS where the Act's protections are being removed) can only be taken by the public as proscribed by State statute, usually fair chase hunting or as furbearers by regulated trapping. Public take of wolves in the act of depredating on domestic animals is regulated by State defense of property laws and is limited to shooting. Wildlife agency professionals adhere to specific protocols when they capture, handle, or euthanize wildlife for research or management purposes. In the vast majority of situations, wolf control will be accomplished by regulated public hunting and trapping or agency control of problem wolves. State authorized wolf control may include, just as the federally authorized control program currently does, gunning from the air and ground trapping and, in a few cases, removing pups from dens. Deliberate poisoning of wolves will not be allowed due to current Environmental Protection Agency label restrictions on the use and application of all poisons (including M–44 devices) capable of killing wolves. Protections in National Parks would continue and would be unaffected by delisting.

Hunting (and in some areas even unregulated hunting) has not threatened wolf populations (Boitani 2003). Hunting is a valuable, efficient, and cost-effective tool to help manage wildlife populations. Viable robust wolf populations in Canada, Alaska and other parts of the world are hunted and trapped and are not threatened by that type of take. The wolf population in Wyoming would remain listed and could not be legally hunted or trapped by the public under this rule. The Service recognized (Service 1994, p. 1–13) and encouraged (Bangs *et al.* in press; Bangs 2008) State wolf management programs to incorporate regulated public hunting in their wolf conservation programs. Conservation programs to restore large predators such as mountain lions, black bears, and wolves succeeded because of the historic restoration of wild ungulates, such as elk and deer, by State fish and game agencies and hunter dollars and involvement (Geist *et al.* 2001, p. 175–181).

While not required by the Act, the 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. Lethal control also can improve the overall effectiveness of non-lethal methods (Brietenmoser *et al.* 2005, p. 70). In areas of the NRM DPS with year-round high livestock density (unsuitable habitat) it is almost

impossible to prevent chronic livestock depredation if wolf packs form in those areas.

Issue 29: Some commenters suggested that periodic population declines in portions of the NRM DPS related to disease occurrence and wolves killing other wolves to self-regulate the population demonstrated that delisting was premature.

Response 29: There is a natural limit to how many wolves suitable habitat in the NRM can support. Preliminary data indicates wolf pack distribution has been stagnant since 2002, livestock conflicts and wolf control have increased (in some areas), and wolf numbers maybe stabilizing and that may limit the population long-term to around 1,500 wolves. Wolf populations above carrying capacity appear to be more susceptible to disease than those below carrying capacity (Mech *et al.* 2008, p. 833; Kreeger 2003, p. 202).

Exposure to canid diseases is high in the NRM and localized disease outbreaks will continue to periodically occur but no diseases have impacted wolf recovery. State plans commit to monitoring wolf health to ensure any impacts caused by diseases or parasites are quickly detected. Furthermore, wolf numbers become regulated by the amount of available prey, intra-species conflict, other forms of mortality, and dispersal. Intra-species conflict appears to intensify when areas reach ''social maximums.'' By managing for at least 50 percent above the minimal recovery levels, State and Federal management provide an adequate safety margin for such events. This margin, combined with the State's commitment to adaptively manage the species as needed, adequately addressed concerns about periodic population declines. Furthermore, wolf populations can rapidly recover from severe disruptions if mortality is reduced; increases of nearly 100 percent per year have been documented in low-density suitable habitat (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2009, Table 4). Wolf biology in combination with careful monitoring and management ensure periodic population declines will not threaten or endanger the NRM DPS.

Issue 30: Many people commented that the State regulatory frameworks were not adequate and should not have been approved. Some commenters cited anti-wolf statements by public officials and county ordinances as evidence that persecution of wolves will resume if delisting occurs.

Response 30: We recognize that human persecution of wolves was the primary reason for their wide-spread extirpation across North America. We fully analyzed the nature and magnitude of this threat in Factors C, D, and E. below. Despite statements to the media by some public officials and some county ordinances that, if implemented, would be problematic for maintenance of a recovered wolf population, the official written policy and laws of the States supersede county rules and authorities and statements by politicians reported by the media. Our evaluation of State regulatory mechanisms considered all available laws, regulations, ordinances, resolutions, memorials, statements by elected officials, and State plans. State and Federal management ensures the continued long-term maintenance of a recovered NRM wolf population.

Issue 31: Many commenters were concerned the States would not honor their commitments or would change their regulatory framework in a manner inconsistent with their wolf management plans after delisting. Such commenters pointed to State law or regulatory protections that changed after the publication of our previous final delisting determination.

Response 31: We recognize that States can alter their regulatory framework after we issue a final delisting rule. Therefore, per our post-delisting monitoring requirements, we will initiate a status review to determine if relisting is warranted if States alter their State laws or management objectives in a manner that significantly increases the threat to the wolf population. Should relisting be required, we may make use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well-being of any recovered species. This measure will preclude inadequate regulatory mechanisms from threatening the wolf population in any State or recovery area. While our post-delisting monitoring window is 5 years, meaningful changes in State law or management objectives that would significantly increase the threat to the wolf population could lead to reconsideration of listing, including the potential for emergency listing, at any point. For example, if a State changed their regulatory framework to authorize the unlimited and unregulated taking of wolves, a condition we have previously determined threatened a wolf population, emergency listing would be immediately pursued. Finally, as an additional layer of protection, the Act allows for citizen petitions to consider relisting should the population's status change.

Issue 32: Some commenters indicated that that the States' defense of property laws represented an unregulated taking of wolves, because wolves could be killed regardless of the wolf population's status relative to the minimum recovery criteria. Other commenters suggested that we ignored the possibility of illegal take increasing once the protections of the Act were removed. Some commenters pointed to the high mortality levels that occurred after the previous delisting became effective as evidence that existing regulatory mechanisms are not adequate.

Response 32: Except for the mortality that occurred in Wyoming's predatory animal area, nearly all of the NRM wolf mortality that occurred after our previous delisting took effect would have occurred even if the Act's protections had remained in place. In terms of take authorization, Idaho's and Montana's regulatory frameworks are similar to the existing nonessential experimental population regulations (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)). All forms of take will be considered in the States' total allowable mortality levels. While we expect the delisted NRM wolf population to be reduced from current levels, the NRM DPS will be managed for at least 15 breeding pairs and at least 150 wolves and is likely to consist of 973 to 1,302 wolves in 77 to 104 breeding pairs. Should periodic and unanticipated disruptions occur, wolf biology in combination with careful monitoring and management ensure declines will not threaten or endanger the NRM DPS. Montana and Idaho will manage the wolf population at high enough levels over their State minimums to provide a more than adequate safety margin for any additional Defense of Property take of wolves by private citizens. Furthermore, we believe such opportunities will be limited as it is uncommon to see a wolf attacking livestock, let alone be able to shoot it. In addition, the number of mountain lions and black bears taken under State regulations, and the number of wolves taken under similar federal regulations, has been low (about 8 percent of all problem wolves removed by agency authorized control) which further demonstrates that defense of property take is minor and will not exceed State safety margins.

Issue 33: Some commenters thought wolf management plans were vague on how, whether, and to what extent enforcement would be carried out. Some commenters thought overwhelmingly anti-wolf public sentiment would discourage county and State attorneys from enforcing State wildlife laws,

particularly among attorneys with ambitions for higher public office.

Response 33: Upon delisting, wolves in all States in the NRM DPS except Wyoming will become protected by State laws and regulations. In most cases, when State game agencies recommend prosecution, prosecution is pursued. As with all enforcement actions (State or Federal), the outcome depends upon the strength of the case. Such enforcement will ensure illegal activity remains minimal. While listed, illegal killing was estimated to be responsible for 10 percent of annual mortality. Following our previous delisting, there was no indication that illegal mortality levels changed from those occurring while wolves were delisted. While some level of illegal mortality will continue, State management well above minimal recovery levels, combined with wolves' reproductive capabilities, ensures the NRM DPS will not fall below recovery levels. Legal hunting opportunities may also reduce illegal killing. 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). Should failure to prosecute result in excessive mortality and an inability maintain the wolf population above recovery levels, an outcome we believe is extremely unlikely, we would consider relisting, including the potential for emergency relisting.

Issue 34: We received numerous comments on the adequacy of Wyoming's 2003, 2007, and 2008 regulatory frameworks. Many commenters agreed with the July 18, 2008 District Court preliminary injunction order and suggested that it left no doubt that Wyoming's regulatory framework contained the same flaws as their 2003 regulatory framework. Some commenters recommended Wyoming be required to revise their wolf management law. Other commenters thought Wyoming's plan was adequate and pointed to our December 12, 2007 approval for support. Some of these commenters stated that a change in our position would result in an unobtainable moving target for Wyoming. The State of Wyoming strongly defended their 2007 law and their recent modification to develop an improved 2008 plan, and 2008 emergency regulations (Freudenthal 2008). The State of Wyoming suggested that we ''must consider the State's current wolf management statutes'' (2007 law, 2008 regulations and plan), that we ''can not rely on the findings in a preliminary injunction order as a reason to reject the State's wolf management scheme,'' and that ''nothing in the text of the Act requires that the regulatory mechanisms governing the management of a species be statutory.'' Wyoming stated that our comments on their State plan which suggested a need to amend State law as the foundation for a revision to their regulatory framework ''provided irrefutable proof of this prejudged outcome.'' Finally, Wyoming wanted the Service clarify that it was in error to reject Wyoming's 2003 wolf plan and that the Service was correct in its 2007 approval of Wyoming's 2007 plan.

Response 34: The best scientific and commercial data available demonstrates that the wolf population remains in need of the Act's protections in the Wyoming portion of the range because of inadequate regulatory mechanisms. The 2008 revisions in the Wyoming wolf management plan and emergency regulations (Chapter 21) are greatly improved over earlier versions, however they are still dependent on Wyoming statute and at times appear to promise actions that Wyoming statute prohibits. For example the Wyoming plan clearly commits to managing genetic connectivity, but State law allows no regulation of wolf mortality over 88 percent of the State, including many areas likely to be used by dispersing wolves. While we still believe most breeding pairs will remain inside of the boundary of the current trophy game area, the extent of the predatory animal area certainly limits most opportunity for genetic and demographic connectivity, a condition that will assist in sustaining wolf recovery in the GYA. We also believe our 2004 rejection of Wyoming's 2003 wolf management plan was correct (see 71 FR 43410, August 1, 2006). We also determined that in hindsight, we were probably too optimistic about what the law really committed Wyoming to and what could be accomplished by regulations alone. We also should have evaluated the potential for genetic connectivity more closely, when we determined the 2007 plan was sufficient. The very specific and deliberate intent, tone, and wording of Wyoming law clearly continues to be the major impediment to Wyoming developing and implementing a wolf management plan the Service can approve. In the past Wyoming has, with the exception of the professional recommendations they used to establish the proposed 2008 hunting season, almost without exception encouraged wolf take to drive the wolf population down to minimum recovery levels. We believe that the best way for Wyoming to provide adequate regulatory mechanisms would be to develop a statewide trophy game management designation as the basis for any revised regulatory framework. At a minimum, this change would require a revision of Wyoming's wolf management law as the current law establishes the limits of the trophy game area to only 12 percent of the State. Until Wyoming revises their statutes, management plan, and associated regulations, and is again Service approved, wolves in Wyoming shall remain protected by Act. See discussion in Factor D.

Issue 35: Many parties commented on the amount of Wyoming that should be managed for maintenance of wolves including the size of Wyoming's trophy game area. Commenters suggested that wolf recovery could be accomplished: Without wolves in Wyoming; within Wyoming's National Parks; within Wyoming's National Parks and wilderness areas; or within the 12 percent of Wyoming currently designated as a trophy game area. Some believed Wyoming's 2007 law allowed the trophy game area to be expanded by the WGFC. Other commenters stated Wyoming's trophy game area should be much larger, including all suitable habitat and all potential dispersal corridors, or State-wide like all the other States in the NRM DPS. Some thought if wolves remained listed in Wyoming then they should continue be managed as experimental populations, others did not.

Response 35: The predatory animal area of Wyoming covers at least 88 percent of Wyoming and can not be expanded per Wyoming Statute. However, the 12 percent of Wyoming with trophy game protections can be reduced by WGFC. Statewide trophy game status: Will allow Wyoming Game and Fish Department (WGFD) more flexibility to devise a management strategy, including regulated harvest, that provides for self-sustaining populations above recovery goals; prevents a patchwork of different management statuses; will be easier for the public to understand and, thus, will be easier to regulate; is similar to State management of other resources like mountain lions and black-bears; and is consistent with the current regulatory scheme in that the entire State is currently nonessential, experimental. Furthermore, maintenance of the Act's protections Statewide will assist Service Law Enforcement efforts that might otherwise be difficult if predatory animal status was allowed in portions of Wyoming. Finally, retaining the Act's protections in all of Wyoming is biologically warranted because: Wolf

dispersal capabilities allow them a range that encompasses the entire state; and retention of the Act's protections in only the current trophy game area would substantially limit potential genetic connectivity. This does not mean Wyoming must manage for wolf pack occupancy everywhere in Wyoming in the future as long as their management framework safely supports their share of a recovered wolf population and allows for adequate genetic and demographic connectivity into the future and incorporates normal wildlife population fluctuations, such as those that appear to have occurred in YNP in 2008. Preliminary counts suggest the YNP segment of the wolf population may be 124 wolves in 12 packs with only 6 breeding pairs. However, the overall GYA population will be similar to 2007, indicating the importance of wolves in Wyoming outside YNP to maintaining wolf recovery in the GYA.

Thus, this final rule removes the Act's protections throughout the NRM DPS except for Wyoming. Wolves in all of Wyoming will continue to be regulated as a non-essential, experimental population per 50 CFR 17.84 (i) and (n). We considered removing the Act's protection in those few often fragmented parts of Wyoming with adequate regulations, such as Wind River Tribal lands, National Parks and Refuges, but to ensure consistent enforcement of the Act, the potential wolf dispersal throughout Wyoming, and other reasons we did not. The adequacy of Wyoming's regulatory mechanisms is discussed further under Factor D below.

Issue 36: Some believed Idaho mandated elimination of wolves. They quoted comments from state officials that suggested wolves be killed to minimum levels as soon as possible. Some indicated the Service should not have approved Idaho's wolf management plan. Others believed that the liberal nature of Idaho's March 28, 2008 defense of property law invited abuse and cited an incident where a person who chased a wolf for a mile before shooting it was not prosecuted. Some said Idaho's 2002 plan makes clear its position is all wolf removal, that IDFG can reclassify wolves ID–36–201 and could expand methods of take (e.g., could broadcast poison). Others said the Service approved Idaho's plan before its step down implementation plan was developed, thus it was not known to be an adequate plan when approved. Others suggested Idaho's regulations were more than adequate and wolves should be delisted.

Response 36: We coordinated extensively with Idaho on the development of its plan and carefully reviewed several drafts of the plan over the course of 2002. We stand by our conclusion that the Idaho plan constitutes adequate regulatory mechanisms. Idaho's implementation planning improved the specific wolf conservation measures Idaho would undertake. Central Idaho provides the largest contiguous block of suitable wolf habitat in the NRM as evidenced by the over 840 wolves living there now. The quality of this habitat, combined with the State's management strategy leave no doubt wolves will be maintained far above minimum recovery levels in Idaho. Idaho's comments on the proposed rule provide an excellent and detailed review of Idaho law, regulations and its formal position regarding the future of wolves in Idaho (Otter 2008). Both its description of how its defense of property laws and hunting regulations were developed are thorough and should remove any doubt that Idaho's regulatory framework will adequately regulate human-caused mortality and maintain a recovered wolf subpopulation in Idaho.

We have also reviewed all the wolves taken under State defense of property regulations. Our March 2008 delisting was predicated on State defense of property laws being similar in their biological effect to the Acts' 2005 and 2008 experimental population regulations. The March 28, 2008 law passed by the Idaho Legislature Idaho Code § 36–1107 was an amendment to an existing law that was specific to black bears and mountain lions. The law added wolves to the protection of property statute and added language that governed taking of wolves. It made the reporting of wolf mortality more stringent than that for bears and lions. Following the initial delisting of gray wolves, private control actions did not increase dramatically. From delisting through July 18, 2008, eleven wolves were killed under Idaho's law. In 2006 and 2007, seven wolves were killed each year under the Act's 10(j) rule. The increase in wolves killed in 2008 by livestock and pet owners is consistent with an increase in wolves and concomitant depredations in Idaho that year.

We reviewed the incident where an individual chased a wolf on a snow machine for a mile before shooting it. While IDFG recommended prosecution, the local county prosecutor determined the new law's definition of ''worrying'' may not have withstood the scrutiny of a jury under the circumstances in this case. The prosecutor supported IDGF issuing a warning to this individual in case should other questionable take occur in the future. We believe the particulars of this case make it unique. IDFG and the Idaho Attorney General's office are working with prosecutors to assure consistent enforcement of § 36–1107 throughout the state.

In addition, all known Idaho wolf mortality, including that related to defense of property, count against the total mortality quota for that hunting unit and would be removed from the allowable hunting harvest. It is unlikely that such take would result in a level of take beyond that allowed by hunting district because hunting occurs after most defense of property take would occur. Thus, that level of mortality would be compensated for by either closing or reducing the hunting quota. Additionally, State management several times above minimum recovery levels provides further assurance that recovery will not be compromised by such sources of mortality. Therefore, we determine that the new law will not threaten the wolf population in Idaho as long as IDFG prosecutes most individuals who abuse it and Idaho maintains its commitment to manage their share of the wolf population well above minimum recovery levels.

Issue 37: While most agreed that Montana appeared to have the best plan and regulatory framework of any State, and it should be the model for other states, others believed it was inadequate. Some thought the lack of a quota system on defense of property take of wolves allowed for unlimited and unregulated taking. Others thought that the level of hunting and trapping that Montana's plan could allow might threaten the wolf population.

Response 37: Montana did an outstanding job of describing, in detail, its regulatory framework and its commitment to wolf management (McDonald 2008). We have reviewed all the wolves taken under State defense of property regulations. Our March 2008 delisting was predicated on State defense of property laws being similar in their biological effect to the Acts' 2005 and 2008 experimental population (10j) regulations. In Montana, only four wolves were taken by private citizens while wolves were delisted between March 28 and July 18, 2008, but all could have been taken under the Act's 10j regulations if the species had been listed. Montana conducted a thorough analysis before setting its hunting season quota and then chose a conservative harvest to build in extra caution. Montana regulatory frame clearly constitutes an adequate regulatory frame work for the purposes of the Act.

Issue 38: Some commenters maintained that none of the NRM DPS should be delisted until Oregon, Washington, and Utah had approved wolf management plans.

Response 38: Any wolf conservation by Washington, Oregon, Utah, and the Tribes will be beneficial, but is not necessary to either achieve or maintain a recovered wolf population in the NRM DPS. Still, Oregon and Utah have State wolf management plans/strategies and Washington is close to finishing theirs (See Factor D). We have assisted and consulted with them during those efforts. This is consistent with the recovery plan which considered parts of these States (Service 1987, p. 2) as being associated with the NRM wolf population. Management in all three States appears likely to benefit the NRM DPS but not significantly.

Issue 39: Some commenters wanted the States to manage for breeding pairs rather than undefined packs.

Response 39: The discrepancy between breeding pairs and packs no longer appears relevant as the States and the Service have committed to measure wolf recovery criteria by breeding pairs and numbers of wolves (Montana 2003; IDFG 2007; Wyoming 2008, p. 13; Mitchell *et al.* 2008). However, Wyoming's comments seemed to suggest that YNP packs that did not raise pups in 2005 might qualify as breeding pairs anyway because they bred in 2006 (Freudenthal 2008, p. 8). This is not an accurate interpretation of the breeding pair metric.

Issue 40: Some commenters recommended wolf management be transferred to the States and Tribes.

Response 40: The Service agrees that a recovered wolf population is best managed by the respective States and Tribes. The States have relatively large and well-distributed professional fish and game agencies that have the demonstrated skills and experience that has successfully managed a diversity of resident species, including large carnivores. We believe these State agencies are similarly qualified to manage a recovered wolf population. State management of wolves 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).

Under cooperative agreements with us, Montana and Idaho, and Nez Perce Tribe have successfully managed wolves in those States for the past 4 to 13 years. The Blackfeet, Salish and Kootenia, and Wind River Tribes have also developed expertise in wolf management within their tribal wildlife agencies by participating in wolf management for the past several years. This allowed their organizations to develop experience, knowledge, and expertise in wolf management and conservation and to develop a track record of credibility and trust with state residents and local government agencies. Unfortunately, with the exception of a few months when wolves were delisted in 2008, Wyoming has chosen to not actively participate in wolf management. The Service worked closely with the States as they developed their wolf management plans to ensure that they will always maintain a wolf population that exceeds recovery criteria. We are confident the States, except Wyoming, and Tribes will adequately manage wolves so the protections of the Act will not again be required.

Until Wyoming revises their statutes, management plan, and associated regulations, and they are approved by the Service, wolves in Wyoming continue to require the protections of the Act.

Issue 41: Some parties raised a concern that State wolf management plans would not be implemented because funding for the plans is not guaranteed. These commenters thought that the lack of guaranteed funding undermined the adequacy of the regulatory mechanisms, thus, delisting should not occur.

Response 41: 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 States recognize that implementation of their wolf management plans requires funding. The States have committed to secure the necessary funding to manage the wolf populations under the guidelines established by their approved State wolf management plans (Montana 2003, p. xiv; Idaho 2007, p. 24, 47–48; Idaho 2002; p. 23–25; Wyoming 2007, p. 29–31). All have worked with their congressional delegations to secure Federal funding, but recognized that other sources of funding may eventually be required to implement their plans. In addition to State license fees or other forms of State funding, Federal funding is available to help manage a delisted wolf population including in the form of direct appropriations, Pittman-Robertson Wildlife Restoration Act, other Federal grant programs, and private funding. The Service will continue to assist the States to secure adequate funding for wolf management. The Federal government will continue to fund wolf management in Wyoming. If wolf management by a State or Federal agency was 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 could 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 to prevent a significant risk to the well-being of any recovered species.

Issue 42: Several parties suggested that we should have considered the risk to the wolf population from catastrophic events such as fire, climate change, drought, disease, and stochastic events.

Response 42: In response to these comments, we added a discussion of catastrophic events under Factor E below. Other potential catastrophic events are considered in other sections including our evaluation of habitat modification, diseases and parasites, human harassment and killing, genetic risks, climate change, and human attitudes. Wolves are one of the most adaptable and resilient land mammals on earth and, except for excessive human persecution, wolf populations can survive every type of natural catastrophic event. There is no record of a wolf population in historic habitat anywhere in the world ever being extirpated by a natural event, except perhaps during the ice ages.

Issue 43: Some commenters requested the Service consider the potential for low genetic diversity to threaten the NRM DPS. They contend that the current or predicted population is not high enough to maintain long-term connectivity and genetic security. These commenters suggested this issue is of greatest concern in the GYA where geographic factors could isolate the population. Commenters recommended that we establish corridors of suitable habitat, or nearly contiguous pack territories, between the recovery areas. Some recommended that we provide habitat protections for identified natural linkage zones between and within the GYA and central Idaho and northwestern Montana. It also was recommended that we should designate critical habitat for these linkage zones.

Response 43: We have greatly expanded our discussion in Factor E regarding genetics. Furthermore, Canadian authorities also have a long history of cooperation with us and have designed wolf management programs in Alberta and British Columbia to promote recovery and genetic exchange with Montana and Idaho (McDonald 2008). Assuming adequate regulation of take across all potential migratory corridors, we do not believe there is now or will be in the foreseeable future a need to develop specific habitat corridors for wolf dispersal. A number of factors make this unnecessary including: The current high levels of genetic diversity; assured future genetic exchange by natural dispersal or if necessary human assistance; the distance wolves routinely disperse through even highly unsuitable habitat; and the limited amount of current and future human development in the corridor between the recovery areas (and Canada), including the GYA, because of the amount and distribution of public land. Wolves have an unusual ability to rapidly disperse long distances, across virtually any habitat and select mates to maximize genetic diversity (Wabakken *et al.* 2007, p. 1631; Linnell *et al.* 2005, p. 383; vonHoldt *et al.* 2007). Thus, connectivity issues are among the least likely to affect wolves when compared to nearly any other species of land mammal (Paquet *et al.* 2006, p. 3; Liberg 2008, p. 1). If necessary any complications from a potential lack of natural habitat connectivity could be quickly resolved by agency-managed genetic exchange. Connectivity and genetics are discussed further below under factors A and E, respectively.

Critical habitat can only be designated for threatened and endangered species. Furthermore, under section 10(j)(2)(C)(ii) of the Act, critical habitat can not be designated for nonessential experimental populations. Therefore, across most of the NRM DPS, critical habitat has never been appropriate. Finally, since we are also removing the Act's protections across those portions of the DPS where the species was previously endangered these areas no longer qualify as potential critical habitat.

Issue 44: Some commenters stated that we failed to consider the impacts of State hunts on the social structure of wolf packs.

Response 44: Social status in wolf packs changes regardless of human-caused mortality and is part of wolf ecology. Humans do increase the rate of turn over, but healthy wolf populations all over the world, including Canada and Alaska, are harvested by people and wolf pack structure is amazingly resilient. The States have incorporated hunting seasons, bag limits, and fair chase methods of take to intentionally reduce the potential impact of human-caused mortality on pack breeding potential and its subsequent ability to successfully raise pups. This issue is considered under Factor E below.

Issue 45: Some commenters encouraged us to investigate human dimensions with a protocol that would allow quantification of changes in the attitudes of the general public, farmers, hunters, and other stakeholders.

Response 45: We agree that the values people hold about wolves may provide valuable insight into successful management strategies. The States have already conducted surveys about human values towards wolves (Idaho 2007, Appendix A; as one example) and will likely continue to do so in the future. We believe this information may be helpful to formulate State policies. However, such monitoring is not required by the Act in order to justify delisting.

Significant Portion of Range

Issue 46: Several commenters stated that the 2007 Department of the Interior Solicitor's opinion (U.S. Department of the Interior, Office of the Solicitor 2007) was an incorrect interpretation of the Act. These commenters argued that we have authority to list or delist only whole species, subspecies, and DPSs—in other words, if we find a species to be in danger of extinction in only a significant portion of its range, we must list it and apply all of the protections of the Act to its entire range, even to portions of the range that are not at risk. These commenters opined that the partial listing approach represents a departure from thirty years of listing practice.

In particular, some commenters suggested the NRM DPS should be protected rangewide because it retains the need for listing over a significant portion of its range. They suggested partial listings would lead to a limitless series of petitions and lawsuits over the status of taxa in portions of their ranges. Others suggested the NRM DPS should be delisted throughout its entire range, unless the threats are so severe in the Wyoming portion of the range that it puts the entire NRM DPS's future in doubt. These commenters suggested the Service's new listing approach inappropriately allows partial-listings when the loss of a portion of range results in a decrease, no matter how small, in the ability to conserve a species, subspecies, or DPS.

Response 46: On March 16, 2007, the Solicitor of the Department of the Interior issued a memorandum opinion with an extensive evaluation of the meaning of ''in danger of extinction throughout all or a significant portion of its range'' (Department of the Interior, Office of the Solicitor 2007). We agree with the interpretation of the Act set forth in the Solicitor's opinion, and disagree with these comments for the reasons given in that opinion. Once we determine listing is appropriate, section 4(c) of the Act requires we ''specify with respect to each such species over what portion of its range it is threatened.'' In this case, we are specifying that the protections of the Act remain necessary in Wyoming. Thus, the protections of the Act shall remain in place in the Wyoming portion of its range. The interpretation of the Act advocated by these commenters fails to give sufficient consideration to the import of section 4(c), is inconsistent with legislative history of the Act that strongly supports the view that Congress intended to give the Secretary broad discretion to tailor the protections of the Act with the needs of the species.

Moreover, even before the 2007 Solicitors opinion, we have applied differential levels of protections for species facing differential levels of threats in different parts of their range. For example, in 1978, the gray wolf was protected as endangered in the lower-48 States, except in Minnesota, where it was protected as threatened (43 FR 9607, March 9, 1978). Nor is the listing determination for NRM DPS the only listing determination applying the Solicitor's opinion. In our 2008 Gunnison prairie dog (*Cynomys gunnisoni*) 12-month finding (73 FR 6660, February 5, 2008), we determined that the Gunnison's prairie dog does not warrant the Act's protections throughout its range, but that the significant portion of the species' range located in central and south-central Colorado and northcentral New Mexico does warrant protection under the Act. On July 10, 2008, we determined the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) was not threatened throughout all of its range and the portion of the subspecies' range located in Colorado represented a significant portion of the range where the subspecies should retain its threatened status (73 FR 39790). Thus, this rule removes the Act's protections in Wyoming while retaining them in Colorado (73 FR 39790, July 10, 2008).

According to the Solicitor's opinion, we have broad discretion in defining what portion of a range is ''significant,'' but this discretion is not unlimited.

Specifically, we may not define ''significant'' to require that a species is endangered only if the threats faced by a species in a portion of its range are so severe as to threaten the viability of the species as a whole. The comment that a portion of the range of a species can be significant only if its loss would put the future of the species in doubt rests on a single quote from hearing testimony on a bill that was a precursor to the Act. If by the future of the species being in doubt, the commenter meant that the threat to the portion of the range must threaten the entire species, such an interpretation would read the ''significant portion or its range.'' The Solicitor's opinion includes a comprehensive evaluation of this issue and the relevant case law.

For this determination, we used an analysis similar to that we have used in other recent listing determinations: A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species. In other words, in considering significance, the Service asks whether the loss of this portion likely would eventually move the species toward extinction, but not to the point where the species should be listed as threatened or endangered throughout all of its range.

Issue 47: Several commenters stated that the ''partial-listing'' approach allowed by the Solicitor's opinion undoes the effect of the 1978 DPS amendments to the Act.

Response 47: We do not believe this approach undoes the 1978 amendments to the Act. Instead, it compliments the 1978 amendments. A DPS of a vertebrate species which interbreeds when mature is considered and treated as a species (i.e., a listable entity) under the Act. A significant portion of the range is a portion of the range of the listed entity (whether a full species, subspecies, or DPS of a vertebrate) that contributes meaningfully to the conservation of the species. Therefore, we may apply the protections of the Act in a significant portion of a DPS. In addition, we may apply the protections of the Act in a significant portion of a species or subspecies of non-vertebrate.

According to our DPS policy (61 FR 4722, February 7, 1996), a DPS must be discrete and must be significant to the taxon to which it belongs (species or subspecies) as a whole. The term ''significant'' in the Act's definitions of endangered and threatened species should not be considered entirely equivalent to the ''significance'' element of the DPS policy. However, we recognize that many of the attributes (described below) we have identified as important for evaluating whether a portion of a species' range is significant are similar to the attributes identified in the DPS policy as being appropriate for evaluating the significance of a potential DPS. There is no requirement that a significant portion of the range be discrete, but similar to DPSs, a significant portion of the range must be significant. As explained in detail previously, the significance of a significant portion of the range is based on an evaluation of its contribution to the conservation of the listable entity being considered. The DPS policy lists four possible factors to consider when determining significance, but does not limit consideration of significance to only those four factors. The considerations we made in this instance for determining whether a portion is significant encompass and expand on some of the concepts in the DPS policy.

Issue 48: Some commenters recommended we use a 4(d) rule to reduce regulatory restrictions in more secure portions of its range instead of the significant portion of range approach.

Response 48: Special rules under section 4(d) of the Act apply only where the protections of the Act are in place. Thus, once we determined the NRM DPS was not threatened in all of its range, use of section 4(d) was no longer an option across most of the DPS. While a 4(d) rule allows us to tailor the Act's taking provisions as necessary and advisable to provide for the conservation of the species, the approach used here also eliminates additional unnecessary regulation. We believe this approach is more consistent with the intention of Congress as expressed in the legislative history concerning the phrase ''significant portion of its range.''

Issue 49: Some commenters suggested a ''partial delisting'' would not improve the conservation status of the DPS and would treat different communities inequitably with regards to the level of protection required and costs associated with them over different geographic areas.

Response 49: We believe this approach allows for a more surgical application of the Act, as envisioned by Congress when it wrote the ''significant portion of its range'' language. The Act does not allow us to consider in this listing decision whether there would be higher costs in one portion of the range than in the rest of the NRM DPS. On the whole, we believe this targeted approach provides for the necessary and appropriate needs of the species, while avoiding unnecessary regulatory burdens.

Issue 50: Many commenters provided opinions on what portion of Wyoming was a significant portion of range. Some commenters supported the position in our 2007 proposal that the only significant portion of Wyoming was the 12 percent identified in State law as the trophy game area. Many commenters were concerned that these boundaries would constrain our ability to maintain a recovered population in Wyoming and instead suggested all of Wyoming was a significant portion of range for wolves. Some commenters indicated the significant portion of Wyoming should include all areas of suitable habitat and potential dispersal corridors to other NRM DPS recovery areas. Other commenters thought the significant portion of Wyoming should include potential included corridors to States outside the NRM DPS and cited documented dispersal of wolves across various portions of Wyoming into South Dakota, Colorado, and Utah as evidence. Other commenters indicated that all of Wyoming was once historic habitat, thus all Wyoming should now be considered a significant portion of range. Still other commenters suggested that the significant portion of range should not split the recovery area and should include the entire GYA (including those portions of the recovery area in Montana and Idaho). Several commenters stated that management practicality favors use of the man-made boundaries. Our significant portion of range analysis can be found in the Conclusion of the 5-Factor Analysis section of this rule below.

Response 50: After careful consideration, we now believe that the boundaries of the significant portion of the range in Wyoming should be expanded to include the entire State. Retaining the Act's protections Statewide: Encloses and defines the area where threats are sufficient to result in a determination that a portion of a DPS' range is significant, and is endangered or threatened; clearly defines the portion of the range that is specified as threatened or endangered; and does not circumscribe the current distribution of the species so tightly that opportunities to maintain recovery are foreclosed. Man-made boundaries are appropriate because of these boundaries correspond to differences in threat management; these differences in threat management result in biological differences in status. There also are a practical considerations (e.g., law enforcement) supporting use

of the State line to delineate the significant portion of range where the Act's protections are still necessary. Retention of the Act's protections throughout the GYA, including those portions in Idaho and Montana, is not necessary given the adequacy of regulatory mechanisms in those States. These issues are discussed further in the Conclusion of the 5-Factor Analysis section below.

Issue 51: Some commenters expressed dissenting views and interpretations of the word ''range'' in the Act's phrase ''significant portion of its range.'' Several believed that ''range'' should mean historical range. Others opined that our definition was the same used in our 2003 rule that was invalidated by the court (68 FR 15804, April 1, 2003). Still others suggested our consideration of significant portion of range should consider all suitable or potential habitat.

Response 51: As elaborated in the 2007 memoradum opinion (Department of the Interior, Office of the Solicitor 2007), we believe the law is clear that ''range'' in this phrase refers to ''current range,'' not ''historical range'' and that the Service therefore must focus primarily on current range. Data about the historical range and how the species came to be extinct in a portion of its historical range may be relevant in understanding or predicting whether a species is ''in danger of extinction'' in its current range. The fact that a species has ceased to exist in what may have been portions of its historical range does not necessarily mean that it is ''in danger of extinction'' in a significant portion of the range where it currently exists. For the purposes of this rule, ''range'' includes all of the NRM DPS (as identified in Factor A below and illustrated in Figure 1). Thus, our five-factor analysis analyzed threats across all portions of the NRM DPS.

Public Involvement

Issue 52: Some thought that the Service should have provided additional opportunities to learn more about the proposal and to provide comments including additional public hearings. Specifically, we received requests for hearings in Denver, Colorado, Seattle, Washington, Portland, Oregon, Washington, DC, and Jackson, Wyoming.

Response 52: We have provided ample opportunity for public comment including public comment periods totaling 150 days. Such a lengthy comment period goes well beyond the basic requirements of the Act and other Federal rulemaking procedures. Section 4(b)(5)(E) requires that we hold one public hearing on proposed regulations if requested. During this rulemaking process we held eight public hearings and eight open houses (72 FR 6106, February 8, 2007; 72 FR 14760, March 29, 2007; 73 FR 36939, July 6, 2007). We selected locations that were within a reasonable driving distance of where wolves live and in every State within the NRM DPS. We also alerted interested parties to the details of public hearings and opportunities for public comment. Public hearing times and locations and other avenues to comment were announced in the **Federal Register**, posted on our Web site and in our weekly wolf reports, and publicized in local and national press releases. All comments, whether presented at a public hearing or provided in another manner, received the same review and consideration. Commenting via electronic, hand delivery, or letter allowed unlimited space to express comments, as opposed to the public hearing format, which limited comments to three minutes in order to provide an opportunity for all attending to speak. Over 520,000 comments were received including approximately 240,000 comments during our most recent comment period. This significant effort satisfies our statutory responsibility under the Act.

Scientific Analyses

Issue 53: Some commenters recommended we conduct a population viability analysis (PVA) or other additional modeling exercises or analysis before delisting.

Response 53: The Act requires that we use the best scientific data available when we make decisions to list, reclassify, or delist a species. PVAs can be valuable as a tool to help us understand the population dynamics of a rare species (White 2000). They can be useful in identifying gaps in our knowledge of the demographic parameters that are most important to a species' survival, but they cannot tell us how many individuals are necessary to avoid extinction. The difficulty of applying PVA techniques to wolves has been discussed by Fritts and Carbyn (1995) and Boitani (2003). Problems include: Our inability to provide accurate input information for the probability of occurrence of, and impact from, catastrophic events (such as a major disease outbreak or prey base collapse); our inability to incorporate all the complexities and feedback loops inherent in wild systems and agency adaptive management strategies; our inability to provide realistic inputs for the influences of environmental variation (such as annual fluctuations in winter severity and the resulting impacts on prey abundance and vulnerability); temporal variation; selective outbreeding (vonHoldt *et al.* 2007); individual heterogeneity; and difficulty in dealing with the spatial aspects of extreme territoriality and the long-distance dispersals shown by wolves. Relatively minor changes in any of these input values into a theoretical model can result in vastly different outcomes. Thus, while we reviewed most of the wolf PVAs conducted to date, we believe conducting another PVA-type analysis on the effect of wolf population management would be of limited value in the NRM DPS. Instead, we relied upon an extensive body of empirical data on wolves and the NRM wolf population. We believe the State, Tribal and Federal commitments for adaptive management preclude any need to theorize regarding the NRM wolf population's future status. We also used models that employed PVA-like parameters and analysis to identify potentially suitable wolf habitat in the NRM DPS now and into the future (Carroll *et al.* 2003, 2006; Carroll 2006).

While some suggested that we conduct a PVA based on maintenance of 30 breeding pairs and 300 wolves or capping a wolf population at an arbitrary level, we believe this would lead to an inaccurate and misleading conclusion. Any such analysis would ignore the fluctuating nature of wildlife populations, actual requirements of the recovery goal, the commitments to manage well above that level, and to adapt their management strategies and adjust allowable rates of human-caused mortality should the population ever appear to not be meeting their management objectives that exceed recovery levels.

One PVA that maybe instructive to the NRM was one from Wisconsin (1999). It suggested a totally isolated population of 300–500 wolves would have a high probability of persisting for 100 years under most scenarios evaluated. Managing wolves at a hypothetical cultural carrying capacity of 300 instead of allowing the population to reach the biological carrying capacity of 500 had little effect on the risk of extinction * * Virtually all simulated populations below 80 individuals declined in the high environmental variability scenarios (Bangs 2002, p. 6).

Issue 54: Some commenters felt that it was difficult to judge the scientific validity of the science we relied upon because some of the science and literature was gray literature, had not been peer reviewed, was in preparation, or was through personal communication.

Response 54: While we attempt to use peer reviewed literature to the maximum extent possible, the Act requires us to make our decision based on the best scientific and commercial data available regardless of form. Because we have so many ongoing research and monitoring projects new data are constantly being collected, analyzed, peer reviewed, and published. Such information often represents the best scientific data available (Service *et al.* 2007, p. 64, 114, 183, 213). All citations have been and continue to be available upon request.

Relisting Criteria

Issue 55: Some commenters recommended we develop a clear, unequivocal set of criteria for automatic relisting. Some commenters argued that monitoring is not sufficient if the results of investigations are not promptly incorporated in policy and management, and this type of rapid response requires availability of contingency funds, clear roles and authorities, and the power to impose the necessary actions on all involved partners. They state that because the effectiveness of the monitoring program depends upon adequate funding, the monitoring plan should have secure funding for at least five years before delisting occurs.

Response 55: State, Tribal, and Federal partners have committed to monitor the wolf population according to the breeding pair standard and publish annual reports of their activities for at least the first 5 years after delisting. We will post this information and our analysis of it annually.

While the Act contains no provision for ''automatic'' relisting of a species based on quantitative criteria, we believe that our criteria for relisting consideration are clear. Three scenarios could lead us to initiate a status review and analysis of threats to determine if relisting is warranted including: (1) If the State wolf population falls below the minimum NRM wolf population recovery level of 10 breeding pairs of wolves and 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 either 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. All such reviews would be made available for public review and comment, including peer review by select species experts. Additionally, if any of these scenarios occurred during the mandatory 5-year post-delisting monitoring period, the post-delisting monitoring period would be extended 5 additional years from that point. If Wyoming were to develop a Service-approved regulatory framework it would be delisted in a separate rule and that proposed rule would contain additional post-delisting monitoring criteria for Wyoming.

Any such status review would analyze status relative to the definition of threatened or endangered considering the 5 factors outlined in section 4(a)(1). If, at any time, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. If emergency listing was instituted, we would then have 240 days to complete a conventional listing rule before the protections of the emergency rule would expire.

Funding for government programs is never certain at any level, but the funding to support wolf management activities of the various Federal and State agencies in the NRM has been consistently obligated for the past 20 years and we have a high level of confidence that the resources necessary to carry out the monitoring and management programs will continue for the foreseeable future. We may provide Federal funding for Federal monitoring requirements.

Use of Section 6 Agreements for States Outside the NRM DPS

Issue 56: Our proposal solicited comments regarding our intention to use section 6 agreements to allow States outside the NRM DPS with Service-approved wolf management plans to assume management of listed wolves, including nonlethal and lethal control of problem wolves. Some commenter found this approach was inappropriate while others commended the idea.

Response 56: This issue is not directly related to delisting in the NRM DPS and has been removed from this final rule.

Miscellaneous Issues Not Germane to This Rulemaking

Issue 57: Some commenters pointed out the positive and negative economic impacts of wolves, especially related to tourism in YNP, livestock depredation, and competition with hunters for surplus big game. Many people believed wolf damage to livestock and big game populations was increasing and becoming much more of an economic burden.

Response 57: Under the Act, listing decisions are not to consider economic factors. That said, we believe wolf-related tourism in places like YNP will not be affected by delisting. Additionally, State management will reduce economic losses caused by livestock depredation and competition with hunters for wild ungulates.

Issue 58: Many members of the public commented on the timing of this regulation. Most thought this final determination was being rushed. Several commenters suggested that we postpone a final determination until Wyoming revises its regulatory framework including the passage of new wolf management legislation. Some commenters suggested that we should not finalize this regulation until final 2008 wolf population data is available.

Response 58: Section 4(b)(6)(A) of the Act indicates that we should publish final rules within one year of proposed rules. Section 4(b)(1)(A) requires that we make such determinations solely on the best scientific and commercial information available. Given our statutory directive to make determinations within one year and instruction to consider ''available'' information, we felt further delay was not prudent. Our development of previous **Federal Register** documents allowed for this final rule to be prepared in much shorter timeframes than are typical for federal rulemaking.

Furthermore, delisting of the NRM wolf population has been delayed for many years as we waited and encouraged Wyoming to develop a regulatory framework that would conserve a recovered wolf population and could withstand legal challenge. It would be even more unfair to the other States, who have done their part, to wait even longer on possible future actions by Wyoming. We hope to remove the Act's protections in Wyoming once the State has an adequate regulatory framework in place. This rule includes 2008 data.

Issue 59: Several commenters, including Wyoming, opined that we should have started the rulemaking process over again (i.e., reproposed delisting) following the remand and vacatur of our previous final rule. A few commenters expressed confusion over what was being proposed. Specifically, they stated that ''To satisfy the Administrative Procedure Act's requirements for notice and comment rulemaking, interested parties must not be expected to 'divine [the Agency's] unspoken thoughts' (*Ariz. Pub. Serv. Co.* v. *EPA*, 211 F.3d 1280, 1299 (D.C. Cir. 2000)).''

Response 59: The October 14, 2008 U.S. District Court order remanded and vacated our final rule. All other documents associated with this rulemaking remained in place. Thus, reproposing this action was unnecessary.

We believe our February 8, 2007, (72 FR 6106) delisting proposal and the October 28, 2008, (73 FR 63926) notice reopening the comment period were clear in what we were proposing. Simply, we proposed to identify a NRM gray wolf DPS and remove most or all this DPS from the list of threatened and endangered wildlife. As noted in the proposal, if Wyoming failed to develop a management regime to adequately conserve wolves, we would retain the Act's protections in a significant portion of the range in the Wyoming portion of the NRM DPS. Our October 28, 2008, (73 FR 63926) notice reopening the comment period, summarized numerous flaws in Wyoming's wolf management framework. This notice (73 FR 63926, October 28, 2008) also noted that all documents relevant to evaluating the adequacy of Wyoming's regulatory mechanisms, including Wyoming State law, their wolf management plan, their implementing regulations (Wyoming Chapter 21), and other supporting information, were available on our website at: *http://westerngraywolf.fws.gov*. When Wyoming issued emergency regulations and a draft revised wolf management plan on October 27, 2008, we immediately posted online. Failure to remedy the adequacy of their regulatory framework resulted in our decision to retain the Act's protections in Wyoming.

Issue 60: Some commenters thought the recovery program illegally restored the wrong subspecies of wolf to Montana, Idaho, and Wyoming.

Response 60: In the mid-1980's, naturally dispersing wolves from Canada began to form packs in northwestern Montana. In 1995 and 1996, wolves were reintroduced to YNP and Central Idaho. For the nonessential-experimental areas, we selected donor wolves that had the greatest chance of resulting in a successful reintroduction program (Service 1994, p. 5–89). Specifically, we selected wolves living in habitat and feeding on prey most similar to those of the reintroduction areas (Service 1994, p. 5–89). Our 1994 EIS noted that wolf populations that historically inhabited the Yellowstone and central Idaho area were slightly smaller and contained fewer black color phase individuals than the more northern Canadian wolves that were dispersing southward and occupying Montana (Service 1994, p. 5–106). At the time, the 1994 EIS noted that recent molecular investigations indicated that gray wolves throughout North America were all one subspecies of gray wolf (Service 1994, p. 5–106). The EIS went on to say that only red wolves and Mexican wolves were genetically distinct at the molecular level (Service 1994, p. 5–106). Resolution of species' subspecific taxonomy remains elusive as the science continues to evolve (Hall 1984, pp. 2–11; Service 1994, pp. 1–21–22; Brewster and Fritts 1995, p. 353; Nowak 1995, p. 375; Nowak 2003, pp. 248–50; Wayne and Vila 2003, pp. 223–4; Leonard *et al.* 2005; p. 1; Leonard and Wayne 2007, p. 1). Legally, the subspecies issue remains irrelevant, as the gray wolf has been listed at the species level in the lower 48 States since 1978.

Issue 61: Many comments were made on issues that were not related to or affected by this rulemaking. Most often these issues involved: Strongly held personal opinions or perceptions about Federal, State, or Tribal government or authorities; property rights; mistrust of political leadership, environmentalists and/or judges; methods of take; risks to human safety; negative affects of wolves on elk and deer herds, hunting, State wildlife agency budgets, outfitting, or livestock production; negative affect of this action to tourism; ecosystem restoration; the U.S. Constitution; what would Jesus do; wildlife management in general; wolves and wolf management; and modifications to the NRM experimental population special 10(j) rule.

Response 61: We respect these opinions, but they are beyond the scope of this rulemaking.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish, wildlife, or plant, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Under 50 CFR 424.11(d), we may remove the protections of the Act if the best available scientific and commercial data substantiate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered; or (3) the original scientific data used at the time the species was classified were in error.

A species may be delisted as recovered only if the best scientific and commercial data available indicate that it is no longer endangered or threatened. Determining whether a species meets the recovered definition requires consideration of the five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

Under section 3 of the Act, a species is ''endangered'' if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the phrase ''significant portion of its range'' refers to the range in which the species currently exists. For the purposes of this rule, ''range'' includes all of the NRM DPS (as identified in Factor A below and illustrated in Figure 1).

Evaluating whether the species should be considered threatened or endangered in all or a significant portion of its range is a multiple-step analysis. If we determine that the species is endangered throughout all of its range, we list it as endangered throughout its range and no further analysis is necessary. If not, we then evaluate if the species meets the definition of threatened throughout all of its range. If the species is threatened in all of its range, we list the species as threatened and consider if any significant portions of its range warrant listing as endangered. If we determine that the species is not threatened or endangered in all of its range, we consider whether any significant portions of its range warrant consideration as threatened or endangered. If we determine that the species is threatened or endangered in a significant portion of its range, the provisions of the Act would only apply to the significant portion of the species' range where it is threatened or endangered.

Foreseeable future is defined by the Services on a case-by-case basis, taking into consideration a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat projection timeframes, and environmental variability. ''Foreseeable'' is commonly viewed as ''such as reasonably can or should be anticipated: Such that a person of ordinary prudence would expect it to occur or exist under the circumstances'' (Merriam-Webster's Dictionary of Law 1996: *Western Watershed Project* v. *Foss* (D. Idaho 2005; CV 04–168–MHW). For the NRM DPS, the foreseeable future differs for

each factor potentially affecting the DPS. It took a considerable length of time for public attitudes and regulations to result in a social climate that promoted and allowed for wolf restoration in the WGL DPS and NRM DPS. The length of time over which this shift occurred, and the ensuing stability in those attitudes, give us confidence that this social climate will persist for the foreseeable future in the portion of the DPS which we are removing from ESA protections. Available habitat and potential future distribution models (Carroll *et al.* 2003, 536; Carroll *et al.* 2006, Figure 6) predict out about 30 years. For some threat factors, a longer time horizon may be appropriate. In our consideration of genetics, we reviewed a paper that looked 100 years into the future (vonHoldt *et al.* 2007). When evaluating the available information, with respect to foreseeable future, we take into account reduced confidence as we forecast further into the future.

The following analysis examines all five factors currently affecting, or that are likely to affect, the NRM gray wolf DPS within the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The NRM DPS is approximately 980,803 km² (378,690 mi²) and includes 402,606 km² (155,447 mi²) of Federal land (41 percent); 49,803 km² (19,229 mi²) of State land (5 percent); 32,942 km² (12,719 mi²) of Tribal land (3 percent); 427,998 km² (165,251 mi²) of private land (44 percent) (the remaining area is either water or lands in Washington that were not categorized into ownership in the geographic information system layers we analyzed). The DPS contains large amounts of three Ecoregion Divisions—Temperate Steppe (prairie) (312,148 km² [120,521 mi²]); Temperate Steppe Mountain (forest) (404,921 km² [156,341 mi²]); and Temperate Desert (high desert) (263,544 km² [101,755 mi²]) (Bailey 1995, p. iv).

The following analysis focuses on suitable habitat (areas that have a 50 percent or greater change of supporting breeding pairs or persistent wolf packs) within the DPS and currently occupied areas. Then, unsuitable habitat is examined. Habitat suitability is based on biological features which impact the ability of wolf packs to persist. A number of threats to habitat are examined including increased human populations and development (including oil and gas), connectivity, ungulate populations, and livestock grazing.

Suitable Habitat—Wolves once occupied or transited all of the NRM DPS. However, much of the wolf's historical range within this area has been modified for human use and is no longer suitable habitat to support wolf packs and wolf breeding pairs. 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 the NRM. Both models ranked areas as suitable habitat if they had characteristics that indicated they might have a 50 percent or greater chance of supporting wolf packs. Suitable wolf habitat in the NRM 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 substantial 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 (i.e., portions of Montana, Idaho, and Wyoming).

Oakleaf's model was a more intensive effort that looked at potential wolf habitat in Idaho, Montana, and Wyoming (Oakleaf *et al.* 2005, p. 555). It 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 (*Bos sp.*) and sheep density, vegetation characteristics (ecoregions and land cover), and human density to comprise its geographic information system layers. Oakleaf analyzed the characteristics of areas occupied and not occupied by NRM wolf packs through 2000 to predict what other areas in the NRM might be suitable or unsuitable for future wolf pack formation (Oakleaf *et al.* 2005, p. 555). In total, Oakleaf *et al.* (2006, p. 559) ranked 170,228 km² (65,725 mi²) as suitable habitat in Montana, Idaho, and Wyoming.

Carroll's model analyzed a much larger area (all 12 western States and northern Mexico) in a less specific way (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). The combination of a geographic information system model and wolf population parameters were used to develop estimates of habitat theoretically suitable for wolf pack persistence. In addition, Carroll predicted the potential effect on suitable wolf habitat of increased road development and human density expected by 2025 (Carroll *et al.* 2006, pp. 30–31). Within the proposed DPS, Carroll *et al.* (2006, pp. 27–31) ranked 277,377 km² (107,096 mi²) as suitable including 105,993 km² (40,924 mi²) in Montana; 82,507 km² (31,856 mi²) in Idaho; 77,202 km² (29,808 mi²) in Wyoming; 6,620 km² (2,556 mi²) in Oregon; 4,286 km² (1,655 mi²) in Utah; and 769 km² (297 mi²) in Washington. Approximately 96 percent of the suitable habitat (265,703 km² (102,588 mi²)) within the DPS occurred in Montana, Idaho, and Wyoming. According to the Carroll model, approximately 28 percent of the NRM DPS would be ranked as suitable habitat (Carroll *et al.* 2006, pp. 27–31).

The Carroll *et al.* (2006, pp. 31–34) model tended to be more generous in identifying suitable wolf habitat under current conditions than the Oakleaf (*et al.* 2006, pp. 558–560) model or that our field observations indicate is realistic. But Carroll's model provided a valuable relative measure across the western United States upon which comparisons could be made. The Carroll model did not incorporate livestock density into its calculations as the Oakleaf model did (Carroll *et al.* 2006, pp. 27–29; Oakleaf *et al.* 2005, p. 556). Thus, that model did not consider those conditions where wolf mortality is high and habitat unsuitable because of chronic conflict with livestock. During the past 20 years, 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.

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 do not believe they are currently suitable habitat based upon on our data on wolf pack persistence for the past 20 years (Bangs 1991, p. 9; Bangs *et al.* 1998, p. 788; Service *et al.* 1999–2009, Figure 1).

Despite the substantial differences in each model's analysis area, layers, inputs, and assumptions, both models predicted that most suitable wolf habitat in the NRM was in northwestern Montana, central Idaho, and the GYA, which is the area currently occupied by the NRM wolf population. 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 earlier Service predictions about wolf habitat suitability in the NRM (Service 1980, p. 9; 1987, p. 7; 1994, p. vii). Because theoretical models only define suitable habitat as those areas that have characteristics with a 50 percent or more 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 these three areas had habitat suitable for dispersal between them and it would remain relatively intact in the future. However, northwest Montana and Idaho were much more connected to each other and the wolf population in Canada than to the GYA and Wyoming (Oakleaf *et al.* 2005, p. 554). Collectively the three core areas are surrounded by large areas of habitat unsuitable for pack persistence. We note that habitat that is unsuitable for pack persistence may be important for connectivity between areas that are suitable for pack persistence.

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 in the NRM. 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 EIS for the GYA (63,700 km^2 [24,600 mi^2]) and central Idaho (53,600 km^2 [20,700 mi^2]) (Service 1994, p. iv), information derived from theoretical models by Carroll *et al.* (2006, p. 25) and Oakleaf *et al.* (2006, p. 554), our nearly 20 years of field experience managing wolves in the NRM, and locations of persistent wolf packs and breeding pairs since recovery has been achieved. 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 believe that Oakleaf's calculations of the amount and distribution of suitable wolf habitat available for persistent wolf pack formation, in the parts of Montana, Idaho, and Wyoming analyzed, represents the most reasonable prediction of suitable wolf habitat in Montana, Idaho, and Wyoming.

The area we conclude that is suitable habitat is depicted in Oakleaf *et al.*'s (2006) map on page 559. Generally, suitable habitat is located in western Montana west of I–15 and south of I–90; Idaho north of I–84; and northwest Wyoming (see figure 1 in 73 FR 63926, October 28, 2008). A comparison of actual wolf pack distribution in 2006 (Service *et al.* 2007, Figure 1) and Oakleaf *et al.*'s (2006, p. 559) prediction of suitable habitat indicates that nearly all suitable habitat in Montana, Idaho, and Wyoming is currently occupied and areas predicted to be unsuitable remain largely unoccupied.

Although Carroll determined there may be some (4 percent) potentially suitable wolf habitat in the NRM DPS outside of Montana, Idaho, and Wyoming, we believe it is marginally suitable at best and is insignificant to NRM wolf population recovery because it occurs in small isolated fragmented areas. While some areas predicted to be unsuitable habitat in Montana, Idaho, and Wyoming have been temporarily occupied and used by wolves or even packs, we still consider them as largely unsuitable habitat. Generally, wolf packs in such areas have failed to persist long enough to be categorized as breeding pairs and successfully contribute toward recovery. Therefore, we consider such areas as containing unsuitable habitat and find that dispersing wolves attempting to colonize those areas are unlikely to form breeding pairs or contribute to population recovery.

Unoccupied Suitable Habitat—Habitat suitability modeling indicates that the three NRM core recovery areas are atypical of other habitats in the western United States because suitable habitat in those core areas occur in such large contiguous blocks (Service 1987, p. 7; Larson 2004, p. 49; Carroll *et al.* 2006, p. 35; Oakleaf *et al.* 2005, p. 559). Without core refugia areas like YNP or the central Idaho wilderness that provide a steady source of dispersing wolves, other potentially suitable wolf habitat is not likely to be capable of sustaining wolf breeding pairs. Some habitat ranked by models as suitable adjacent to 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 does not always translate into successful wolf occupancy and 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.* 2005, p. 559) (typically, isolated mountain ranges) often possess higher mortality risk for wolves because of their enclosure by, and proximity to, unsuitable habitat with a high mortality risk. 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 useable 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). Because of edge effects, some habitat areas outside the core areas may rank as suitable in models, but are unlikely to actually be successfully occupied by wolf packs. For these reasons, we believe that the NRM wolf population will remain anchored by the three recovery areas. These core population segments will continue to provide a constant source of dispersing wolves into surrounding areas, supplementing wolf packs and breeding pairs in adjacent, but less secure suitable habitat.

Currently Occupied Habitat—We calculated the area currently occupied by the NRM wolf population by drawing a line around the outer points of radio-telemetry locations of all known wolf pack territories in 2005 (Service *et al.* 2006, Figure 1; 71 FR 6634, February 8, 2006, p. 6640). We defined 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). This approach includes all intervening areas including suitable or unsuitable habitat. Typically by the end of the year, only 50 percent of packs meet the criteria to be classified as breeding pairs. The overall distribution of wolf packs has been similar since 2000, despite a wolf population that has more than doubled (Service *et al.* 2001–2009, Figure 1; Bangs *et al.* in press). This pattern persisted in 2006, 2007, and 2008. Since the wolf population has saturated most suitable habitat in the NRM DPS, significant growth in the population's outer distribution is unlikely. This final rule relied upon recent wolf monitoring data which has changed little in recent years (see Figure 1).

We included areas between the core recovery segments as occupied wolf habitat because they are important for demographic and genetic connectivity. While these areas are no longer capable of supporting persistent wolf packs, dispersing wolves routinely travel through those areas and packs occasional occupy them (Service 1994, pp. 6:5–6; Bangs 2002, p. 3; Jimenez *et al.* 2008d). These areas include the Flathead Valley and other smaller valleys intensively used for agriculture and a few of the smaller, isolated mountain ranges surrounded by agricultural lands in western Montana. Important dispersal areas also include parts of western Wyoming outside the current State trophy game boundary, such as the Wyoming Range adjacent to Idaho and valleys north of Kemmerer. Dispersing wolves from Idaho that bred in the GYA likely crossed this area and survived during the winter breeding season, resulting in natural genetic connectivity.

As of the end of 2004, we estimated approximately 275,533 km^2 (106,384 mi^2) of occupied habitat in parts of Montana (125,208 km^2 [48,343 mi^2]), Idaho (116,309 km^2 [44,907 mi^2]), and Wyoming (34,017 km^2 [13,134 mi^2]) (Service *et al.* 2005, Figure 1). This pattern persisted in 2005–2008 (Service *et al.* 2006–2009). Although currently occupied habitat includes some prairie (4,488 km^2 [1,733 mi^2]) and some high desert (24,478 km^2 [9,451 mi^2]), wolf packs have not used these habitat types successfully (Service *et al.* 2005–2009, Figure 1). Since 1986, no persistent wolf pack has had a majority of its home range in high desert or prairie habitat. Landownership in the occupied habitat area is 183,485 km^2 (70,844 mi^2) Federal (67 percent); 12,217 km^2 (4,717 mi^2) State (4.4 percent); 3,064 km^2 (1,183 mi^2) Tribal (1.7 percent); and 71,678 km^2 (27,675 mi^2) private (26 percent) (Service *et al.* 2005–2009, Figure 1).

We determined that the current wolf population is a three-segment metapopulation and that the overall area used by persistent wolf packs has not significantly expanded since the population achieved its recovery goal. While there maybe occasional exceptions, stagnant outer distribution patterns for the past 6 years indicate there is probably limited suitable habitat for the NRM wolf population to expand significantly beyond its current outer boundaries. Carroll's model predicted that 165,503 km^2 (63,901 mi^2) of suitable habitat (62 percent) was within the occupied area; however, the model's remaining potentially suitable habitat (38 percent) was often fragmented, in smaller, more isolated patches (Carroll *et al.* 2006, p. 35) and to date has not been occupied by breeding pairs .

The NRM wolf population occupies nearly 100 percent of the recovery areas recommended in the 1987 recovery plan (i.e., central Idaho, the GYA, and the northwestern Montana) (Service 1987, p. 23) and nearly 100 percent of the primary analysis areas (the areas where suitable habitat was predicted to exist and the wolf population would live) analyzed for wolf reintroduction in central Idaho and the GYA (Service 1994, p. 1:6). This pattern will continue because management plans for public lands in the NRM DPS will result in forest cover, high ungulate densities, low to moderate road and livestock densities, and other factors critical to maintaining suitable wolf habitat.

Potential Threats Affecting Habitat or Range—Establishing a recovered wolf population in the NRM did not require land-use restrictions or curtailment of traditional land-uses because there was enough suitable habitat, enough wild ungulates, and sufficiently few livestock conflicts to recover wolves under existing conditions (Bangs *et al.* 2004, pp. 95–96). We do not believe that any traditional land-use practices in the NRM need be modified to maintain a recovered NRM wolf population into the foreseeable future. We do not anticipate overall habitat changes in the NRM occurring at a magnitude that will threaten wolf recovery in the foreseeable future because 71 percent of the occupied habitat is in public ownership that is managed for multiple uses that are complementary with suitable wolf habitat, and maintenance of viable wolf populations (Carroll *et al.* 2003, p. 542; Oakleaf *et al.* 2005, p. 560).

The GYA and central Idaho recovery areas, 63,714 km^2 (24,600 mi^2) and 53,613 km^2 (20,700 mi^2), respectively, are primarily composed of public lands (Service 1994, p. iv) and are the largest contiguous blocks of suitable habitat within the NRM DPS. Public lands in National Parks, wilderness, roadless areas and large blocks of contiguous mountainous forested habitat are largely unavailable and/or unsuitable for intensive development. Central Idaho and the GYA provide secure wolf habitat and abundant ungulate populations, with about 99,300 ungulates in the GYA and 241,400 in central Idaho (Service 1994, pp. viii–ix). These areas are considered secure because they are not available for development due to their land-use classifications, management guidelines for other species (e.g., grizzly bears), habitat, access, and geological characteristics (Service 1993, 1996, 2007; Servheen *et al.* 2003; U.S. Forest Service 2006). Thus, they will continue to provide optimal suitable habitat for a resident wolf population and will be a dependable source of dispersing wolves to help maintain genetic connectivity and a viable wolf population in the NRM (Service 1994, p. 1:4). The central Idaho recovery area has 24,281 km^2 (9,375 mi^2) of designated wilderness at its core (Service 1994, p. 3:85). The GYA recovery area has a core including over 8,094 km^2 (3,125 mi^2) in YNP and about 16,187 km^2 (6,250 mi^2) of designated wilderness (although these areas are less useful to wolves, except seasonally, due to high elevation) (Service 1994, p. 3:45). These areas are in public ownership that is not suitable and/or not available for human development of a scale that could possibly affect its overall suitability for wolves, and no foreseeable habitat-related threats would prevent them from supporting a wolf population that exceeds recovery levels.

While the northwestern Montana recovery area (basically west of I–15 and north of I–90 in Montana and Idaho) (84,800 km^2 (33,386 mi^2)) also has a core of protected suitable habitat (Glacier National Park, the Bob Marshal Wilderness Complex, and extensive Forest Service lands), it is not as high quality or as contiguous as that in either central Idaho or GYA (Smith *et al.* 2008). The primary reason for this is that many ungulates do not winter throughout the Park or Wilderness areas because it is higher in elevation. Most wolf packs in northwestern Montana live west of the Continental Divide, where forest habitats are a fractured mix of private and public lands (Service *et al.* 1989–2008, Figure 1; Murrey *et al.* submitted 2008). This mix exposes wolves to high levels of mortality, and

thus this area supports smaller and fewer wolf packs. Wolf dispersal into northwestern Montana from the more stable resident packs in the core protected area (largely the North Fork of the Flathead River along the eastern edge of Glacier National Park and the few large river drainages in the Bob Marshall Wilderness Complex) and the abundant National Forest Service lands largely used for recreation and timber production rather than livestock production helps to maintain that segment of the NRM wolf population (Bangs *et al.* 1998, p. 786). Wolves also disperse into northwestern Montana from central Idaho and Canada and several packs have trans-boundary territories, helping to maintain the NRM population (Boyd *et al.* 1995, p. 136; Service 2002–2009, Figure 1). Conversely, wolf dispersal from northwestern Montana into Canada, where wolves are much less protected, continues to draw some wolves into vacant or low-density habitats in Canada where they are subject to liberal hunting and agency control (Bangs *et al.* 1998, p. 790). Despite mortalities that occur in Canada, the trans-boundary movements of wolves and wolf packs that led to the original establishment of wolves in Montana connects the wolf population in the NRM to the much larger wolf population in Canada and will continue to have an overall positive effect on wolf genetic diversity and demography in the northwest Montana segment of the NRM wolf population.

An important factor in maintaining wolf populations is the native ungulate population. Wild ungulate prey in these three areas are composed mainly of elk, white-tailed deer, mule deer, moose, and (in the GYA) bison. Bighorn sheep, mountain goats, and pronghorn antelope also are common but not important, at least to date, as wolf prey. In total, 100,000 to 250,000 wild ungulates are estimated in each State where wolf packs currently exist (Service 1994, pp. viii–ix). The States in the NRM DPS have successfully managed resident ungulate populations for decades. State ungulate management plans, discussed in Factor D below, commit them to maintain ungulate populations at densities that will continue to support a recovered wolf population well into the foreseeable future (See Idaho 2007, p. 1–2; Curtis 2007, p. 14–21 as an examples of such plans).

Last year, 2008 marked the first year since our reintroductions began that the NRM wolf population did not grow by 20 percent. We believe this slowing growth rate is the result of the NRM wolf population reaching carrying capacity. Human-caused mortality in 2008 was not high enough to explain all the reduced growth in the population. At carrying capacity natural factors such as disease, social strife, and food limitations begin to help regulate wolf populations. As demonstrated by the NRM DPS's suspected carrying capacity, there is sufficient suitable habitat to maintain the NRM wolf population well above recovery levels but not significantly higher than current levels.

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. Through active management, most wolves learn that livestock can not be successfully attacked and do not view them as prey. However, when wolves and livestock mix, some livestock and some wolves will be killed. Conflict between wolves and livestock has resulted in the average annual removal of 8 to 14 percent of the NRM wolf population (Bangs *et al.* 1995, p. 130; Bangs *et al.* 2004, p. 92; Bangs *et al.* 2005, pp. 342–344; Service *et al.* 2009, Tables 4, 5; Smith *et al.* 2008, p. 1). Such control promotes occupancy of suitable habitat in a manner that minimizes damage to private property and fosters public support to maintain recovered wolf populations in the NRM DPS without threatening the NRM wolf population.

We do not foresee a substantial increase in livestock abundance across the NRM that would result in increased mortality. The opposite trend has been occurring. In recent years, about 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 threat factors (discussed below), we do not believe the continued presence of livestock will in any meaningful way threaten the recovered status of the NRM DPS in the foreseeable future.

Within the GYA, human populations are expected to increase (Carroll 2006). In six northwest Wyoming counties most used by wolves, the human population is projected to increase by roughly 15,000 residents between 2000 and 2020 (from 105,215 in 2000 to 120,771 by 2020) (Wyoming Department of Administration and Information Economic Analysis Division 2005). The Montana GYA counties are expected to increase by roughly 35,000 people during this same time (from 120,934 in 2000 to 154,800 by 2020) (NPA Data Services 2002). We anticipate similar levels of population growth in the remaining portions of the DPS given that the West, as a region, is projected to increase at rates faster than any other region (U.S. Census Bureau Population Division 2005).

As human populations increase associated impacts will follow. 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 added recreation on public lands (Robbins 2007). Despite efforts to minimize impacts to wildlife (Brown 2006, p. 1–3), some development will make some areas of the NRM less suitable for wolf occupancy. However, we expect these impacts will be minimal as sufficient habitat is secure.

Wolves are one of the most adaptable large predators in the world and are unlikely to be substantially impacted by any threat except human persecution (Fuller *et al.* 2003, p. 163; Boitani 2003, p. 328–330). Land-use restrictions on human development were not necessary to recover the wolf population. Even active wolf dens can be quite resilient to nonlethal disturbance by humans (Frame *et al.* 2007, p. 316). The vast majority of suitable wolf habitat and the current wolf population is secure in mountainous forested Federal public land (National Parks, wilderness, roadless areas, and 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. Furthermore, the range of wolves and grizzly bears overlap in many parts of Montana, Idaho and Wyoming and mandatory habitat guidelines on public lands for grizzly bear conservation guarantee and far exceed necessary criteria for maintaining suitable habitat for wolves (for an example, see U.S. Department of Agriculture (USDA) 2006). Current and projected levels of human use of public lands will be managed to limit resource impacts by the management plans of the appropriate land management agencies or governments.

Most types of intensive human development predicted in the future will occur in areas that have already

been extensively modified by human activities and are unsuitable wolf habitat (Wyoming 2005, Appendix III). In terms of mineral extraction activities, such development is likely to continue to be focused at lower elevation, private lands and in open habitats, and outside of currently suitable and currently occupied wolf habitat (Robbins 2007). 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 (now approximately 23 percent mortality per year) is well within the wolf population's biological mortality threshold (30 to 50 percent), especially given the large amount of secure habitat 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 also can provide some insights 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. 31) predicted future wolf habitat suitability under several scenarios through 2025, including 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. Threats were not predicted to alter wolf habitat suitability in the NRM DPS nearly enough to cause the wolf population to fall below recovery levels in the foreseeable future or even significantly effect wolf dispersal between the recovery segments, including the GYA. In many areas within the NRM DPS (including northwest Montana, the GYA, and northeast Oregon), habitat suitability will be increased beyond current levels as roads on public lands are reduced, a process underway in the NRM (Carroll *et al.* 2006, p.25; Servheen *et al.* 2003; Service 1993, 1996, 2007; Brown 2006, 1–3).

We acknowledge 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. Therefore, we do not believe there is a need to limit or manage future human population growth for wolf conservation in the NRM. Wolf populations persist in many areas of the world that are far more developed than the NRM currently is or is likely to be in the foreseeable future (Boitani 2003, pp. 322–23). Current habitat conditions are adequate to support a wolf population well above minimal recovery levels and model predictions indicate that development in the NRM over the next 25 years is unlikely to change habitat in a manner that would threaten the NRM wolf population (Carroll *et al.* 2003, p. 544).

Furthermore, we do not expect any threats to habitat or range to meaningfully impact dispersal or connectivity. 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.* 2008d). Thus, we believe wolves are among the least likely species of land mammal to face a serious threat from reduced connectivity related to projected changes in habitat.

At present, all three recovery areas appear sufficiently connected. There is more than enough habitat connectivity between occupied wolf habitat in Canada, northwestern Montana, and Idaho to ensure exchange of sufficient numbers of dispersing wolves to maintain demographic and genetic diversity in the NRM wolf metapopulation (Oakleaf *et al.* 2005, p. 559; Carroll *et al.* 2006, p. 32; Boyd *et al.* 2007; vonHoldt *et al.* 2007, p. 19). We have documented routine movement of radio-collared wolves across the nearly contiguous available suitable habitat between Canada, northwestern Montana, and central Idaho (Pletscher *et al.* 1991, p. 544; Boyd and Pletscher 1999, pp. 1095–1096; Sime 2007). In addition, there are several shared transborder packs, between Canada, Montana, and Idaho. While the GYA is the most isolated core recovery area within the NRM DPS (Oakleaf *et al.* 2005, p. 554; vonHoldt *et al.* 2007, p. 19), radio telemetry data demonstrate that the GYA is not isolated as at least one wolf naturally disperses into the GYA each year and at least 4 radio-collared non-GYA wolves have bred and produced offspring in the GYA in the past 12 years (1996–2008).

Within the foreseeable future, some habitat degradation will occur between the core recovery areas. Overall, we believe this will have only minimal impacts on foreseeable levels of dispersal and connectivity. Model predictions through 2025 (Carroll *et al.* 2003, p. 541; Carroll 2006, p. 32) and 2040 (Travis *et al.* 2005, pp. 2–5, 14–15; *http://www.centerwest.org/futures/west/2040.html*), in combination with our understanding of wolf dispersal capabilities, demonstrate the quantity, quality, and distribution of habitat, including consideration of intervening development, will remain more than sufficient to allow adequate levels of natural connectivity into the foreseeable future.

Thus, threats to habitat are unlikely to disrupt connectivity in the foreseeable future. Factor E provides a detailed evaluation of the adequacy of current and expected levels of genetic exchange as well as alternative approaches to genetic exchange should they ever become necessary (an outcome we believe is extremely unlikely). Factor D discusses the adequacy of available regulatory frameworks to ensure genetic exchange will be maintained.

Summary threats to Wolf Habitat—We do not foresee that impacts to habitat or range will occur at levels that will significantly affect wolf numbers or distribution, connectivity, or affect population recovery and long-term viability in the NRM. Occupied suitable habitat is secured by core recovery areas in northwestern Montana, central Idaho, and the GYA, including Wyoming. These areas include Glacier National Park, Grand Teton National Park, YNP, numerous U.S. Forest Service Wilderness Areas, and other State and Federal public lands. These areas will continue to be managed for high ungulate densities, moderate rates of seasonal livestock grazing, moderate-to-low road densities associated with abundant native prey, low potential for livestock conflicts, and security from excessive unregulated human-caused mortality. Secure portions of the NRM DPS will be able to support large wolf populations well into the foreseeable future.

Unsuitable habitat and small fragmented areas of suitable habitat outside of these core areas largely represent geographic locations where wolf breeding pairs would only persist in low numbers, if at all. Although such areas may historically have contained suitable habitat, wolf pack persistence

in these areas are not important or necessary for maintaining a viable, self-sustaining, and evolving representative wolf population in the NRM into the foreseeable future. Still, these areas may contribute to a healthy wolf population by facilitating dispersal between core recovery areas. The available data indicate that threats to habitat are unlikely to disrupt such connectivity in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

While listed under the Act, gray wolves could not be legally killed or removed from the wild in the NRM for commercial, recreational (hunting, trapping), or educational purposes. In the NRM, about 3 percent of the wolves captured for scientific research, nonlethal control, and monitoring have been accidentally killed (Bangs *et al.* in press). Some wolves may have been illegally killed for commercial use of the pelts and other parts, but we believe illegal commercial trafficking in wolf pelts or wolf parts is rare. Illegal capture of wolves for commercial breeding purposes also is possible, but we have no evidence that it occurs in the NRM. We believe the prohibition against ''take'' provided for by Section 9 of the Act has discouraged and minimized the illegal killing of wolves for commercial or recreational purposes. Although Federal penalties under Section 11 of the Act will not apply if delisting is finalized other Federal laws will still protect wildlife in National Parks and on other Federal lands (Service 1994, pp. 1:5–9). In addition, Montana, Idaho, Wyoming (only in the trophy game area), Washington, Oregon, Utah, and the Tribes have similar laws and regulations that will protect wolves from overutilization for commercial, recreational, scientific, and educational purposes (this issue is also discussed in Factor D below). We believe these laws will continue to provide a strong deterrent to illegal killing of wolves by the public, except in Wyoming's predatory animal area, as they have been effective in State-led conservation programs for other resident wildlife such as black bears, mountain lions, elk, and deer. In addition, the State fish and game agencies, National Parks, other Federal agencies, and most Tribes have well-distributed experienced professional law enforcement officers to help enforce State, Federal, and Tribal wildlife regulations (See Factor D).

Scientific Research and Monitoring—From 1984 to 2008, the Service and our cooperating partners captured nearly 1,100 NRM wolves for monitoring, nonlethal control, and research purposes with 25 accidental deaths. If NRM wolves were delisted, the State, National Parks, and Tribes would continue to capture and radio-collar wolves in the NRM area for monitoring and research purposes in accordance with their State laws, wolf management plans, and regulations (See Factor D and Post-Delisting Monitoring sections below). 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 be an insignificant source of mortality to the wolf population.

Education—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 and are not protected by the Act. However, States may get requests to place wolves that would otherwise be euthanized in captivity for research or educational purposes. Such requests have been, and will continue to be, rare; would be closely regulated by the State wildlife management agencies through the requirement for State or Federal permits, except in Wyoming's predatory animal area; and would not substantially increase human-caused wolf mortality rates.

Commercial and Recreational Uses—This section primarily addresses the potential for hunting and trapping across the NRM DPS post-delisting. Other forms of human caused mortality are discussed under the discussion of human predation under Factor C.

Wolf populations can maintain themselves despite sustained human-caused mortality rates of between 30 and 50 percent per year (Keith 1983; Fuller *et al.* 2003, pp. 182–184). When populations are maintained below carrying capacity and natural mortality rates and self-regulation of the population remain low, human-caused mortality can replace up to 70 percent of natural mortality (Fuller *et al.* 2003, p. 186). Wolf pups can also be successfully raised by other pack members and breeding individuals can be quickly replaced by other wolves (Brainerd *et al.* 2008, p. 1). Collectively, these factors mean that wolf populations are quite resilient to human-caused mortality if it is adequately regulated.

Regulated hunting and trapping are traditional and effective wildlife management tools that can be applied to help achieve State and Tribal wolf management objectives (Bangs 2008). In the absence of the Act's protections, Montana, Idaho, and Wyoming, in the trophy game area, would use public harvest to manipulate wolf distribution and overall population size to help reduce conflicts with livestock and, in some cases, human hunting of big game, just as they do for other resident species of wildlife. Montana, Idaho, Wyoming and some Tribes in those States, would allow regulated public harvest of surplus wolves in the NRM wolf population for commercial and recreational purposes by regulated private and guided hunting and trapping. Such take and any commercial use of wolf pelts or other parts would be regulated by State or Tribal law (see discussion of State laws and plans under Factor D).

The regulated take of those wolves would not affect wolf population recovery or viability in Montana and Idaho because these States would allow such take only for wolves that are not needed to achieve the State's commitment to maintaining a recovered population (see Factor D below). If Montana and Idaho had implemented their planned hunt, the wolf population in Montana and Idaho would still be far in excess of recovered levels. In the trophy game areas of northwest Wyoming, if other sources of mortality had been adequately regulated, this level of hunter harvest would not threaten Wyoming's share of a recovered wolf populations; however, Wyoming's overall regulatory framework does not adequately regulate other sources of mortality. In the predatory area of Wyoming, commercial and recreational use would be unlimited and unregulated. This lack of regulation would not allow wolves to persist in predatory portions of the State. State laws in Washington, Oregon, and Utah do not currently allow public take of wolves for recreational or commercial purposes. These issues are discussed in much greater detail in Factor D below.

In summary, we determine scientific and educational take to remain insignificant factors in maintaining the NRM wolf population well above recovery levels well into the foreseeable future. Furthermore, we believe Idaho and Montana will adequately manage commercial and recreational use for the foreseeable future. Commercial and recreational use in Wyoming will not be adequately managed. These issues are discussed fully in Factor D below.

C. Disease or Predation

As discussed in detail below, a wide range of diseases may affect the NRM wolves. However, no diseases or parasites, even in combination, are of

such magnitude that the population is likely to become in danger of extinction in the foreseeable future. Similarly, predation does not pose a significant threat to the NRM wolf population. The rates of mortality caused by disease and predation are well within acceptable limits, and we do not expect those rates to change appreciably if NRM wolves are delisted. State plans commit to monitoring wolf health to ensure any new or new impacts caused by diseases or parasites are quickly detected. Natural predation on wolves is rare but predation by humans is a significant issue if not regulated. More information on disease and predation (including by humans) are discussed below.

Disease—The NRM wolves are exposed to a wide variety of diseases and parasites that are common throughout North America. 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 EIS on gray wolf reintroduction identified disease impact as an issue, but did not evaluate it further, as it appeared to be insignificant (Service 1994, pp. 1:20–21).

Infectious disease induced by parasitic organisms is a normal feature of the life of wild animals, and the typical wild animal hosts a broad multi-species community of potentially harmful parasitic organisms (Wobeser 2002, p. 160). We fully anticipate that these diseases and parasites will follow the same pattern seen 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, p. 1–7; Smith and Almberg 2007, 17–19; Johnson 1995a, b) and will not significantly threaten wolf population viability. The diseases and parasites of wolves are unlikely to effect human health and safety and most are already endemic in other wild carnivores and dogs. Nevertheless, because these diseases and parasites, and perhaps others, have the potential to impact wolf population distribution and demographics, careful monitoring (as per the State wolf management plans) will track such events (Atkinson 2006, p. 1–7). Should such an outbreak occur, human-caused mortality would be regulated over an appropriate area and time period to ensure wolf population numbers in the NRM DPS are maintained above recovery levels in those portions of the DPS.

Canine parvovirus (CPV) infects wolves, domestic dogs (*Canis familiaris*), foxes (*Vulpes vulpes*), coyotes, 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), and exposure in wolves is thought to be almost universal. Currently, nearly 100 percent of the wolves handled by MFWP (Atkinson 2006) and YNP (Smith and Almberg 2007, p. 18) had blood antibodies indicating nonlethal exposure to CPV. 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 points to canine distemper as being the primary cause of low pup survival during those years (Smith *et al.* 2006, p. 244; Smith 2008). Pup production and survival in YNP returned to normal levels after each event (Smith and Almberg 2007, p. 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 22 percent annually from 1996 to 2008 (Service *et al.* 2009, Table 4). Mech *et al.* (2008, p. 824) recently concluded CPV reduced pup survival, subsequent dispersal, and the overall rate of population growth in Minnesota (a population near carrying capacity in suitable habitat). It is possible that at carrying capacity the NRM population may be effected similarly and the overall rate of growth maybe 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 (Kreeger 2003, p. 209). The prevalence of antibodies to this disease in samples of 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 YNP (Smith and Almberg 2007, p. 18). 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 once in NRM wolves despite their high exposure to it, but we suspect it contributed to the high pup mortality documented in the northern GYA in spring 1999, 2005, and 2008. These periodic outbreaks will undoubtedly occur but as documented elsewhere CD does not threaten wolf populations and the NRM wolf population increased even during years with localized outbreaks. Park biologist's (Smith 2008, pers. comm.) believes that wolf deaths mainly occurred from CD when the YNP population was around the historic high of 170 wolves the previous winter. In 2008, wolf packs in Wyoming outside YNP (about 25 packs and 18 breeding pairs) appear to have only slightly lower pup production (Jimenez 2008, pers. comm.), indicating the probable most severe disease outbreak in 2008 was localized to the northern range of YNP. This suggests CD mortality maybe associate with high wolf density, and possibly carrying capacity. Thus the NRM population may be more effected by CD, and other diseases when at the carrying capacity in suitable habitat.

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 WGL populations, 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 reported from wolves beyond the Great Lakes regions (Wisconsin Department of Natural Resources 1999, p. 61).

Mange (*Sarcoptes scabeii*) is caused by a mite 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

mortality from exposure during severe winter weather or secondary infections (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, wolves in the NRM almost exclusively in the GYA, and primarily east of the Continental Divide (Jimenez *et al.* 2008b; Atkinson 2006, p. 5; Smith and Almberg 2007, p. 19). Those wolves likely contracted mange from coyotes or fox whose populations experience occasional outbreaks. Between 2003 and 2008, the percent of Montana packs with mange fluctuated between 3 and 24 percent of packs including infestation rates of 3%, 10%, 24%, 10%, 4%, and 0%, respectively. Between 2002 and 2008, the percent of Wyoming packs with mange fluctuated between 3 and 15 percent of packs including infestation rates of 5%, 8%, 12%, 3%, 9%, 15%, and 15%, respectively. 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. Manage has never been confirmed in wolves in Idaho (Jimenez *et al.* 2008b, p. 1).

In packs with the most severe infestations, pup survival appeared low, and some adults died (Jimenez *et al.* 2008b). In addition, we euthanized several wolves with severe mange for humane reasons and because of their abnormal behavior. We predict that mange in the NRM will act as it has in other parts of North America (Brand *et al.* 1995, pp. 427–428; Kreeger 2003, pp. 207–208) and not threaten wolf population viability. Evidence suggests NRM wolves will not be infested on a chronic population-wide level given the recent response of wolves that naturally overcame a mange infestation (Jimenez *et al.* 2008b, p. 1).

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). 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, death from exposure and/or secondary infection following self-inflicted trauma, caused by inflammation and itching, appears possible. Dog-biting lice were first confirmed in NRM wolves on two members of the Battlefield pack in the Big Hole Valley of southwestern Montana in 2005, and on a wolf in south-central Idaho in early 2006, but their infestations were not severe (Service *et al.* 2006, p. 15; Atkinson 2006, p. 5; Jimenez *et al.* 2008c). The source of this infestation is unknown, but was likely domestic dogs. Lice have not been documented in the NRM since 2006.

Rabies, canine heartworm (*Dirofilaria immitus*), blastomycosis, brucellosis, neosporsis, leptospirosis, bovine tuberculosis, canine coronavirus, viral papillomatosis, hookworm, tapeworm (Echinococcus granulosus, Foreyt *et al.* 2008, p. 1), lice, 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, p. 1–7). 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 wolves in the NRM. 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.* 2009, Table 1 & Figure 1), wolf-to-wolf contacts will not likely lead to a continuing increase in disease prevalence. The wolves' exposure to these types of organisms may be most common outside of the core population areas, where domestic dogs are most common, and lowest in the core population areas because wolves tend to flow out of, not into, saturated habitats. Despite this dynamic, we assume that most NRM wolves will continue to have exposure to most diseases and parasites in the system. Diseases or parasites have not been a significant threat to wolf population recovery in the NRM or elsewhere to date, and we have no reason to believe that they will become a significant threat to their viability in the foreseeable future.

In terms of future 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. We do not believe that diseases or changes in disease monitoring will threaten wolf population recovery in the NRM DPS.

Natural Predation—No wild animals routinely prey on gray wolves (Ballard *et al.* 2003, pp. 259–260). 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, wolves in the NRM have died from wounds they received while attacking prey on about a dozen occasions (Smith *et al.* 2006, p. 247). That level of natural mortality could not significantly affect wolf population viability or stability.

Since NRM wolves have been monitored, only three wolves have been confirmed killed by other large predators. Two adults were killed by mountain lions, and one pup was killed by a grizzly bear (Jimenez *et al.* 2008a, p. 1). Wolves in the NRM 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 impact wolf populations.

Other wolves are the largest cause of natural predation among wolves. Numerous mortalities have resulted from territorial conflicts between wolves and about 7 percent of wolf deaths are

caused by territorial conflict in the NRM wolf population (Smith 2007, p. 1). Wherever wolf packs occur, including the NRM, some low level of wolf mortality will result from territorial conflict. Wolf populations tend to regulate their own densities; consequently, territorial conflict is highest in saturated habitats like YNP. This cause of mortality is infrequent except at carry-capacity and does not result in a level of mortality (<3 percent rate of natural wolf mortality in the NRM) that would significantly affect a wolf population's viability in the NRM (Smith *et al.* 2008, p. 1).

Human-caused Predation—Wolves are susceptible to human-caused mortality, especially in open habitats such as those that occur in the western United States (Bangs *et al.* 2004, p. 93). An active eradication program is the sole reason that wolves were extirpated from the NRM (Weaver 1978, p. i). Humans kill wolves for a number of reasons. In all locations where people, livestock, and wolves coexist, some wolves are killed to resolve conflicts with livestock (Fritts *et al.* 2003, p. 310; Woodroffe *et al.* 2005, pp. 86–107, 345–7). 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) and some are reported to State, Tribal, and Federal authorities. A few (2 in 2008) wolves have been killed by people who stated that they believed their physical safety was being threatened.

However, many wolf killings are intentional, illegal, and are never reported to authorities. Wolves may become unwary of people or human activity, and that can make them vulnerable to human-caused mortality (Mech and Boitani 2003, pp. 300–302). In the NRM, mountain topography concentrates both wolf and human activity in valley bottoms (Boyd and Pletscher 1999, p. 1105), especially in winter, which increases wolf exposure to human-caused mortality. The number of illegal killings is difficult to estimate and impossible to accurately determine because they generally occur with few witnesses. Often the evidence has decayed by the time the wolf's carcass is discovered or the evidence is destroyed or concealed by the perpetrators. 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 successfully pack establishment and persistence in open prairie or high desert habitats (Bangs *et al.* 1998, p. 788; Service *et al.* 1989–2009, Figure 1).

As part of the interagency wolf monitoring program and various research projects, about 30 percent of the NRM wolf population has been monitored with radio telemetry since the 1980s (Smith *et al.* 2008, p. 1). The annual survival rate of mature wolves in northwestern Montana and adjacent Canada from 1984 through 1995 was 80 percent (Pletscher *et al.* 1997, p. 459) including 84 percent for resident wolves and 66 percent for dispersers. A preliminary analysis of the survival data among NRM radio-collared wolves (Hensey and Fuller 1983, p. 1; Smith *et al.* 2008, p. 1) from 1984 through 2006 indicates that about 26 percent of adult-sized wolves die every year, so annual adult survival averages about 74 percent, which typically allows wolf population growth (Keith 1983, p. 66; Fuller *et al.* 2003, p. 182). 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.* 2008). 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.* 2008, p. 1). This percentage is among the lower end of adult wolf survival rates that an isolated population can sustain (Fuller *et al.* 2003, p. 185).

Of all mortalities of radio-collared wolves from 1984–2004, 21 percent were killed by natural causes (including 7 percent wolf-to-wolf conflict), 15 percent died from human-caused mortality other than agency control (vehicles, capture-related, incidental trapping, accidents, and legal harvest of wolves that range into Canada), 28 percent were killed in control actions, 21 percent were illegally killed, and in 15 percent cause of death was unknown (Smith 2007, p. 1). Nevertheless, wolf numbers have increased at rate of about 22 percent annually, until 2008, in the face of ongoing levels of human-caused mortality.

It should be noted that our analysis did not estimate the cause or rate of survival among pups younger than 7 months of age because they are too small to radio-collar. These survival rates may also be biased in other ways. Wolves are more likely to be radio-collared if they likely to come into conflict with people, so the proportion of mortality caused by agency depredation control actions could be overestimated by radio-telemetry data. Wolves initially radio-collared because of livestock depredation had higher rates of mortality (Murray *et al.* 2008, p. 1). People who illegally kill wolves may destroy the radio-collar, so the proportion of illegal mortality could be underestimated. Wolves that disperse long distances are much more difficult to locate than resident wolves, so their survival maybe even lower than telemetry data indicate (Murray *et al.* 2008, p. 1). The high proportion of wolves radio-collared in National Parks for research purposes can result in underestimating the overall rate of human-caused mortality in the NRM wolf population.

Wolf mortality from agency control of problem wolves (which includes legal take by private individuals under defense of property regulations in rules promulgated under section 10(j) of the Act) is estimated to remove around 10 percent of adult radio-collared wolves annually. If the Act's protections were removed, we expect comparable levels of agency control. In terms of defense of property, from 1995 through 2008, about 75 wolves were legally killed by private citizens under Federal defense of property regulations (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)). Existing 10(j) regulations are similar to State laws that would take effect and direct take of problem wolves if wolves were delisted, except in Wyoming. Thus, we do not expect private citizen take under State defense of property laws to significantly increase the overall rate of wolf removal, except in Wyoming (Bangs *et al.* in press, pp. 19–20). All sources of human-caused mortality would be considered in total allowable mortality levels. In Wyoming, State law mandates much more aggressive control in the Trophy game area and unregulated take in the predatory animal area and would far exceed take allowed under existing 10(j) regulations. Given adequate regulatory mechanisms in all portions of the NRM DPS, except Wyoming, we believe this issue will not threaten the recovered status of the NRM DPS, except in Wyoming. These issues are discussed in more detail relative to State regulation in Factor D below.

In our previous final rule we explained that, post-delisting, State management would likely increase the mortality rate outside National Parks and National Wildlife Refuges from its current level (Smith *et al.* 2008, p. 1). We explained that wolf mortality could nearly double without reducing the population (Fuller *et al.* 2003, p. 185). In 2008, the high number of wolves in the NRMs, saturation of suitable habitat, and increased dispersal into unsuitable habitat, in combination with more

aggressive State management frameworks, resulted in about a forty percent increase (78 wolves) in agency authorized control actions from the previous year. As more wolves tried to establish themselves in unsuitable habitat livestock depredations increased and more wolves and a larger percentage of the wolf population were killed by agency control actions. However, this increase alone could not have resulted in the slower growth in the NRM wolf population. Increased agency control only explains between thirty-three percent of the difference between a predicted NRM wolf population of 1,876 wolves for 2008 (assuming continued population growth of 24 percent as documented prior to 2008) and our actual mid-year 2008 estimate of 1,639 wolves, a difference of 237 wolves. We also think it's unlikely other sources of human-caused mortality made up the difference between these two estimates. Instead, we believe the NRM's slowing growth was primarily the result of reaching carry capacity where a host of natural causes (disease, social strife, starvation, etc.) have acted to help control the population.

In summary, recent and predicted human-caused mortality rates will allow for rapid wolf population growth when the wolf population is below carrying capacity. The protection of wolves under the Act promoted rapid initial wolf population growth in suitable habitat. Montana, Idaho, and Wyoming have committed to continue to regulate human-caused mortality so that it does not reduce the NRM wolf population below recovery levels. But only Montana, Idaho, Oregon, Washington, and Utah have adequate laws and regulations to fulfill those commitments and ensure that the NRM wolf population remains above recovery levels (see Factor D). Each post-delisting management entity (State, Tribal, and Federal) has experienced and professional wildlife staff to ensure those commitments can be accomplished.

D. The Adequacy or Inadequacy of Existing Regulatory Mechanisms

The following analysis summarizes the current regulatory approach as well as the regulatory mechanisms that would take effect post-delisting. The analysis considers whether such post-delisting regulatory mechanisms in each portion of the NRM DPS are adequate to maintain the recovered status of the NRM DPS.

Current Wolf Management—The 1980 and 1987 NRM wolf recovery plans (Service 1980, p. 4; Service 1987, p. 3) recognized that conflict with livestock was the major reason that wolves were extirpated, and that management of conflicts was a necessary component of wolf restoration. The plans also recognized that control of problem wolves was necessary to maintain local public tolerance of wolves and that removal of some wolves would not prevent the wolf population from achieving recovery. In 1988, the Service developed an interim wolf control plan that applied to Montana and Wyoming (Service 1988, p. 1); the plan was amended in 1990 to include Idaho and eastern Washington (Service 1990, p. 1). We analyzed the effectiveness of those plans in 1999, and revised our guidelines for management of problem wolves listed as endangered (Service 1999, p. 1). Evidence showed that most wolves do not attack livestock, especially larger livestock such as adult horses and cattle, but wolf presence around livestock will always result in some level of depredation (Bangs and Shivik 2001; Bangs *et al.* 2005, pp. 348–350). Therefore, we developed a set of guidelines under which depredating wolves could be harassed, moved, or killed by agency officials (Service 1999, pp. 39–40). The control plans were based on the premise that agency wolf control actions would affect only a small number of wolves, but would sustain public tolerance for non-depredating wolves, thus enhancing the chances for successful population recovery (Mech 1995, pp. 276–276). Our assumptions have proven correct, as wolf depredation on livestock and subsequent agency control actions have remained compatible with recovery, as the wolf population expanded its distribution and numbers far beyond, and more quickly than, earlier predictions (Service 1994, p. 2:12; Service *et al.* 2007, Tables 4).

The conflict between wolves and livestock has resulted in the average annual removal of 8 to 14 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.* 2008, Tables 4, 5; Smith *et al.* 2008, p. 1). We estimate illegal killing removed another 10 percent of the wolf population, and accidental and unintentional human-caused deaths have removed 3 percent of the population annually (Smith *et al.* 2008, p. 1). Even with this level of mortality, populations have expanded rapidly (Service *et al.* 2008, Table 5). Despite liberal regulations regarding wolf removal, nearly all suitable areas for wolves are being occupied by resident packs (Service *et al.* 2008, Figure 1; Oakleaf *et al.* 2005, p. 559). The outer NRM wolf pack distribution has remained largely unchanged since the end of 2000 (Service *et al.* 2001–2009, Figure 1), indicating that wolf packs are simply filling in the areas with suitable habitat, not successfully expanding their range into unsuitable habitat. As we previously explained in the recovery section, we believe that the NRM wolf population is likely at or above long-term carrying capacity.

Because wolf populations continually try to expand, we expect wolves will increasingly disperse into unsuitable areas that are intensively used for livestock production. A higher percentage of wolves in those areas will become involved in conflicts with livestock, and a higher percentage of those wolves will be removed to reduce future livestock damage. In the earlier stages of wolf restoration about 6 percent of the NRM wolf population was removed annually (Service *et al.* 2008, Table 5). In recent years, this total has more than doubled (Service *et al.* 2007–2009, Table 5). Fuller *et al.* (2003) reviewed all available wolf studies to determine whether a population increased, stabilized, or decreased based on its annual mortality rates. According to these field data, assuming the population is maintained below carrying capacity, human-caused mortality would have to remove somewhere between 34 percent and 50 percent of the wolf population annually before the population would decline (Fuller *et al.* 2003, pp. 184–185). In practice, until 2008, the wolf population grew an average rate of 24 percent annually despite an annual mortality rate of 26 percent (ranging from 20 to 50 percent depending on location and year) (Smith *et al.* 2008, p. 1). Actual capacity to withstand mortality will vary by geographic area. The State laws and management plans intend to balance the level of wolf mortality, primarily human-caused mortality, with the wolf population growth rate to achieve desired population objectives.

Adequacy of Regulatory Mechanisms Within the NRM DPS—It has been long recognized that the future conservation of a delisted wolf population in the NRM depends almost solely on State regulation of human-caused mortality. In 1999, the Governors of Montana, Idaho, and Wyoming agreed that regional coordination in wolf management planning among the State, Tribes, and other jurisdictions was necessary. They signed a MOU to facilitate cooperation among the three States in developing adequate State wolf management plans so that delisting could proceed. In this agreement, all

three States committed to maintain at least 10 breeding pairs and 100 wolves per State. The States were to develop their pack definitions to approximate the current breeding pair definition. Governors from the three States renewed that agreement in April 2002.

Because the primary threat to the wolf population (human caused mortality) still has the potential to significantly impact wolf populations if not adequately managed, we must find that the States will manage for sustainable mortality levels before we can remove the Act's protections. Therefore, we requested that the States of Montana, Idaho, and Wyoming prepare State wolf management plans to demonstrate how they would manage wolves after the protections of the Act were removed. With limited suitable habitat in Washington, Oregon, and Utah and on Tribal lands within the NRM DPS, we believe these areas will play only a small role in the conservation of the NRM DPS. We do not believe threats in those States or on Tribal lands are likely to be significant enough to affect wolf population recovery. Nevertheless, all areas within the NRM DPS are considered below.

Several issues were key to our approval of State plans including: Consistency between State laws, management plans, and regulations; regulations that prevent excessive take; methods used to measure wolf population status; the organizational ability and skill to successfully monitor and manage State wolf populations; and commitments to manage wolves safely above minimum recovery levels. Our determination of the adequacy of those three key State management plans was based on the combination of Service knowledge of State law, the State management plans, wolf biology, our experience managing wolves for the last 20 years, the success of wolf management in other areas of the world peer review of the State plans, the State response to peer review, and public comments including those from the States.

State plans and other documents pertinent to State wolf management post-delisting can be viewed at *http://westerngraywolf.fws.gov/*. All current State and Tribal management laws, plans, and regulations in the NRM DPS have been evaluated and are discussed below.

Montana—Montana has demonstrated their capacity to manage their wolf population. In June 2005, MFWP entered into a Cooperative Agreement with the Service allowing it manage all wolves in the State subject to general oversight by the Service. The State's efforts have proven successful, as Montana's wolf population estimate increased from 152 wolves in 15 breeding pairs in late 2004 to about 491 wolves in 34 breeding pairs in 2008 (Service *et al.* 2009, Table 4). Preliminary data also indicated that Montana's wolf population in 2008 would be at higher levels than in 2007 (McDonald 2008). Their post-delisting approach is discussed in detail below.

The gray wolf was listed under the Montana Nongame and Endangered Species Conservation Act of 1973 (87–5–101 MCA). Senate Bill 163, passed by the Montana Legislature and signed into law by the Governor in 2001 and Administrative Rules of Montana 12.2.501 and 12.5.201 establish the current legal status for wolves in Montana. Upon Federal delisting, wolves would be classified and protected under Montana law as a ''Species in Need of Management'' (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 would still occur, but is to be prosecuted under State law and Commission regulations.

In 2000, the Governor of Montana appointed the Montana Wolf Management Advisory Council to advise MFWP regarding wolf management after the species is removed from the lists of Federal and State-protected species. In August 2003, MFWP completed a Final EIS pursuant to the Montana Environmental Policy Act and recommended that the Updated Advisory Council alternative be selected as Montana's Final Gray Wolf Conservation and Management Plan (Montana 2003, p. 131). See *http://fwp.mt.gov/wildthings/wolf/default.html* to view the MFWP Final EIS and the Montana Gray Wolf Conservation and Management Plan.

Under the management plan, the wolf population would be maintained above the recovery level of 10 breeding pairs by managing for a total of at least 15 breeding pairs. Wolves would not be deliberately confined to any specific geographic areas of Montana nor would the population size be deliberately capped at a specific level. However, wolf numbers and distribution would be managed adaptively based on ecological factors, wolf population status, conflict mitigation, and human social tolerance.

The plan and Administrative Rules commit MFWP to implement its management framework in a manner that encourages connectivity among wolf populations in Canada, Idaho, GYA, and Montana to maintain the overall metapopulation structure (see Factor E.). Overall, wolf management would include population monitoring, routine analysis of population health, management in concert with prey populations, law enforcement, control of domestic animal/human conflicts, implementation of a wolf-damage mitigation and reimbursement program, research, and information and public outreach. Montana's plan (Montana 2003, p. 132) predicted that under State management, the wolf population would be between 328 and 657 wolves with approximately 27 to 54 breeding pairs by 2015.

An important ecological factor determining wolf distribution in Montana is the availability and distribution of wild ungulates. Montana has a rich, diverse, and widely distributed prey base on both public and private lands. The MFWP has and will continue to manage wild ungulates according to Commission-approved policy direction and species management plans. The plans typically describe a management philosophy that protects the long-term sustainability of the ungulate populations, allows recreational hunting of surplus game, and aims to keep the population within management objectives based on ecological and social considerations. The MFWP takes a proactive approach to integrate management of ungulates and carnivores. Ungulate harvest is to be balanced with maintaining sufficient prey populations to sustain Montana's segment of a recovered wolf population. Ongoing efforts to monitor populations of both ungulates and wolves will provide credible, scientific information for wildlife management decisions.

MFWP will manage problem wolves in a manner similar to the control program currently being implemented in the experimental population area in

southern Montana. Similar to the current federal regulations in the experimental areas, Montana law (MCA 87–3–130) will allow a citizen to haze, harass, or kill a wolf that is seen attacking, killing, or threatening to kill a person or livestock or domestic dogs. Administrative Rules of Montana (12.9.1301 through 12.9.1305) will guide MFWP's approach to addressing wolf-livestock conflicts, including non-lethal and lethal control. Agency control of problem wolves is incremental and in response to confirmed depredations. State management of conflicts would become more conservative and no public hunting would be allowed if there were fewer than 15 breeding pairs statewide.

State laws, Administrative Rules and Commission-approved regulations would allow agency management of problem wolves by MFWP and USDA–Wildlife Services (WS); take by private citizens in defense of private property; and, when the population is above 15 breeding pairs, regulated fair chase hunting of wolves. Montana law allowing take in defense of private property is similar to the 2005 experimental population regulations, whereby livestock owners can shoot wolves seen attacking or threatening livestock or domestic dogs as long as such incidents are reported promptly and subsequent investigations confirm that livestock were being attacked by wolves. Since 2004, MFWP has enlisted and directed USDA–WS in problem wolf management, just as the Service has done since 1987.

For the 2008 hunting season, MFWP recommended a tentative state-wide total harvest quota of 75 wolves, split across three wolf management units. The Commission's decision to adopt final quotas was pre-empted by issuance of the preliminary injunction. Thus, the Commission did not adopt final quotas. If it would have approved MFWP's recommendation and implemented, a MFWP simulation model predicted that one year later, there would be about 497 wolves, between 93 and 100 packs, and between 44 and 61 breeding pairs in Montana; this would have been larger than the minimum 2007 population.

This model simulation now appears to have been reasonable because without hunting, the wolf population increased by 69 wolves in 2008. Montana's wolf season-setting processes (framework and quotas) also incorporate adequate safety nets to prevent overharvest. These include: (1) Establishing quotas at a time of year (tentative in July and final in August) so that the most current monitoring data could be considered; (2) creation of a 1–800 hotline update so that hunters would know whether or not wolf harvest was legal (i.e. quota was open) prior to going hunting; (3) mandatory reporting of successful harvest within 12 hours so FWP can closely monitor hunter success and quota status; (4) mandatory carcass inspection within 10 days to verify age/sex of harvested animals and collect other biological information; (5) closure of the season upon a 24-hour notice when a wildlife management unit the quota is filled; (6) FWP authority to initiate a season closure prior to reaching a quota when conditions or circumstances indicate the quota may be reached within 24 hours; (7) definite season-ending closure date, regardless of whether the quotas were reached; and (8) emergency season closure at any time by order of the FWP Commission. If the full tentative state-wide harvest recommended MFWP had occurred in 2008, it would have resulted in an estimated statewide wolf population of 416 wolves in 35 to 40 breeding pairs. Should overharvest ever occur, next years harvest would be adjusted to compensate. No public hunting would be allowed if there were fewer than 15 breeding pairs statewide.

The MFWP Commission also prohibited more than 25% of the total allowable wolf management unit quota to be taken during the month of December. This would have limited wolf harvest when wolves are known to disperse at higher rates.

Hunt and defense of property laws, regulations, and other background information can be viewed at: *http://westerngraywolf.fws.gov* and in Montana's (2008) comments on the delisting proposal.

When the Service reviewed and determined that the Montana wolf plan and regulatory framework met the requirements of the Act, we stated that Montana's wolf management plan would maintain a recovered wolf population and minimize conflicts with other traditional activities in Montana's landscape. We have also carefully reviewed Montana's 2008 comments on this rule (McDonald 2008). In their comments Montana explained in detail how their regulatory framework guarantee's the secure future of wolves in Montana, the process used to develop Montana's hunting framework and quota system and its safeguards, and its commitment and the steps Montana had already taken to ensuring demographic and genetic connectivity with Canada and the other recovery areas. The Service has every confidence that Montana will implement, for the foreseeable future, the commitments it has made in its current laws, regulations, and wolf plan. Thus, we continue to determine that Montana's State law, wolf management plan, and implementing regulations provide the necessary regulatory mechanisms to assure maintenance of the State numerical and distributional share of a recovered NRM wolf population well into the foreseeable future.

Idaho—Idaho has demonstrated their capacity to manage their wolf population. In January 2006, the Governor of Idaho signed a Memorandum of Understanding with the Secretary of the Interior that provided IDFG the responsibility and authority to manage all Idaho wolves as a designated agent of the Service. The State's efforts have proven successful, as Idaho's wolf population estimate increased from 512 wolves in 36 breeding pairs in late 2005 (Service *et al.* 2006, Table 4) to about 846 wolves in 39 breeding pairs in 2008 (Service *et al.* 2009). Slower growth and higher levels of conflicts in 2008 indicates suitable habitat maybe saturated and the wolf population will stabilize because it is at carrying capacity. Their post-delisting approach is discussed in detail below.

The Idaho Fish and Game Commission (IFGC) 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 IFGC reclassified the species as a big game animal under Idaho Administrative Procedures Act (13.01.06.100.01.d). The big game classification will take effect once this rule becomes effective. As a big game animal, State regulations will 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 (IWCMP) (Idaho 2002) and big game hunting regulations currently in place. The IWCMP 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 IWCMP was written with the assistance and leadership of the Wolf Oversight Committee established in 1992 by the Idaho Legislature. Many special interest groups including legislators, sportsmen, livestock producers, conservationists, and IDFG personnel were involved in the development of the IWCMP. The Service provided technical advice to the Committee and reviewed numerous drafts before the IWCMP was finalized.

In March 2002, the IWCMP was adopted by joint resolution of the Idaho Legislature. The IWCMP can be found at: *http://www.fishandgame.idaho.gov/cms/wildlife/wolves/wolf_plan.pdf.*

The IWCMP calls for IDFG: To be the primary manager of wolves after delisting; to maintain a minimum of 15 packs of wolves to maintain a substantial margin of safety over the 10 breeding pair minimum; and to manage them as a viable self-sustaining population that will never require relisting under the Act. Wolf take will be more liberal if there are more than 15 packs and more conservative if there are fewer than 15 packs in Idaho. The wolf population will be managed by defense of property regulations similar to those now in effect under the Act. Public harvest will be incorporated as a management tool when there are 15 or more packs in Idaho to help mitigate conflicts with livestock producers or big game populations that outfitters, guides, and others hunt. The IWCMP allows IDFG to classify the wolf as a big game animal or furbearer, or to assign a special classification of predator, so that human-caused mortality can be regulated. In March 2005, the IGFC adopted the classification of wolves as a big game animal post-delisting, with the intent of managing wolves similar to black bears and mountain lions, including regulated public harvest when populations are above 15 packs. The IWCMP calls for the State to coordinate with USDA–WS to manage depredating wolves depending on the number of wolves in the State. It also calls for a balanced educational effort.

In November 2007, Idaho released its Wolf Population Management Plan for public review and comment (Otter 2007, p. 1; Idaho 2007). That plan is a more detailed step-down management plan compared to the general guidance given in the plan Idaho adopted in 2002 and discusses the State's intent to manage the population above 20 breeding pairs to provide hunting opportunities for wolves surplus to that goal (Idaho 2007). The population goal within the plan calls for maintaining the population near or above the 2005 levels (approximately 520 wolves). The 2007 plan details how wolf populations will be managed to assure their niche in Idaho's wild places into the future (Otter 2007). It was finalized and adopted by the IFGC in March 2008.

Maintenance of prey populations is an important part of continued wolf recovery. The IDFG will manage elk and deer populations to meet biological and social objectives according to the State's species management plans. The IDFG will manage both ungulates and carnivores, including wolves, to maintain viable populations of each. Ungulate harvest will focus on maintaining sufficient prey populations to sustain quality hunting and healthy, viable wolf and other carnivore populations. IDFG has conducted research to better understand the impacts of wolves and their relationships to ungulate population sizes and distribution so that regulated take of wolves can be used to assist in management of ungulate populations and vice versa.

The Mule Deer Initiative in southeast Idaho was implemented by IDFG in 2005, to restore and improve mule deer populations. Though most of the initiative lies outside current wolf range and suitable wolf habitat in Idaho, improving ungulate populations and hunter success will decrease negative attitudes toward wolves. When mule deer increase, some wolves may move into the areas that are being highlighted under the initiative. Habitat improvements within much of southeast Idaho would focus on improving mule deer conditions. The Clearwater Elk Initiative also is an attempt to improve elk numbers in the area of the Clearwater Region in north Idaho where currently IDFG has concerns about the health of that once-abundant elk herd (Idaho 2006). This is the same area where low elk numbers resulted in a proposal to temporarily reduce wolf density for 5 years in an attempt to increase elk numbers. Ultimately more prey always allows areas the potential to support more predators, including wolves.

Once wolves are delisted, human-caused mortality will be regulated as directed by the IWCMP to maintain a recovered wolf population. In its preliminary injunction order, the District Court stated that Idaho's depredation control law was not likely to threaten the continued existence of the wolf in Idaho because that State has committed to managing for at least 15 breeding pairs and at least 150 wolves. We agree with this conclusion. The Idaho management plan is designed to maintain the Idaho wolf population at over 500 wolves in midwinter. At this level, it would be impossible for the Idaho's defense of property regulations to significantly affect the overall rate of wolf mortality in Idaho (Smith *et al.* 2008, p. 1; Service *et al.* 2009, Table 5). Furthermore, every mortality, including defense of property mortality which usually occurs in summer, will be deducted from the fall hunting quota. Therefore, all wolves taken in defense of property in Idaho would simply reduce the amount that could otherwise be taken by hunters in the fall. Idaho provided a more detailed analysis of their regulatory framework in their comments (Otter 2008) to our 2008 notice (73 FR 63926, October 28, 2008) reopening the comment period on our February 8, 2007 proposed rule (72 FR 6106).

The court specifically noted that Idaho's final wolf hunting regulations set a quota for the 2008 hunting season of 428 wolves from all causes of mortality Statewide. We anticipate that most mortality from hunters would occur in the fall elk and deer season in October and November when access is greatest and more hunters are afield. Mortality limits were set by zone so that once reached, the hunting season for that zone would be closed. As implemented, Idaho included all take in defense of property in the total allowable mortality levels. Mandatory reporting of harvest or defense of property take is required within 72 hours. The court's July 18, 2008, order preliminarily enjoining the delisting rule prevented implementation of the 2008 hunting season. Had the hunting season occurred, the maximum level of wolf mortality would have been a maximum (and likely unreachable) harvest of about 244 wolves. If that one-year quota had been fully achieved it would have still likely resulted in a remaining wolf population in Idaho of at least 602 wolves by mid-winter 2008 (Otter 2008). In subsequent years, Idaho intended to greatly reduce the harvest to about 54 wolves per year to maintain the wolf population at or above 518 wolves statewide. Any changes in actual harvest or actual wolf population levels from theoretical predictions would be adjusted (adaptive management) in subsequent years. Wolf populations are so biologically resilient, Idaho habitat so productive and expansive, and Idaho is managing for such a large buffer above minimum population levels, that such typical year-to-year fluctuations between theory and reality would never reduce the wolf population below State, let alone recovery minimum levels.

Hunt and defense of property laws, regulations, and other background information can be viewed at: *http://westerngraywolf.fws.gov* and are discussed in detail in Idaho's (Otter 2008) comments on the proposal for this delisting rule.

Our analysis of Idaho's regulatory framework determined that the combined impact of the State law, their wolf management plans and IFGC actions and implementing regulations constitute a biologically-based and scientifically sound wolf conservation strategy. It will maintain the wolf

population well above recovery minimums and the methods that they will utilize to established the hunting quota system and harvest season it will promote natural connectivity from Idaho into the GYA (Otter 2008). The Service has every confidence that Idaho will implement, for the foreseeable future, the commitments it has made in its current laws, regulations, and wolf plan. Thus, we continue to determine that Idaho's State law, wolf management plan, and implementing regulations provide the necessary regulatory mechanisms to assure maintenance of the State numerical and distributional share of a recovered NRM wolf population well into the foreseeable future.

Wyoming—In 2007, the Wyoming legislature passed a State statute which provided the framework for Wyoming's wolf management once the wolf is delisted from the Act. Following the change in State law, Wyoming drafted a revised wolf management plan (Wyoming 2007). On November 16, 2007, the WGFC unanimously approved the 2007 Wyoming Plan (Cleveland 2007, p. 1). On December 12, 2007, the Service determined that this plan, if implemented, would provide adequate regulatory protections to conserve Wyoming's portion of the recovered NRM wolf population into the foreseeable future (Hall 2007, p. 1–3). The plan went into effect upon the Governor's certification to the Wyoming Secretary of State that all of the provisions found in the 2007 Wyoming wolf management law have been met (W.S. §§ 23–1–109(b)&(c); Freudenthal 2007a, p. 1–3).

Implementation of that law was premised on Wyoming's Governor certifying to the Wyoming Secretary of State that (1) the Service publishing a delisting rule that includes the entire State of Wyoming by February 28, 2007; (2) the Service completed a modification of the 2005 special rule (10j) for the experimental population that addressed Wyoming's concerns about wolf management to maintain ungulate herds above State management objectives; and (3) settlement of the claims in Wyoming's lawsuit contesting the Service not approving Wyoming's 2003 wolf management law and wolf plan. Wyoming provided the necessary certifications before the effective date and the Service-approved 2007 Wyoming wolf management plan was legally authorized by Wyoming statutes. It was implemented on March 28, 2008, when the previous delisting rule became effective (73 FR 10514, February 27, 2008).

During the subsequent litigation, the U.S. District Court for the District of Montana reviewed our approval of Wyoming's regulatory framework. The court stated that we acted arbitrarily in delisting a wolf population that lacked evidence of genetic exchange between subpopulations. The court also stated that we acted arbitrarily and capriciously when we approved Wyoming's 2007 regulatory framework. The court was particularly concerned that Wyoming failed to commit to managing for at least 15 breeding pairs. The court also stated that accepting a ''small'' trophy game area designation (approximately 12 percent of northwest Wyoming) was not supported by the record and was therefore arbitrary and capricious. Even more problematic, in the courts view, was the ''malleable'' nature of the trophy game area which could be diminished by the WGFC post-delisting. Finally, the court raised concerns with Wyoming's depredation control law which it viewed as significantly more expansive than existing experimental population regulations. The court concluded that the Plaintiffs were likely to prevail on the merits of their claims.

Based on the concerns expressed by the district court, we reanalyzed Wyoming's regulatory framework. A central component of Wyoming's regulatory framework is its plan to designate wolves as predatory animals across at least 88 percent of the State and manage wolves as a trophy game animal in the remaining portions of northwest Wyoming. The trophy game area totaled just over 31,000 km^2 (12,000 mi^2) (12% of Wyoming) in northwestern Wyoming, including YNP, Grand Teton National Park, John D. Rockefeller Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, and adjacent public and private lands.

In the predatory area, wolves will experience unregulated human-caused mortality. Wolves are unlike coyotes in that wolf behavior and reproductive biology results in wolves 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), wolves are unlikely to survive in portions of Wyoming where they are regulated as predatory animals. This conclusion was validated this spring. After our previous delisting became effective, most of the wolves in the predatory animal area were killed within a few weeks of losing the Act's protection (17 of at least 28). Mortality included: 9 shot from the ground by private individuals, sometimes after being chased long distances by snowmobile; 2 shot by private aerial gunners permitted by the Wyoming Department of Agriculture; 5 killed by agency authorized control, and 1 died of unknown causes.

''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. All other States within the NRM DPS manage wolves as a game species.

We previously approved this approach because the 12 percent of Wyoming where wolves would be managed as a trophy game species included 70 percent of the State's suitable wolf habitat and was presumed large enough to support Wyoming's share of a recovered wolf population. This approach failed to consider the impacts of the predatory animal area to genetic connectivity. As discussed fully in Factor E and the Conclusion of the 5-Factor Analysis sections below, we now believe Wyoming must institute additional protections to facilitate natural genetic exchange in order to constitute an adequate regulatory mechanism. Specifically, long distance dispersers from other recovery areas, especially from Idaho, are most likely to cross the predatory animal area to find and join other packs (facilitating genetic connectivity) east or south of YNP. This approach also had failed to consider the likelihood that some lone wolves or even breeding pairs or packs from the trophy game area may periodically and temporarily disperse from the trophy animal area. Some of these dispersers would normally return to the northwest Wyoming's core of suitable habitat. The current regulatory framework substantially increases the odds that these periodic dispersers will not survive, thus, impacting Wyoming's wolf population including opportunities for genetic and demographic exchange. Wyoming's 2008 plan commits to maintain genetic connectivity, but under State law they have no management authority or means in the predatory animal area to actually fulfill that promise.

While the statute sets the legal maximum for Wyoming's trophy game area, ''This area may be diminished by rule of the commission if the commission determines the diminution does not impede the delisting of gray wolves and will facilitate Wyoming's management of wolves'' (Wyoming House Bill 0231, (xii)(l) p. 8). The first condition is not useful since wolves would have already been delisted for Wyoming's law to apply. As previously

determined (71 FR 43410, August 1, 2006), a smaller trophy game area is not sufficient to maintain Wyoming's share of a recovered NRM gray wolf population. Our previous analysis failed to consider the possibility that the WGFC would alter these boundaries. We now determine that a reduction in the trophy game area and expansion of the predatory area would further limit breeding pair occupancy in Wyoming and reduce opportunities for successful dispersal and genetic exchange.

Within the trophy game portions of the State, Wyoming State law mandates an ''aggressive'' wolf management strategy that we now determine is unlikely to conserve Wyoming's share of a recovered wolf population. One flaw with Wyoming's approach is the law's dependence on the National Parks to contribute at least 8 breeding pairs toward the total goal of at least 15 breeding pairs statewide. Such dependence could lead the Wyoming wolf population to quickly slide below recovery goals. While the National Parks will maintain more than 8 breeding pairs in most years, the National Parks' population will periodically fall below 8 breeding pairs. In 2005, disease and other factors caused the YNP population to fall to 118 wolves in 7 breeding pairs (Service *et al.* 2006). Preliminary data for 2008 indicates similar natural factors reduced the YNP population to 124 wolves in 6 breeding pairs (Smith 2008). Wyoming State law maintains that ''the (WGFC) shall promulgate rules and regulations requiring lethal control of wolves harassing * * * livestock and for wolves occupying areas where chronic wolf predation occurs.'' It goes on to state that ''permits shall be issued as long as there are seven (7) breeding pairs within the State and outside of YNP.'' The mandatory issuance of such lethal take permits are independent of predictions whether the year-end wolf population would be below 7 breeding pairs outside the National Parks or 15 breeding pairs or 150 wolves Statewide. The law allows for cancellation or suspension of permits only if further lethal control could cause the relisting of wolves.

Thus, State law mandates aggressive management until the population outside the National Parks fall to 6 breeding pairs. If such a management strategy had been fully implemented in 2008, when disease and other natural factors appear to have reduced the YNP population to 6 breeding pairs, the total Wyoming population would have fallen to the minimum recovery goal and any additional unregulated mortality (e.g., illegal killing, defense of property, control of problem wolves, death following dispersal into the predatory area) eliminating breeding pairs would have pushed the Wyoming wolf population below minimum recovery levels. We have long maintained that Wyoming, Montana, and Idaho must each manage for at least 15 breeding pairs and at least 150 wolves in mid-winter to ensure the population never falls below the minimum recovery goal of 10 breeding pairs and 100 wolves per State. As demonstrated here, Wyoming State law does not satisfy this standard. Thus, we now determine Wyoming State law would prevent Wyoming from maintaining its share of a recovered NRM wolf population into the foreseeable future.

On March 13, 2008, WGFC issued regulations implementing the law (Wyoming Chapter 21). These regulations further demonstrate the inadequacy of the regulatory framework established by State law. As noted above, State law requires lethal control of wolves where chronic wolf predation occurs. The WGFC's implementing regulations defined a ''chronic wolf predation area'' as any area where there were two or more livestock depredations over any time frame (Talbott 2008). The WGFC's March 25, 2008 wolf regulation guidance stipulated that once an area is deemed a chronic depredation area, the WGFD supervisor can issue permits without verification of predation. This interpretation meant that every part of the trophy game area outside the National Parks qualified as a chronic wolf predation area as every part of Wyoming has had two or more depredations on livestock by wolves since 1995 and that issuance of lethal take permits would be mandatory on the part of WGFD provided seven packs were present outside the National Parks in Wyoming, regardless of the number of wolves in National Parks. The changes made in the emergency WGFC regulations in 2008 largely rectified that problem of unregulated take in the trophy game area.

Shortly after our previous wolf delisting, WGFD issued its first trophy game area annual lethal take permit. This permit authorized lethal take of four wolves after the landowner reported seeing a wolf track on his private property. In early July, and despite no recent depredations, this same permit was modified by WGFD to include a total of nine people some of whom had no apparent connection to the property. In early May, a federal grazing permittee who had depredations on his allotment the previous summer requested that WGFD remove wolves prior to him placing his cattle on allotment or to provide him with a lethal control permit. As his grazing allotment was in the chronic wolf predation area (as was all of the trophy game area in Wyoming outside the National Parks), the WGFC regulations required them to issue the lethal take permit. Such examples demonstrate that the framework established by State law allows Wyoming to reduce their wolf population outside the National Parks to 6 breeding pairs regardless of whether the year-end wolf population would be below 7 breeding pairs outside the National Parks or 15 breeding pairs or 150 wolves Statewide.

At the point where we became aware of these implementing regulations, we began discussions with Wyoming about whether these regulations constituted an adequate regulatory mechanism. In response, WDGF asked the Wyoming Attorney General's Office to review the situation. On May 8, 2008, the Attorney General issued an opinion on the implementing regulation's definition of chronic wolf predation area. The regulation states '' 'Chronic wolf predation area' means a geographic area within the Wolf Trophy Game Management Area where gray wolves have repeatedly (twice or more) harassed, injured, maimed or killed livestock or domesticated animals.'' The opinion found that the regulations use of ''twice or more'' was ambiguous and that in order to meet the intent of the Statute that wolves not be relisted, the State should interpret ''twice or more'' to mean within a calendar year (Martin 2008, p. 1–5). Consequently, the State determined that WGFD may not initiate wolf control actions, including issuing lethal take permits, unless an area had two or more instances of wolves harassing, injuring, maiming or killing livestock or domestic animals since January 1 of that year. While this significantly improved implementation of their regulations, we remained concerned about this ambiguity.

Following this May 8, 2008, opinion, Wyoming indicated they would amend the regulations at their earliest opportunity. Revisions were finally made to their regulations after the District Court vacated and remanded our previous final rule.

On October 27, 2008, Wyoming issued emergency regulations and a revised wolf management plan. We have closely reviewed Wyoming's comments on the proposed delisting rule (Freudenthal 2008) and all changes to Wyoming's regulatory framework. While we believe the revised regulatory framework is a vast improvement over its predecessor, the emergency regulation is temporary (it is only in effect for 120 days). Thus,

we can not rely on it as an adequate regulatory mechanism. Most importantly, these regulatory improvements do not address the legislative shortcomings noted above (i.e., a trophy game area that can be diminished and a statute that encourages the WGFC to manage the population toward the minimum recovery goals in a manner that allows the possible reduction of the wolf population to below recovery levels.

We find that a regulatory framework for wolf management at minimum recovery levels is not adequate. Attempts to maintain any wildlife population at bare minimum levels are unlikely to be successful. As with all wildlife species, periodic disturbance or random events will occur. This fact was proven by the dramatic, but temporary changes, in wolves and breeding pairs in YNP in 2005 and 2008. Managing at minimal levels increases the likelihood that periodic disturbance or random events will leave the population below management objectives. Instead, the State wildlife agency should be given leeway in its management approach to compensate for periodic or random events, as Montana and Idaho have done. Managing to minimal recovery levels also increases the chances of genetic problems developing in the GYA population and would reduce the opportunities for demographic and genetic exchange in the WY portion to the GYA.

We also reviewed Wyoming's proposed 2008 hunting season regulation. While the proposed 2008 hunting season was not implemented, we determined it was well designed, biologically sound, and, by itself, it would not have threatened Wyoming's share of the recovered NRM wolf population. Wyoming's hunting season was designed around an allowable hunter-caused mortality in each of four hunting districts in the trophy game area. Hunting would end by November 30, or in each subquota as its individual quota is filled, or when 25 wolves had been harvested, whichever is sooner. This level of hunter-caused mortality would remove a small portion of the wolves in Wyoming outside the national parks. If other sources of mortality had been adequately regulated, this level of hunter harvest would likely have resulted in a Wyoming wolf population outside the national parks of just under 200 wolves by December 31, 2008 and nearly 400 wolves in the GYA. Because hunting harvest would end November 30, it would have had only minor negative impacts within the trophy game area on naturally dispersing wolves or the opportunity for effective genetic migrants into Wyoming. Wolves in YNP would not be substantially affected by a regulated public hunt, as hunting is not allowed in national parks and wolves rarely leave YNP during the time period when the fall hunting season would occur.

Considering all of the above, we now determine that Wyoming's regulatory framework does not provide the adequate regulatory mechanisms to assure that Wyoming's share of a recovered NRM wolf population would be conserved if the protections of the Act were removed (Gould 2009). Until Wyoming revises their statutes, management plan, and associated regulations, and is approved by the Service, wolves in Wyoming remain listed as experimental population in this portion of the NRM DPS. Specific required revisions are discussed in the Conclusion of the 5-Factor Analysis section of the rule below.

Washington—Wolves in Washington are listed as endangered under the State's administrative code (WAC 232.12.014; these provisions may be viewed at: *http://apps.leg.wa.gov/wac/*). Under Washington's administrative code (WAC 232.12.297), ''endangered'' means any wildlife species native to the State of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the State. Endangered species in the State of Washington are protected from hunting, possession, and malicious harassment, unless such taking has been authorized by rule of the Washington Fish and Wildlife Commission (RCW 77.15.120; these provisions can be viewed at: *http://apps.leg.wa.gov/rcw/*). If the NRM DPS is delisted, those areas in Washington included in the NRM DPS would remain listed as endangered by Washington State law until the wolf meets the statewide conservation objectives in the Washington Wolf Conservation and Management Plan. The Conservation objectives will establish the targets for downlisting to threatened, downlisting to sensitive status, and then delisting from sensitive status. The areas in Washington not included in the NRM DPS would remain listed as endangered under both State and Federal law until further rulemaking is proposed.

Although we have received reports of individual and wolf family units in the North Cascades of Washington (Almack and Fitkin 1998), agency efforts to confirm them were unsuccessful until summer 2008 when a breeding pair (at least an adult male and female and 6 pups) were confirmed near Twisp, Washington. Genetic analysis indicated that neither adult was related to the NRM wolves and had probably originated in central British Columbia. Intervening unsuitable habitat makes it highly unlikely that many wolves from the NRM population will disperse to the North Cascades of Washington in the future.

Washington State does not currently have a final wolf conservation and management plan for wolves. However, the State established a wolf working group advisory committee and is preparing a draft State gray wolf conservation and management plan (see *http://wdfw.wa.gov/wlm/diversty/soc/gray_wolf/*). That plan should be finalized in late 2009. Interagency Wolf Response Guidelines have been developed by the Service, Washington Department of Fish and Wildlife, and USDA WS to provide a checklist of response actions for five situations that may arise in the future (can be viewed at *http://wdfw.wa.gov/wlm/diversty/soc/gray_wolf/contacts.htm*. Wolf management in Washington may be beneficial to the NRM wolf population, but is not necessary for achieving or maintaining a population of wolves in the NRM DPS.

Oregon—The gray wolf has been classified as endangered under the Oregon Endangered Species Act (ORS 496.171–192) since 1987. The law requires the Oregon Fish and Wildlife Commission to conserve the species in Oregon. Anticipating the reestablishment of wolves in Oregon from the growing Idaho population, the Commission directed the development of a wolf conservation and management plan to meet the requirements of both the Oregon Endangered Species Act and the Oregon Wildlife Policy. ORS 496.012 states in part that ''It is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this State.''

In February 2005, the Oregon Fish and Wildlife Commission adopted the Oregon Wolf Conservation and Management Plan (Oregon 2005). The plan was built to meet the following five delisting criteria identified in State statutes and administrative rules: (1) The species is not now (and is not likely in the foreseeable future to be) in danger of extinction in any significant portion of its range in Oregon or in danger of becoming endangered; (2) the species' natural reproductive potential is not in danger of failure due to limited population numbers, disease, predation, or other natural or human-related factors affecting its continued existence;

(3) most populations are not undergoing imminent or active deterioration of range or primary habitat; (4) overutilization of the species or its habitat for commercial, recreational, scientific, or educational purposes is not occurring or likely to occur; and (5) existing State or Federal programs or regulations are adequate to protect the species and its habitat.

The Plan describes measures the Oregon Department of Fish and Wildlife (ODFW) will take to conserve and manage the species. These measures include actions that could be taken to protect livestock from wolf depredation and address human safety concerns. The following summarizes the primary components of the plan.

Wolves that naturally disperse into Oregon will be conserved and managed under the plan. Wolves will not be captured outside of Oregon and released in the State. Wolves may be considered for Statewide delisting once the population reaches four breeding pairs for 3 consecutive years in eastern Oregon. Four breeding pairs are considered the minimum conservation population objective, also described as Phase 1. The plan calls for managing wolves in western Oregon, as if the species remains listed, until the western Oregon wolf population reaches four breeding pairs. This means, for example, that a landowner would be required to obtain a permit to address depredation problems using injurious harassment.

While the wolf remains listed as a State endangered species, the following will be allowed: (1) Wolves may be harassed (e.g., shouting, firing a shot in the air) to distract a wolf from a livestock operation or area of human activity; (2) harassment that causes injury to a wolf (e.g., rubber bullets or bean bag projectiles) may be employed to prevent depredation, but only with a permit; (3) wolves may be relocated to resolve an immediate localized problem from an area of human activity (e.g., wolf inadvertently caught in a trap) to the nearest wilderness area; (4) relocation will be done by ODFW or USDA–WS personnel; (5) livestock producers who witness a wolf in the act of attacking livestock on public or private land must have a permit before taking any action that would cause harm to the wolf; and (6) wolves involved in chronic depredation may be killed by ODFW or USDA–WS personnel; however, nonlethal methods will be emphasized and employed first in appropriate circumstances.

Once the wolf is State-delisted, more options are available to address wolf-livestock conflict. While there are five to seven breeding pairs (the management population objective for Phase 2), landowners may kill a wolf involved in chronic depredation with a permit. Under Phase 3 (more than seven breeding pairs), a limited controlled hunt could be allowed to decrease chronic depredation or reduce pressure on wild ungulate populations.

The plan provides wildlife managers with adaptive management strategies to address wolf predation problems on wild ungulates if confirmed wolf predation leads to declines in localized herds. In the unlikely event that a person is attacked by a wolf, the plan describes the circumstances under which Oregon's criminal code and the Federal Act would allow harassing, harming or killing of wolves where necessary to avoid imminent, grave injury. Such an incident must be reported to law enforcement officials.

A strong information and education program will ensure anyone with an interest in wolves is able to learn more about the species and stay informed about wildlife management activities. The plan identifies several research projects as being necessary for future success of long-term wolf conservation and management in Oregon. Monitoring and radio-collaring wolves are listed as critical components of the plan both for conservation and communication with Oregonians. An economic analysis provides estimates of costs and benefits associated with wolves in Oregon and wolf conservation and management. Finally, the plan requires annual reporting to the Commission on program implementation.

The Oregon Wolf Management Plan, as approved by the Oregon Fish and Wildlife Commission in February 2005, called for three legislative actions which the 2005 Oregon Legislative Assembly considered, but did not adopt. In 2007, ODFW proposed the bill again in the state Legislature to make three legislative actions, but again they were not adopted. ODFW has no plans to reintroduce any wolf legislation in the 2009 session. These actions were: (1) Changing the legal status of the gray wolf from protected non-game wildlife to a ''special status mammal'' under the ''game mammal'' definition in ORS 496.004; (2) amending the wildlife damage statute (ORS 498.012) to remove the requirement for a permit to lethally take a gray wolf caught in the act of attacking livestock; and (3) creating a State-funded program to pay compensation for wolf-caused losses of livestock and to pay for proactive methods to prevent wolf depredation. As a result, the Fish and Wildlife Commission amended the Oregon Plan in December 2005 and rather than dropping the proposals, moved them from the body of the Plan to an appendix. The Commission remains on record as calling for those legislative enhancements; however, implementation of the Oregon Plan does not depend upon them.

Under the Oregon Wolf Management Plan, the gray wolf will remain classified as endangered under State law until the conservation population objective for eastern Oregon is reached (i.e., four breeding pairs for 3 consecutive years). Once the objective is achieved, the State delisting process will be initiated. Following delisting from the State Endangered Species Act, wolves will retain their classification as nongame wildlife under ORS 496.375.

Compared to Montana, Idaho, and Wyoming, the portion of the DPS containing suitable habitat within Oregon is small. We acknowledge that a few packs may become established within the DPS in Oregon; however, their role in the overall conservation of the NRM DPS is inherently small given the limited number of packs that habitat there is likely to support. That said, we encourage State efforts to conserve wildlife that is locally rare or endangered and we expect Oregon's wolf management approach to be beneficial to the NRM wolf population. We determine wolf management in Oregon is adequate to facilitate the maintenance of, and in no way threatens, the NRM DPS's recovered status.

Utah—If federally delisted, wolves in Utah's portion of the NRM DPS would remain listed as protected wildlife under State law. In Utah, wolves fall under three layers of protection—(1) State code, (2) Administrative Rule and (3) Species Management Plan. The Utah Code can be found at: *http://www.le.State.ut.us/~code/TITLE23/TITLE23.htm*. The relevant administrative rules that restrict wolf take can be found at *http://www.rules.utah.gov/publicat/code/r657/r657-003.htm* and *http://www.rules.utah.gov/publicat/code/r657/r657-011.htm*. These regulations restrict all potential taking of wolves in Utah, including that portion in the NRM DPS.

In 2003, the Utah Legislature passed House Joint Resolution 12, which directed the Utah Division of Wildlife Resources (UDWR) to draft a wolf management plan for the review, modification and adoption by the Utah Wildlife Board, through the Regional Advisory Council process. In April 2003, the Utah Wildlife Board directed UDWR to develop a proposal for a wolf working group to assist the agency in this endeavor. The UDWR created the

Wolf Working Group in the summer of 2003. The Wolf Working Group is composed of 13 members that represent diverse public interests regarding wolves in Utah.

On June 9, 2005, the Utah Wildlife Board passed the Utah Wolf Management Plan (Utah 2005). The goal of the Plan is to manage, study, and conserve wolves moving into Utah while avoiding conflicts with the elk and deer management objectives of the Ute Indian Tribe; minimizing livestock depredation; and protecting wild ungulate populations in Utah from excessive wolf predation. The Utah Plan can be viewed at *http://www.wildlife.utah.gov/wolf/*. Its purpose is to guide management of wolves in Utah during an interim period from Federal delisting until 2015, or until it is determined that wolves have become established in Utah, or the political, social, biological, or legal assumptions of the plan change. During this interim period, immigrating wolves will be studied to determine where they are most likely to settle without conflict.

Compared to Montana, Idaho, and Wyoming, the portion of the DPS containing suitable habitat within Utah is very small. Wolf management in Utah will have no effect on the recovered wolf population. We acknowledge that a few packs might become established within the DPS in Utah; however, their role in the overall conservation of the NRM DPS is inherently small given the limited number of packs that habitat there is likely to support. That said, we encourage State efforts to conserve wildlife that is locally rare or endangered and we expect Utah's wolf management approach to be beneficial to the NRM wolf population. We determine wolf management in Utah is adequate to facilitate the maintenance of, and in no way threatens, the NRM DPS's recovered status.

Tribal Plans—Approximately 20 Tribes are within the NRM DPS. Currently, perhaps only 1 or 2 wolf packs are entirely dependent on Tribal lands for their existence in the NRM DPS. In the NRM DPS about 32,942 km^2 (12,719 mi^2) (3 percent) of the area is Tribal land. In the NRM wolf occupied habitat, about 4,696 km^2 (1,813 mi^2) (2 percent) is Tribal land (Service 2006; 71 FR 6645, February 8, 2006). Therefore, while Tribal lands can contribute some habitat for wolf packs in the NRM, they will be relatively unimportant to maintaining a recovered wolf population in the NRM DPS. Many wolf packs live in areas of public land where Tribes have various treaty rights, such as wildlife harvest. The States agreed to incorporate Tribal harvest into their assessment of the potential surplus of wolves available for public harvest in each State, each year, to ensure that the wolf population is maintained above recovery levels. Utilization of those Tribal treaty rights will not significantly impact the wolf population or reduce it below recovery levels because a small portion of the wolf population could be affected by Tribal harvest or lives in areas subject to Tribal harvest rights.

The overall regulatory framework analyzed in this proposed rule depends entirely on State-led management of wolves that are primarily on lands where resident wildlife is traditionally managed primarily by the State. Any wolves that may establish themselves on Tribal lands will be in addition to those managed by the State outside Tribal reservations. At this point in time, only the Wind River Tribe (Wind River Tribe 2007) has an approved tribal wolf management plan for its lands. In addition, Nez Perce Tribe had a Service wolf management plan approved in 1995, but that plan only applied to listed wolves. It was approved by the Service so the Tribe could take a portion of the responsibility for wolf monitoring and management in Idaho under the special regulation under section 10(j). While the Blackfeet Tribe has a wolf management plan, Blackfeet Tribal lands are not in the experimental population area. Therefore, all wolf management on Blackfeet Tribal lands has been directed by Service guidelines (Service 1999). No other Tribe has submitted a wolf management plan.

In November 2005, the Service requested information from all Tribes in the NRM regarding their Tribal regulations and any other relevant information regarding Tribal management or concerns about wolves (Bangs 2004). All responses were reviewed and addressed, including incorporation into the rule where appropriate.

Compared to Montana, Idaho, and Wyoming, the portion of the DPS containing suitable habitat within Tribal lands is small. We acknowledge that a few packs may become established within the DPS on Tribal lands; however, their role in the overall conservation of the NRM DPS is inherently small given the limited number of packs that habitat there is likely to support. That said, we encourage State efforts to conserve wildlife that is locally rare or endangered and we expect Washington's wolf management approach to be beneficial to the NRM wolf population. We determine wolf management on Tribal lands is adequate to facilitate the maintenance of, and in no way threatens, the NRM DPS's recovered status.

Summary—We have determined that adequate regulatory mechanisms are in place in all portions of the NRM DPS except Wyoming. Montana and Idaho have committed to manage for at least 15 breeding pairs and at least 150 wolves in mid-winter to ensure the population never falls below 10 breeding pairs and 100 wolves in either State. All sources of mortality will be carefully managed. State projections indicate that the NRM wolf population in Montana and Idaho will be managed for around 673 to 1,002 wolves in 52 to 79 breeding pairs. As long as populations are maintained well above minimal recovery levels, wolf biology (namely the species' reproductive capacity) and the availability of large, secure blocks of suitable habitat will maintain strong source populations capable of withstanding all other foreseeable threats.

Wyoming's regulatory framework does not provide the adequate regulatory mechanisms to assure that Wyoming's share of a recovered NRM wolf population would be conserved if the protections of the Act were removed. We determine that revision of Wyoming's wolf management law is necessary (Gould 2009). This revision will then provide the foundation for Wyoming's larger regulatory framework, including the State's wolf management plan and implementing regulations so that it assures conservation of the gray wolf rather than focus on aggressive control. 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.

Compared to Montana, Idaho, and Wyoming, the portion of the DPS containing suitable habitat within Oregon, Washington, Utah, and Tribal lands is small. We acknowledge that a few packs may become established within these portions of the DPS; however, their role in the overall conservation of the NRM DPS is inherently small given the limited number of packs that habitat there is likely to support. That said, we encourage State and Tribal efforts to conserve wildlife that is locally rare or endangered and we expect wolf management in these areas to be beneficial to the NRM wolf population. Any wolf breeding pairs that do become established in these areas would be in addition to those necessary to maintain the wolf population above recovery levels. The adjacent States of Utah, Oregon, and Washington all have in

place laws protecting wolves that would remain in effect after delisting. Utah, Oregon, and the Wind River Tribe have adopted beneficial wolf management plans and Washington is currently finalizing one. We determine wolf management in these areas is adequate to facilitate the maintenance of, and in no way threatens, the NRM DPS's recovered status.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Public Attitudes Toward the Gray Wolf—Human attitudes toward wolves is the main reason the wolf was listed under the Act. These attitudes are largely based on the real and perceived conflicts between human activities and values and wolves, such as depredation on livestock and pets, competition for surplus wild ungulates between hunters and wolves, concerns for human safety, wolves' symbolic representation of wildness and ecosystem health, the economic costs and benefits, killing of wolves by people, and the wolf-related traditions of Native American Tribes or local culture.

Public hostility toward wolves led to the excessive human-caused mortality that extirpated the species from the NRM DPS in the 1930s. Such attitudes toward wolves are deeply ingrained in some individuals and continue to affect human tolerance of wolves. The predatory animal designation in Wyoming underscores this point. Wyoming's 2003 State law and wolf management plan essentially confined wolves to Wyoming's National Parks and wilderness areas. In 2007, Wyoming mandated wolves be classified as predatory animals in at least 88 percent of the State and allowed this area to be expanded if the WGFC ''determines the diminution does not impede the delisting of gray wolves and will facilitate Wyoming's management of wolves.'' Such a management strategy is not required to manage wolf density and distribution and was not used by other States.

Because of the impact that public attitudes can have on wolf recovery, we are requiring adequate regulatory mechanisms to be in place that will balance negative attitudes towards wolves in the places necessary for recovery. As discussed extensively in Factor D, we find that the management plans in Idaho and Montana adequately protect wolves from this threat. However, the regulatory mechanisms in Wyoming are currently insufficient to protect the wolves in that State from some of the outcomes that occur when the public has negative perceptions regarding wolf presence.

Outside of Wyoming, all the other States in the NRM DPS appear to have reached an acceptable compromise balancing the needs of the species and the diverse opinions of their citizens. Montana and Idaho have passed laws and regulations that implement a balanced and socially acceptable program that meets the legal requirements of the Act, promotes 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 (State defense of property and hunting regulations). With the continued help of private conservation organizations, Montana, Idaho, and the Tribes will continue to foster public support to maintain recovered wolf populations in the NRM DPS. Post-delisting management by Montana and Idaho will further enhance local public support for wolf recovery (Bangs 2008). 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.* in press, Bangs 2008). State wildlife organizations have specific departments and staff dedicated to providing accurate and science-based public education, information, and outreach (Idaho 2007, p. 23–24, Appendix A; Montana 2003, p. 90–91). The comprehensive approach to wolf management in Montana and Idaho ensures human attitudes toward wolves should not again threaten each state's contribution to a recovered wolf population. The neighboring States of Washington, Oregon, and Utah, as well as many of the Tribes, have also developed regulatory mechanisms that balance the needs of the species and the diverse opinions of their citizens in order to facilitate the maintenance of, and in no way threaten, the NRM DPS's recovered status.

Genetic Considerations—Currently, genetic diversity throughout the NRM DPS is very high (Forbes and Boyd 1996, p. 1084; Forbes and Boyd 1997, p. 226; vonHoldt *et al.* 2007, p. 19; vonHoldt *et al.* 2008). Contemporary statistics for genetic diversity from 2002–2004 for central Idaho, northwestern Montana, and the GYA, respectively are; n = 85, 104, 210; allelic diversity = 9.5, 9.1, 10.3; observed heterozygosity = 0.723, 0.650, 0.708; expected heterozygosity = 0.767, 0.728, 0.738. (vonHoldt *et al.* 2008). These levels have not diminished since 1995. The high allelic diversity (a measure of the richness of genetic material available for natural selection to act on) and the high heterozygosity (a measure of how gene forms are packaged in an individual, with high heterozygosity tending to lead to higher fitness) demonstrate all subpopulations within the NRM wolf populations have high standing levels of genetic variability. In short, wolves in northwestern Montana and both the reintroduced populations are as genetically diverse as their vast, secure, healthy, contiguous, and connected populations in Canada; thus, inadequate genetic diversity is not a wolf conservation issue in the NRM at this time (Forbes and Boyd 1997, p. 1089; vonHoldt *et al.* 2007, p. 19; vonHoldt *et al.* 2008). This genetic health is the result of deliberate management actions by the Service and its cooperators since 1995 (Bradley *et al.* 2005).

Genetic exchange at one effective migrant (i.e., a breeding migrant that passes on its genes) per generation is enough to ensure that genetic diversity will remain high (Mills 2007, p. 193). Wolves have an unusual ability to rapidly disperse long distances across virtually any habitat and select mates to maximize genetic diversity. Thus, 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, 189–190; Paquet *et al.* 2006, p. 3; Liberg 2008, p. 1). The northwestern Montana and central Idaho core recovery areas are well connected to each other, and to large wolf populations in Canada, through regular dispersals (Boyd *et al.* 1995; Boyd and Pletscher 1999; Jimenez *et al.* 2008d; vonHoldt *et al.* 2007; vonHoldt *et al.* 2008).

While the GYA is the most isolated core recovery area within the NRM DPS (Oakleaf *et al.* 2005, p. 554; vonHoldt *et al.* 2007, p. 19), radio telemetry data demonstrate that the GYA is not isolated as wolves regularly disperse into the area from the other recovery areas. For example, in 2002, a collared wolf from Idaho dispersed into Wyoming and became the breeding male of the Greybull pack near Meeteetse. In 2009, a male disperser from central Idaho (whose father dispersed from YNP to central Idaho) likely bred with a female in the GYA and is establishing a new pack east of YNP. He also associated with the newly formed Evert pack in YNP in 2008 (Smith 2008). Since only about 30 percent of the NRM wolf population has been radio-collared, other unmarked wolves from Idaho or

northwestern Montana have undoubtedly made the journey to the GYA and successfully bred. While vonHoldt *et al.* (2007) found no evidence of gene flow into YNP, an expanded analysis by vonHoldt *et al.* (2008) has demonstrated gene flow by naturally dispersing wolves form other recovery areas into the GYA.

Overall, data from radio-collared wolves indicates that at least one wolf naturally disperses into the GYA each year and at least 4 radio-collared non-GYA wolves have bred and produced offspring in the GYA in the past 12 years (1996–2008). Undoubtedly, other uncollared wolves have also naturally dispersed into and bred in the GYA (Wayne 2009, pers. comm.). Since a wolf generation is approximately 4 years, there has been over one effective migrant per generation in the GYA wolf population. This amount of migration exceeds the widely accepted effective migrant per generation rule. This rule, widely accepted by conservation biology and genetic literature, holds that one breeding immigrant per generation should allow for local evolutionary adaptation while minimizing negative effects of genetic drift and inbreeding depression (Mills 2008).

State and Federal management post-delisting will continue to ensure potential for natural genetic exchange. Wolves will be managed at high levels and human caused mortality will be purposely limited during peak periods of dispersal. Management practices, committed to in State management plans, will increase the potential to naturally incorporate effective migrants include: Reducing the rate of population turnover and fostering persistent wolf packs in all or select core recovery segments or all or select areas of suitable habitat (Oakleaf *et al.* 2005; 72 FR 6106, February 8, 2007); periodically creating localized disruptions of wolf pack structure or modified wolf density in select areas of suitable habitat to create social vacancies or space for dispersing wolves to fill; maintaining higher rather than lower overall wolf numbers in all or select recovery areas; maintaining more contiguous and broader wolf distribution instead of disjunction and limited breeding pair distribution; minimizing mortality between and around core recovery segments during critical wolf dispersal and breeding periods (December through April); and reducing the rates of mortality in core recovery segments during denning and pup rearing periods (April through September).

Montana and Idaho have already incorporated most of these types of management practices into their wolf management frameworks. Furthermore, Montana and Idaho have designed their management practices, especially hunting seasons, to maintain relatively high wolf numbers and distribution throughout suitable habitat and to protect dispersing wolves from harvest during peak dispersal, breeding and pup rearing periods. In addition, problem wolf control is restricted to recent depredation events which are uncommon during peak dispersal periods. These measures should ensure dispersal toward the GYA from northwest Montana and central Idaho continues.

Additionally, connectivity across the NRM will remain a high priority issue for the Service and our partner wildlife agencies. A process to identify, maintain and improve wildlife movement areas between the large blocks of public land in the NRM is ongoing (Servheen *et al.* 2003, p. 3). This interagency effort involves 13 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, p. 1–3). 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 Land Linkage 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) a workshop in the spring of 2006 on implementing management actions for wildlife linkage (the proceedings of which are available online at: *http://www.cfc.umt.edu/linkage*). The objective of this work is to maintain and enhance movement opportunities for all wildlife species across the NRM. Although this linkage work is not directly associated with the wolf population, it should benefit wolves even after delisting.

Successful natural migration into the GYA is also dependant upon Wyoming. Specifically, wolves must not only be able to get to Wyoming but they must be able to traverse large portions of it for extended periods of time, to survive long enough to find a mate in suitable habitat and reproduce. Wyoming's current regulatory framework for delisted wolves minimizes the likelihood of successful migration into the GYA. Under current State law, wolves are classified as predatory animals in at least 88 percent of the State. Wolves are unlikely to survive long in portions of Wyoming where they are regulated as predatory animals. As most wolves tend to disperse in winter, dispersing wolves tend to travel through valleys where snow depths are lowest and wild prey is concentrated. Likely wolf dispersal patterns indicate that dispersing wolves moving into the GYA from Idaho or Montana tend to move through the predatory area (Oakleaf *et al.* 2005, p. 559). Physical barriers (such as high-elevation mountain ranges that are difficult to traverse in winter) appear to discourage dispersal through the National Parks' northern and western boundaries. Limited social openings in the National Parks' wolf packs also direct wolves dispersing from Idaho and Montana around the National Parks and toward the predatory area portions of Wyoming. Furthermore, Wyoming's maintains 22 winter elk feeding grounds that support thousands of wintering elk. These areas attract and could potentially hold dispersing wolves in the predatory area. Many dispersing wolves in Wyoming, and even some established breeding pairs, temporarily leave their primary territory to visit the elk feed grounds in winter. Twelve of the 22 elk feed grounds are currently in Wyoming's predatory animal area. Potential expansion of the predatory animal area, as allowed by Wyoming's current statute, could further limit breeding pair occupancy in Wyoming and would reduce opportunities for successful dispersal and genetic exchange.

We believe Wyoming must institute additional protections to facilitate natural genetic exchange in order to constitute an adequate regulatory mechanism. Specifically, the State's regulatory framework should minimize take in all suitable habitat and across all of Wyoming's potential migration routes among NRM subpopulations. This management is particularly important during peak dispersal, breeding, and pup rearing periods. In addition to requiring that Wyoming manage for at least 15 breeding pairs and at least 150 wolves in mid-winter in their State, Wyoming must also manage for at least 7 breeding pairs and at least 70 wolves in Wyoming outside the National Parks. Such requirements are necessary to preserve connectivity and allow for a buffer to ensure that the population will not drop down below the minimum number of wolves necessary for recovery. This secondary goal will provide dispersing wolves more social openings and protection from excessive human-caused mortality. This strategy will also maintain a sufficiently large number of wolves in the GYA; larger

population size is a proven remedy to genetic inbreeding.

Implementation of the recently completed MOU (Groen *et al.* 2008) makes it even more unlikely that agency-managed genetic exchange would be necessary in the foreseeable future. This MOU recognizes that genetic diversity is currently very high throughout the NRM DPS and commits to establish and maintain a monitoring protocol to ensure that necessary levels of gene flow occur so that the population retains high levels of genetic diversity and its recovered status (Groen *et al.* 2008).

Population levels across the NRM DPS could also impact gene flow. The delisted NRM DPS wolf population is likely to be reduced from its current levels of around 1,639 wolves by State management. However, wolf populations in the three States containing most of the occupied and most of the suitable habitat in the NRM DPS will be managed for at least 15 breeding pairs and at least 150 wolves so that the population never goes below recovery levels. State projections indicate they will manage the population at least two to three times this minimal recovery level and likely over 1,000 wolves.

Natural wolf dispersal between all recovery areas has occurred when the wolf population was far below 1,000 wolves (the first wolf to disperse from northwestern Montana to the GYA occurred in 1992 when there were only 41 wolves and 4 breeding pairs in the NRM, and in 2002 a radio-collared wolf from central Idaho dispersed into the GYA to form the Greybull pack when there were only 663 wolves in 49 breeding pairs). Therefore, we believe state management of a population below 1,000 wolves is unlikely to significantly reduce the overall rate of dispersal in the NRM. If the population is managed for over a thousand wolves, as expected, we believe the impact on dispersal and connectivity will be negligible. If the population is managed to the minimum recovery target of 150 wolves per State, we expect dispersal to noticeably decrease. Nevertheless, dispersal events still occurred even when wolf populations were low, and when mortality averaged 26 percent of the population annually. We expect adequate levels of dispersal will continue given the State's commitment to manage well above minimal recovery goals. Yearling and other young wolves must disperse to find unrelated mates (wolves strongly seek nonrelated wolves as mates). This social event is a basic function of wolf populations and occurs regardless of the numbers, density, or presence of other wolves (Mech and Boitani 2003, p. 11–180).

Wolf biology also provides some assurance that levels of gene flow will be sufficient to avoid the threat of loss of genetic diversity. Natural wolf mate selection shows that future dispersers into a system experiencing some level of inbreeding would be much more likely to be selected for breeding and have their genes incorporated into the inbred population (Bensch *et al.* 2006, p. 72; vonHoldt *et al.* 2007, p. 1). Thus, introduction of just one or two new genetic lines can substantially benefit, although not completely remedy, conservation issues related to low genetic diversity (Vila *et al.* 2003, p. 9; Liberg *et al.* 2004; Liberg 2005, pp. 5–6; Mills 2007, pp. 195–196; Fredrickson *et al.* 2007, p. 2365; Vila 2008).

We recognize additional research on the appropriate level of gene flow relative to the population size is ongoing. Post-delisting, we expect the GYA population will be managed for more than 300 wolves across portions of the GYA in Montana, Idaho, and Wyoming (63,700 km^2 (24,600 mi^2)). Maintenance at such levels, combined with expected levels of gene flow, indicates genetic diversity will not threaten this wolf population. The other recovery areas face even lower threat levels related to future genetic diversity. The recently completed memorandum of understanding ensures this issue will be appropriately managed into the foreseeable future by the NRM DPS's State and Federal partners as new information comes to light (Groen *et al.* 2008).

As with all models, theoretical predictions concerning viability rely upon the quality and accuracy of the data being inputted. In most cases, available theoretical predictions of genetic factors impacting wolf population viability have proven poor predictors of actual status of very small wolf populations (Fritts and Carbyn 1995; Boitani 2003; Fuller *et al.* 2003, 189–190). Review of the scientific literature shows that, throughout the world, truly isolated wolf populations that are far smaller and far less genetically diverse than the GYA population have persisted for many decades and even centuries (Fritts and Carbyn 1995, p. 33; Boitani 2003, pp. 322–23, 330–335; Fuller *et al.* 2003, p. 189–190; Liberg 2005, pp. 5–6; 73 FR 10514, February 27, 2008). Even the Mexican wolf with its extremely limited genetic diversity (only 7 founders) is not threatened by reduced genetic diversity where the addition of a single new genetic line reversed inbreeding depression (Fredrickson *et al.* 2007). A wolf population on Isle Royale National Park that started from 2 or 3 founders in 1949 and remained very small (<50 wolves, long term effective population size 3.8) has persisted until the present time (Boitani 2003, p. 330). While this population's key demographic properties (Fuller *et al.* 2003) are comparable to outbred populations of wolves, being founded from such a small number of individuals and maintenance at such extremely low levels for such a long time has resulted in a congenital malformation in the vertebrae column and might eventually effect its population dynamics (Raikkonen *et al.* in review). This extreme case will not occur anywhere in the NRM DPS.

A more relevant example is the Kenai Peninsula wolf population. This area is somewhat developed and connected to the mainland by 16 km (10 mi) of glacier and rugged mountains. Wolves were extirpated there by 1919. A few wolves naturally recolonized it in the 1960's and bred in the mid- 1960's. The wolf population grew rapidly and within 10 years it occupied all suitable wolf habitat (roughly 15,500 km^2 (6,000 mi^2)). It has remained relatively stable for the past 35 years despite being isolated, small (<200 wolves), liberally hunted and trapped, and exposed to typical wolf diseases and parasites. The population is not threatened (Peterson *et al.* 1994, p. 1) and remains genetically fit (Talbot and Scribner 1997, p. 20–21). Because the NRM wolf population will be managed well above this level, we are confident that the theoretical predictions of inbreeding are highly unlikely to occur. We find that actual data concerning genetic diversity in wolves and wolf population persistence is a better predictor of future outcomes than theoretical models.

In all but the most extreme cases, small wolf populations are unlikely to be threatened solely by the loss of genetic diversity (Boitani 2003, p. 330). In fact, none of the highly inbred recovering populations from around the world have ever gone extinct or failed to recover because of low genetic diversity (Fuller *et al.* 2003, p. 189–190). It is our current professional judgment that even in the highly unlikely event that no new genes enter YNP or the GYA in the next 100 years, that wolf population's currently high genetic diversity would be slightly reduced, but not to the point the GYA wolf population would be threatened. Even the totally isolate, highly inbred, and very small (never more than 50 wolves) Isle Royale wolf population has persisted for over 60 years and has still maintained similar demographics

compared to other non-inbred wolf populations. The NRM wolf population does not currently have and will not have such severe issues. Furthermore, from a purely biological perspective, the NRM DPS is a 400-mile southwestern extension of a North American wolf population consisting of many tens of thousands of individuals, and its recovery is not even remotely comparable to other situations where concerns about genetic diversity have been raised.

VonHoldt *et al.* (2007) concluded ''if the YNP wolf population remains relatively constant at 170 individuals (estimated to be YNP carrying capacity), the population will demonstrate substantial inbreeding effects within 60 years,'' resulting in an ''increase in juvenile mortality from an average of 23 to 40%, an effect equivalent to losing an additional pup in each litter.'' The vonHoldt *et al.* (2007) prediction of eventual inbreeding in YNP relies upon several unrealistic assumptions. One such assumption limited the wolf population analysis to YNP's (8,987 km^2 (3,472 mi^2)) carrying capacity of 170 wolves, instead of the 449 that currently occupy the GYA and the more than 300 wolves to be managed for in the entire GYA (63,700 km^2 (24,600 mi^2)) by Montana, Idaho, and Wyoming. YNP is only 14 percent of the area in the GYA and only contains about a third of the wolves in the GYA wolf population. Wolf pack territories in YNP are contiguous with those outside YNP in the GYA. The vonHoldt *et al.* (2007) predictive model also capped the population at the YNP population's winter low point, rather than at higher springtime levels when pups are born. Springtime levels are sometimes double the winter low.

As explained in the recovery section above, wolf recovery in the NRM never depended solely on natural dispersal. Should genetic issues ever materialize, an outcome we believe is extremely unlikely, the MOU provides a failsafe in that it ensures States will implement techniques to facilitate agency-managed genetic exchange (moving individual wolves or their genes into the affected population segment) (Groen *et al.* 2008). Human intervention in maintaining recovered populations is necessary for many conservation-reliant species and a well-accepted practice in dealing with population concerns (Scott *et al.* 2005). The 1994 wolf reintroduction EIS indicated that intensive genetic management might become necessary if any of the sub-populations developed genetic demographic problems (Service 1994, p. 6–74). The 1994 EIS stated that other wildlife management programs rely upon such agency-managed genetic exchange and that the approach should not be viewed negatively (Service 1994, p. 6–75). Human-assisted genetic exchange is a proven technique that has created effective migrants in the NRM DPS. An example of successful managed genetic exchange in the NRM population was the release of 10 wolf pups and yearlings translocated from northwestern Montana to YNP in the spring of 1997. Two of those wolves become breeders and their genetic signature is common throughout YNP and the GYA (vonHoldt 2008). Wolves could easily be moved again in the highly unlikely event that inbreeding or other problems ever threaten any segment of the NRM wolf population. Other future agency-managed genetic exchange could include other means of introducing novel wolves or their genes into a recovery area if it were ever to be needed. At this time, such approaches remain unnecessary and are highly likely to remain unneeded in the future.

Given the NRM populations' current high genetic diversity, proven connectivity, the strong tendency of wolves to outbreed (choose mates not related to themselves), large area and distribution of core refugia, the vast amounts of suitable habitat, and future management options, including agency-managed genetic exchange, the NRM wolf population will not be threatened by lower genetic diversity in the foreseeable future.

Climate Change—While there is much debate about the rates at which carbon dioxide levels, atmospheric temperatures, and ocean temperatures will rise, the Intergovernmental Panel on Climate Change (IPCC), a group of leading climate scientists commissioned by the United Nations, concluded there is a general consensus among the world's best scientists that climate change is occurring (IPCC 2001, pp. 2–3; IPCC 2007, p. 4). The twentieth 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, warmer 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 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 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 may eventually experience milder, wetter winters and warmer, drier summers (Bartlein *et al.* 1997, p. 786). Additionally, the pattern of snowmelt runoff also may 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, climate change should not threaten the NRM wolf population. Wolves are habitat generalists and next to humans 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 DPS is roughly in the middle of historic wolf distribution in North America. Because historic 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 slightly 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.

Changing climate conditions have the potential to impact wolf prey. There is new evidence that declining moose populations in the southern GYA are likely a result of global warming (Service 2008), a conclusion that has been reached in other parts of the southern range of moose in North America. However, the extent and rate to which most ungulate populations will be impacted 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 dying over winter, thus maintaining a higher overall 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—The habitat model/PVA 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 the NRM DPS within the foreseeable future (for example we did not consider tidal waves) to the extent possible. None of these factors are thought to pose a significant risk to wolf recovery in the foreseeable future. With regard to wildfires, which humans often view as catastrophic events, large mobile species such as wolves and their ungulate prey usually are not adversely impacted. Wildfires in the NRM often lead to an increase in ungulate food supplies and an increase in ungulate numbers, which in turn supports increased wolf numbers. Wolves are an exceptionally resilient species.

Impacts to Wolf Pack Social Structure—When human-caused mortality rates are low, packs contain older individuals. Such ''natural'' pack structures are limited to National Parks and large, remote wilderness areas. These ''natural'' social structures will continue unaltered in those areas after wolves are delisted.

However, wolves in much of the NRM DPS constantly interact with livestock and people. These areas experience higher rates of mortality which alters pack structure. We have removed 988 problem wolves in the NRM since 1987 and have monitored the effect of removing breeders or other pack members on wolf packs structure and subsequent breeding. Those effects were minor and would certainly not affect wolf population recovery in the NRM (Brainerd *et al.* 2007). Although defense of property laws in Montana and Idaho are similar to current nonessential experimental regulations, such mortality may increase slightly after delisting in those States. In addition, regulated hunting will be allowed by the States which will increase wolf mortality rates.

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.* 2007). Higher rates of human-caused mortality also may simply compensate for some forms of natural mortality (Fuller *et al.* 2003, p. 185–186). Thus, the potential effects caused by natural wolf pack dynamics in much of the NRM DPS will be moderated by varying degrees by conflicts with humans and rates of human-caused mortality (Campbell *et al.* 2006, p. 363; Garrott *et al.* 2005; p. 7–9). Higher rates of human-caused mortality outside protected areas will result in different wolf pack size and structure than that in protected areas, but wolves 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 threatening the population (Boitani 2003). Therefore, while human caused mortality may alter pack structure, we have no evidence that indicates this in anyway threatens the NRM DPS.

Summary of Factor E—No other manmade and natural factors threaten wolf population recovery now or in the foreseeable future throughout the majority of the NRM DPS. Public attitudes toward wolves have improved greatly over the past 30 years. We expect that, given adequate continued management of conflicts, those attitudes will continue to support wolf restoration. As stated previously, the regulatory mechanisms in Wyoming are currently insufficient to protect the wolves in that State from some of the outcomes that occur when the public has negative perceptions regarding wolf presence. We find this threat to be closely tied with all mortality management as we discussed extensively in Factor D.

The State wildlife agencies have professional education, information, and outreach components and will continue to present balanced science-based information to the public that will continue to foster general public support for wolf restoration and the necessity of conflict resolution to maintain public tolerance of wolves.

We also have determined that wolf genetic viability, interbreeding coefficients, genetic drift, or changes in wolf pack social structure are unlikely to threaten the wolf population in the NRM DPS in the foreseeable future. But in the highly unlikely event that the GYA population segment was threatened by a loss of genetic diversity, that threat could be easily resolved by reintroduction or other deliberate management actions, as promised by Montana and Idaho, if it ever became necessary.

Conclusion of the 5-Factor Analysis

Is the Species Threatened or Endangered throughout ''All'' of its Range—As required by the Act, we considered the five potential threat factors to assess whether the gray wolf in the NRM DPS is threatened or endangered throughout all or a significant portion of its range. When considering the listing status of the species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then the species is listed in its entirety.

Human-caused mortality is the most significant issue to the long-term conservation status of the NRM DPS. Therefore, managing this source of mortality (i.e., overutilization of wolves for commercial, recreational, scientific and educational purposes and human predation) remains the primary challenge to maintaining a recovered wolf population into the foreseeable future. We have concluded that Montana and Idaho will maintain their share and distribution of the NRM wolf population above recovery levels for the foreseeable future. Both States have wolf management laws, plans, and regulations that adequately regulate human-caused mortality. Both States have committed to manage for at least 15 breeding pairs and at least 150 wolves in mid-winter to ensure the population never falls below 10 breeding pairs and 100 wolves in either State. State projections indicate that the NRM wolf population in Montana and Idaho will likely be managed for around 673 to 1,002 wolves in 52 to 79 breeding pairs.

As described in more detail in Factor D and below, Wyoming's regulatory framework does not provide the adequate regulatory mechanisms to assure that Wyoming's share of a recovered NRM wolf population would be conserved if the protections of the Act were removed. In order to constitute adequate regulatory mechanisms, Wyoming's regulatory framework needs to: Designate and manage wolves as a trophy game species statewide; manage for at least 15 breeding pairs and at least 150 wolves in mid-winter in their State and at least 7 breeding pairs and at least 70 wolves in mid-winter outside the National Parks; authorize defense of property take in a manner that is similar to the current regulatory scheme; consider all sources of mortality, including all hunting and defense of property mortality, in its total statewide allowable mortality levels; and manage the population to maintain high levels of genetic diversity and to continue ongoing genetic exchange. 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.

Regulatory mechanisms in all surrounding States are adequate to facilitate the maintenance of, and in no way threaten, the NRM DPS's recovered status. All wolves in these surrounding areas will be regulated by the States as at least a game species (some provide greater protections). Violation of State

regulations will be subject to prosecution.

As long as populations are maintained well above minimal recovery levels, wolf biology (namely the species' reproductive capacity) and the availability of large, secure blocks of suitable habitat will maintain strong 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 practice shows these areas will maintain their suitability well into the foreseeable future, if not indefinitely. Connectivity among the central-Idaho and northwest Montana recovery areas and with wolves in Canada will provide further long-term stability to the NRM DPS. Populations in all of the NRM DPS, except Wyoming, will also be managed for continued genetic exchange with the GYA (Groen *et al.* 2008). If genetic problems ever materialize in any portion of the NRM DPS, which we believe is highly unlikely in the foreseeable future, they will be resolved by agency-managed genetic exchange. While disease and parasites can temporarily impact population stability, 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. Finally, we believe that other natural or manmade factors are unlikely to threaten the wolf population within the foreseeable future in all portions of the range with adequate regulatory mechanisms.

A lack of substantial threats to the NRM gray wolf population, except in Wyoming, indicates that this DPS is neither in danger of extinction, nor likely to become endangered within the foreseeable future in any of its range, except in Wyoming. Thus, the NRM DPS does not merit continued listing as threatened or endangered throughout ''all'' of its range. Retention of the Act's protections in any significant portions of the range that where the gray wolf is threatened or endangered ensures all significant portions of the range maintain adequate protection.

Is the Species Threatened or Endangered in a Significant Portion of its Range—Having determined that the NRM DPS of gray wolf does not meet the definition of threatened or endangered in ''all'' of its range, we must next consider whether there are any significant portions of its range that are in danger of extinction or are likely to become endangered in the foreseeable future. On March 16, 2007, a formal opinion was 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''' (U.S. DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are 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 range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range (Shaffer and Stein 2000). Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species overall. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to

its location on the margin of the species' habitat requirements.

To determine if a portion of the species' range contributes substantially to the resiliency of the species, the Service considered in this instance: (1) To what extent does this portion of the range contribute to the total of large blocks of high-quality habitat; (2) To what extent do the population size and characteristics within this portion of the range contribute to the ability of the species to recover from periodic disturbances; (3) To what extent does this portion of the range act as a refugium of the species; and (4) To what extent does this portion contain an important concentration of habitats necessary for certain life history functions?

To determine if a portion of the species' range contributes substantially to the redundancy of the species, the Service considered in this instance: (5) To what extent does this portion of the range contribute to the total [gross area] range of the species; (6) To what extent does this portion of the range contribute to the total population of the species; (7) To what extent does this portion of the range contribute to the total suitable habitat; and (8) To what extent does this portion of the range contribute to the geographical distribution of the species?

To determine if a portion of the species' range contributes substantially to the representation of the species, the Service considered in this instance: (9) To what extent does this portion of the range contribute to the genetic diversity of the species; (10) To what extent does this portion of the range contribute to the morphological/physiological diversity of the species; (11) To what extent does this portion of the range contribute to the behavioral diversity of the species; and (12) To what extent does this portion of the range contribute to the diversity of ecological settings in which the species is found?

These questions provide for a relative ranking of the level of the portion's contribution to the listable entity's (species, subspecies or DPSs) representation, resiliency, or redundancy. The above questions are tools to identify those factors that are important in considering a portion's contribution to resiliency, redundancy, and representation, and whether it is significant. The Service then reviews the results and the justifications to decide whether the portion contributes substantially to the representation, redundancy and resiliency of the listable entity (species, subspecies or DPS). In general, if the contribution to the representation, resiliency, or redundancy of all or nearly all the questions is low, the portion likely does not contribute substantially to representation, resiliency, or redundancy; if the contribution to the representation, resiliency, or redundancy of most or multiple questions are high, the portion likely contributes substantially to representation, resiliency, or redundancy.

To determine whether the NRM DPS is threatened in any significant portion of its range, we first considered how the concepts of resiliency, representation, and redundancy apply to the conservation of this particular DPS. A number of available documents provide insight into this discussion including: The originally listed entity (39 FR 1171, January 4, 1974; 50 CFR 17.11 in 1975, 1976, 1977), the recovery plans (Service 1980; Service 1987), the 1994 reintroduction EIS (Service 1994), our designation of non-essential, experimental population areas (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 50 CFR 17.84 (i) & (n)), our 2001/2002 review of the recovery goals (Bangs 2002), Interagency Annual Reports (Service *et al.* 1989–2008), and numerous professional publications (see Service *et al.* 2007, pp. 213–230; Soule *et al.* 2003, p. 1238; Scott *et al.* 2005, p. 383; Vucetich *et al.* 2006, p. 1383; Carroll *et al.* 2006, pp. 369–371; Waples *et al.* 2007, p. 964).

Based on our 5-factor threats analysis above, we readily identified two areas within the NRM DPS as warranting further consideration to determine if they are significant portions of the range that may be threatened or endangered. These areas include: (1) All portions of Wyoming; and (2) unoccupied portions of Montana and Idaho as well as the portions of Utah, Washington and Oregon within the NRM DPS. For each of these areas we evaluate whether they are significant per the above definition and, if significant, we weigh whether they are threatened or endangered. If any of these areas constitute a significant portion of the range that is threatened or endangered, we then determine the appropriate boundaries where the protections of the Act should remain in place.

Wyoming—We have long considered Wyoming to be critical to the establishment and maintenance of NRM wolf population (39 FR 1171, January 4, 1974; 50 CFR 17.11 in 1975, 1976, 1977; Service 1980; Service 1987; Service *et al.* 1989–2008; Service 1994; 59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 50 CFR 17.84 (i) & (n); Bangs 2002; Williams 2004; 71 FR 43410, August 1, 2006; Hall 2007). The following analysis considers all of Wyoming with a focus on northwest Wyoming which contains the vast majority of the State's suitable wolf habitat. While our proposed rule indicated we would consider excluding National Parks from the Wyoming significant portion of the range (72 FR 6106, February 8, 2007), we no longer believe this is warranted as it would excessively subdivide the Yellowstone recovery area into units so small as to meaningfully reduce their contribution to the representation, resiliency, or redundancy of the NRM DPS.

Northwest Wyoming meaningfully affects resiliency in that it contains a high percentage of the NRM DPS' large blocks of high quality habitat thereby contributing to the NRM DPS' long-term viability. Similarly, northwest Wyoming contains a population that is essential to the conservation of the NRM population. We view this portion of the NRM population as sufficiently robust to make a high contribution to the ability of the NRM DPS to recovery from periodic disturbance. Northwest Wyoming's National Parks also serve as a refugium protected from certain population events (such as human caused mortality). Northwest Wyoming also contains suitable habitat areas which provide all of the species' life history functions. Collectively, this information indicates that northwest Wyoming would allow the NRM DPS to recover from periodic disturbance and, thus, meaningfully contributes to the resiliency of the NRM DPS.

In terms of redundancy, we considered several factors. First, Wyoming includes approximately 25 percent of the total gross area of the NRM DPS. Second, northwest Wyoming includes approximately 25 percent of the NRM DPS' current population and a third of the minimum population recovery goal. Northwest Wyoming also includes approximately 17 percent of the NRM DPS' total suitable habitat. Finally, northwest Wyoming contains the majority and the core of the Yellowstone recovery area, one of three subpopulations in the NRM DPS. Collectively, this information indicates that northwest Wyoming provides a margin of safety for the species to withstand catastrophic events and, thus, meaningfully contributes to the redundancy of the NRM DPS.

In terms of representation, suitable habitat within northwest Wyoming's National Parks and some surrounding areas contain ecological settings that differ from the ecological setting of most of the rest of NRM DPS. This ecological setting results in some unique or unusual behavior. For example, the

presence of bison in these areas result in the unique, learned, group hunting behavior not required for other prey types. Other studies found that similar local adaptations to specific prey type resulted in genetic differences (Leonard *et al.* 2005). Collectively, this information indicates that northwest Wyoming's National Parks and some surrounding areas could play a role in conserving the species' adaptive capabilities and, thus, contributes to the representation of the NRM DPS.

We have determined that northwest Wyoming meaningfully contributes to NRM DPS' resiliency, redundancy, and representation at a level such that its loss would result in a decrease in the ability to conserve the NRM DPS. Thus, this portion of the range constitutes a significant portion of the NRM DPS' range as described in the Act.

If we identify any portion as significant, we then determine whether in fact the species is threatened or endangered in this significant portion of its range. Within this portion of the range, managing human-caused mortality remains the primary challenge to maintaining a recovered wolf population in the foreseeable future. If Wyoming's wolf population is managed above recovery levels, the species' biology (specifically its reproductive capacity) and the availability of a large, secure block of suitable habitat will maintain a strong source population capable of withstanding all other foreseeable threats. Unfortunately, Wyoming's current regulatory framework does not provide the adequate regulatory mechanisms to assure that Wyoming's share of a recovered NRM wolf population would be conserved if the protections of the Act were removed.

In 2004, we determined that problems with the 2003 Wyoming legislation and plan, and inconsistencies between the law and management plan did not allow us to approve Wyoming's approach to wolf management (Williams 2004). On August 1, 2006, we published a 12-month finding describing the reasons why the 2003 Wyoming State law and wolf management plan did not provide the necessary regulatory mechanisms to assure maintenance of Wyoming's numerical and distributional share of a recovered NRM wolf population (71 FR 43410). In 2007, the Wyoming legislature amended State law to address our concerns. Following the change in State law, the WGFC approved a revised wolf management plan (Cleveland 2007). This plan was then approved by the Service as providing adequate regulatory protections to conserve Wyoming's portion of a recovered NRM DPS into the foreseeable future (Hall 2007). Following the July 18, 2008, U.S. District Court for the District of Montana's preliminary injunction order, we reconsidered this approval.

In its preliminary injunction order, the U.S. District Court stated that we acted arbitrarily in delisting a wolf population that lacked evidence of genetic exchange between subpopulations. We believe Wyoming's current regulatory framework for delisted wolves would further reduce the likelihood of natural genetic connectivity as wolves are unlikely to successfully traverse the 88 percent of Wyoming where wolves are considered predatory animals.

The court also stated that we acted arbitrarily and capriciously when we approved Wyoming's 2007 statute which allows the WGFC to diminish the trophy game area (which State law restricts to no more than 12 percent of Wyoming) if it ''determines the diminution does not impede the delisting of gray wolves and will facilitate Wyoming's management of wolves.'' Because wolves are unlikely to survive where they are classified as predatory animals, potential expansion of the predatory animal area would further limit occupancy in Wyoming and opportunities for natural connectivity.

Furthermore, the court stated that we acted arbitrarily and capriciously when we approved Wyoming's 2007 statute and wolf management plan because it determined that the State failed to commit to managing for at least 15 breeding pairs. Specifically, the court stated that Wyoming State law intends to rely on the National Park Services' ability to maintain 8 breeding pairs of wolves to satisfy Wyoming's obligation to preserve at least 15 breeding pairs as its share of the required wolf population. We have long maintained that Wyoming, Montana, and Idaho must each manage for at least 15 breeding pairs and at least 150 wolves in mid-winter to ensure the population never falls below the minimum recovery goal of 10 breeding pairs and 100 wolves per State.

Finally, the court raised concerns with Wyoming's depredation control law that it viewed as significantly more expansive than existing nonessential, experimental regulations (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 outlined in detail in Factor D above, we have determined Wyoming's existing regulatory framework does not provide the necessary regulatory mechanisms to assure that Wyoming's share of a recovered NRM wolf population would be conserved if the protections of the Act were removed. Revision of Wyoming's wolf management law, plan, and regulation are necessary to ensure the long-term conservation of Wyoming's share of a recovered NRM wolf population (Gould 2009). These revisions need to provide the foundation for necessary changes to the Wyoming gray wolf management plan and associated regulations. Until Wyoming revises their statutes, management plan, and associated regulations, and obtains Service approval, wolves in Wyoming shall remain protected by Act.

We may consider many factors in determining the boundaries of the significant portion of its range where the DPS remains listed including whether there is a biological basis for boundaries (e.g., population groupings, genetic differences, or differences in ecological setting) or if differences in threat management result in biological differences in status (e.g., International or State boundaries where the threats might be different on either side of the boundary). Significant portion of range boundaries may consist of geographical features, constructed features (e.g., roads), or administrative boundaries.

The boundaries used to legally define the extent of a significant portion of range are identified following these general principles: (1) Boundaries enclose and define the area where threats are sufficient to result in a determination that a portion of a DPS' range is significant, and is endangered or threatened; (2) Boundaries clearly define the portion of the range that is specified as threatened or endangered, and may consist of geographical or administrative features or a combination of both; and (3) Boundaries do not circumscribe the current distribution of the species so tightly that opportunities for recovery are foreclosed.

The scale of the boundaries is determined case-by-case to be appropriate to the size of the portion of the listed entities' range, and the availability of unambiguous geographic or administrative boundaries. The scale at which one defines the range of a particular species is fact and context dependant. In other words, whether one defines the range at a relatively course or fine scale depends on the life history of the species at issue, the data available, and the purpose for which one is considering range.

Our proposed rule (72 FR 6106, February 8, 2007) indicated that we found the only ''significant'' portion of

Wyoming was the 12 percent of the State in northwestern Wyoming managed as a trophy game area (W.S. 11–6–302 *et seq.* and 23–1–101, *et seq.* in House Bill 0213). In its July 18, 2008, preliminary injunction order, the U.S. District Court for the District of Montana referred to this area ''small'' and questioned why we had reversed our position that Wyoming should designate wolves as trophy game statewide. Furthermore, the court expressed concern over the lack of genetic connectivity between wolves in Wyoming and wolves in the rest of the NRM DPS.

Our position on both Wyoming's 2003 and 2007 regulatory framework was based on the ability of the regulatory mechanisms to maintain the State's share of a recovered wolf population. In 2004, we recommended changes to Wyoming's 2003 State law and wolf management plan because the trophy game area (limited to northwest Wyoming's National Parks and wilderness areas) was not sufficient to assure the Service that the wolf population would remain above recovery levels. In our 2004 letter, we recommended statewide trophy game status. In 2007, Wyoming substantially expanded their trophy game area. While far short of our stated desire for a statewide trophy game area, we concluded the expanded area, which included 70 percent of the State's suitable wolf habitat, was large enough to support Wyoming's share of the minimum number of breeding pairs necessary for recovered wolf population.

Following the release of the July 18, 2008, Montana District Court preliminary injunction order, we reevaluated the adequacy of Wyoming's regulatory framework including the size of the trophy game area. We now believe all of Wyoming should be managed as a trophy game area. The record demonstrates that wolves are unlikely to survive where they are classified as predatory animals. Thus, the current regulatory framework is problematic for the reasons outlined below.

First, the current regulatory framework limits natural genetic connectivity. The GYA is the most isolated core recovery area within the NRM DPS (Oakleaf *et al.* 2005, p. 554; vonHoldt *et al.* 2007, p. 19). Wolf dispersal patterns indicate that dispersing wolves moving into the GYA from Idaho or Montana are likely to move through the predatory area (Boyd *et al.* 1995). Physical barriers (such as high-elevation mountain ranges that are difficult to traverse in winter) appear to discourage dispersal through the National Parks' northern and western boundaries. Limited social openings in the National Parks' wolf packs also direct dispersing wolves from Idaho and Montana toward the predatory area portions of Wyoming. Finally, Wyoming's winter elk feeding grounds attract and could potentially hold dispersing wolves in the predatory area. Thus, we believe dispersal is more likely to lead to genetic exchange if dispersers have safe passage through the predatory area. While natural connectivity is not and has never been required to achieve our recovery goal, we believe it should be encouraged so as to minimize the need for agency-managed genetic exchange. Because exact migratory corridors are not known, WGFD should be given regulatory authority over the entire State to adaptively manage this issue as new information comes to light over time.

A statewide trophy game area is also advisable given the dispersal capabilities of wolves. Wolves have large home ranges (518 to 1,295 km^2 (200 to 500 mi^2)) with average long-distance dispersal events of 97 km (60 mi) (Boyd and Pletscher 1997, p. 1094; Boyd *et al.* 2007; Thiessen 2007, p. 33), unusually long-distance dispersal events of 290 km (180 mi) (Jimenez *et al.* 2008d, Figures 2 and 3), and dispersal potential of over 1,092 km (680 mi). Some of these wolves may disperse and return to the core of suitable habitat. A statewide trophy game status will allow for routine and unusual dispersal events without near certain mortality (although pack establishment in areas of unsuitable habitat is extremely unlikely).

Furthermore, statewide trophy game status will allow more flexibility to devise a management strategy, including regulated harvest that provides for self-sustaining populations above recovery goals. For example, having management authority over the entire State could allow for strategic use of all suitable habitat if necessary during years of disease outbreak. Such an approach could also allow managers to strategically shift wolf distribution and densities in response to localized impacts to native ungulate herds and livestock.

Additionally, we believe statewide trophy game status prevents a patchwork of different management statuses; will be easier for the public to understand and, thus, will be easier to regulate; is similar to State management of other resources like mountain lions and blackbears; and is consistent with the current regulatory scheme in that the entire State is currently nonessential, experimental. Finally, maintenance of the Act's protections Statewide will assist Service Law Enforcement efforts that might otherwise be difficult if predatory animal status was allowed in portions of Wyoming.

We believe the entire State of Wyoming should be managed as a trophy game area. Continuation of the current regulatory framework in Wyoming would meaningfully affect the DPS's resiliency, redundancy, and representation, and decrease the ability to conserve the species. For the purposes of this rule, the entire State shall be considered a significant portion of the range with the understanding that different portions of the range contribute different biological benefits. This boundary: Encompasses the area where threats are sufficient to result in a determination that a portion of a DPS' range is significant, and is endangered or threatened; clearly defines the portion of the range that is specified as threatened or endangered; and does not circumscribe the current distribution of the species so tightly that opportunities to maintain recovery are foreclosed. Retaining the Act's protections Statewide also is inclusive of the area where a lack of threat management results in biological differences in status (i.e., it covers the State's entire predatory animal area). By identifying the entire State as a significant portion of the range we are not suggesting wolves could or should reoccupy or establish packs in unsuitable habitat.

Unoccupied portions of Montana and Idaho as well as the portions of Utah, Washington and Oregon within the NRM DPS—Finally, we decided to analyze the remaining portions of the NRM DPS in our significant portion of range analysis out of an abundance of caution and based on the controversy concerning the status of the wolf in this area. Specifically, we considered: The portion of Montana east of I–15 and north of I–90; the portion of Idaho south of I–84; and the portions of Oregon, Washington, and Utah within the NRM DPS. These boundaries are based largely upon our understanding of suitable habitat and the location of easily identifiable and understandable manmade markers and boundaries. The following provides our analysis of whether these portions of the range are significant.

This portion of the range does not meaningfully contribute to the resiliency, redundancy, and representation of the NRM DPS. In terms of resiliency, the area: Does not contain any large blocks of high-quality habitat; does not contain, nor is it capable of containing, a population

substantial enough to contribute to the ability of the NRM DPS to recover from periodic disturbance; does not act, nor is it capable of acting, as a refugium for the NRM DPS; and does not contain an important concentration of habitats necessary to carry out life-history functions (a possible exception is the ability to traverse these areas which may play a role in the conservation of the species). In terms of redundancy, the area: Makes a moderate contribution to the total range of the NRM DPS; does not contribute, nor is it capable of contributing, meaningfully to the total population of the NRM DPS; contains only about 8 percent of theoretical suitable wolf habitat (as described by Oakleaf *et al.* 2005, p. 561); and is not capable of contributing largely to the geographic representation of the species. In terms of representation, the area: Is unlikely to have wolves that are genetically, morphologically or physiologically unique; is unlikely to have wolves that exhibit behavior indicative of local adaptations that contributes to the overall diversity of the NRM DPS; and does not represent a unique ecological setting. With only a minor contribution the resiliency, redundancy, and representation of the NRM DPS, we determine these areas are not a significant portion of range in the NRM DPS.

Most of these areas have been so modified by humans that they are no longer able to support viable wolf populations or persistent breeding pairs. To the extant that any of these areas contain suitable habitat, they are small, fragmented areas where wolf packs are unlikely to persist. Only a few wolves have established themselves in these areas. Most of these have eventually become problem wolves requiring control. This lack of suitability is why wolf recovery was never envisioned for these areas (Service 1987; Service 1994).

To the extant that the ability to traverse these areas may play a role in the conservation of the species, all wolves in these areas will be regulated by the States as a game species. Violation of game rules will be subject to prosecution. We believe this is an appropriate level of protection for these largely unsuitable habitats and the same level of protection recommended for southern and eastern Wyoming.

We have determined that these areas are insignificant to maintaining the NRM wolf population's viability as they make only minor contributions to the species' representation, resiliency, or redundancy. These contributions are not at a level that meaningfully impacts the ability to conserve the species. To the extant that the ability to traverse these areas may play a role in the conservation of the species, they will be appropriately regulated.

In conclusion, based on the best scientific and commercial data available, we recognize a DPS of the gray wolf (*C. lupus*) in the NRM. The NRM gray wolf DPS encompasses the eastern one-third of Washington and Oregon, a small part of north-central Utah, and all of Montana, Idaho, and Wyoming. Recent estimates indicate the NRM DPS contains approximately 5 times more wolves than the minimum population recovery goal requires and about 3 times more wolves than the breeding pair recovery goal requires. The end of 2008 will mark the ninth consecutive year the population has exceeded our numeric and distributional recovery goals. The States of Montana and Idaho have adopted State laws, management plans, and regulations that meet the requirements of the Act and will conserve a recovered wolf population into the foreseeable future. However, wolf populations in Wyoming continue to face high magnitude of threats that would materialize imminently in the absence of the Act's protections because of a lack of effective regulatory mechanisms in the State. We determine that the best scientific and commercial data available demonstrates that (1) the NRM DPS is 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 represents a significant portion of range where the species remains in danger of extinction because of inadequate regulatory mechanisms. Thus, this final rule removes the Act's protections throughout the NRM DPS except for Wyoming. Wolves in Wyoming will continue to be regulated as a non-essential, experimental population per 50 CFR 17.84 (i) and (n).

Effects of the Rule

Promulgation of this final rule will affect the protections afforded to the NRM gray wolf population under the Act, except for the significant portion of the range (SPR) in Wyoming. Taking, interstate commerce, import, and export of these wolves are no longer prohibited under the Act, except for the SPR in Wyoming. Other State and Federal laws will still regulate take. In addition, with the removal of the Act's protection in most of the NRM DPS, Federal agencies are no longer required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the species' continued existence, except for the SPR in Wyoming. No critical habitat has been designated for the NRM DPS: Thus, 50 CFR 17.95 is not modified by this regulation. Removing the Act's protections in most of the NRM DPS is expected to have positive effects in terms of management flexibility to the State, Tribal, and local governments.

Because the SPR in Wyoming shall remain protected under the Act, this regulation leaves in place the nonessential experimental regulations in Wyoming designed to reduce the regulatory burden. Until Wyoming revises their statute, regulations, and management plan, and it is again Service approved, most wolves in Wyoming will continue be regulated by the 1994 experimental rule (59 FR 60252, November 22, 1994; 50 CFR 17.84(i)). Wolves on Wind River Tribal lands will be regulated by the 2005 and 2008 experimental rule (70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)) because the Tribe has a Service approved post-delisting wolf management plan.

Elsewhere in today's **Federal Register**, we also identify the Western Great Lakes (WGL) DPS and removed the gray wolves in that DPS from the List of Endangered and Threatened Wildlife. As the Service is taking these regulatory actions with respect to the NRM DPS and WGL DPS at the same time, this final rule includes regulatory revisions under § 17.11(h) that reflect the removal of the protections of the Act for both the WGL DPS and most of the NRM DPS, and reflect that gray wolves in Wyoming, an SPR of the NRM DPS range, continue to be listed as an experimental population. However, only that portion of the revised gray wolf listing in § 17.11(h) that pertains to the NRM DPS is attributable to this final rule.

The separate experimental population listing in portions of Arizona, New Mexico, and Texas continues unchanged.

Once this rule goes into effect, if a NRM wolf goes beyond the NRM DPS boundary, it attains the listing status of the area it has entered.

Post-Delisting Monitoring

Section 4(g)(1) of the Act, added in the 1988 reauthorization, requires us to implement a system, in cooperation with the States, to monitor for not less than 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 purpose of this post-delisting monitoring is to verify that a recovered species remains secure

from risk of extinction after it no longer has the protections of the Act. Should relisting be required, we may make use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well-being of any recovered species.

Monitoring Techniques—The NRM area was intensively monitored for wolves even before wolves were documented in Montana in the mid-1980s (Weaver 1978; Ream and Mattson 1982, p. 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, our university and agency cooperators, volunteers, or interested special interest groups; and by capturing, radio-collaring, and monitoring wolves. We only consider 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.

The wolf monitoring system works in a hierarchical nature. Typically we receive a report (either directly or passed along by another agency) that wolves or their signs were observed. We make no judgment whether the report seems credible or not and normally just note the general location of that observation. Unless breeding results, reports of single animals are not important unless tied to other reports or unusual observations that elicit concern (e.g., a wolf reported feeding on a livestock carcass). Lone wolves can wander long distances over a short period of time (Mech and Boitani 2003, pp. 14–15) and may be almost impossible to find again or confirm. However, the patterns and clusters of those individual reports are very informative and critical to subsequent agency decisions about where to focus agency searches for wolf pack activity.

When we receive multiple reports of multiple individuals that indicate possible territoriality and pair bonding (the early stage of pack formation), or a report of multiple wolves that seems highly credible (usually made by a biologist or experienced outdoors-person), we typically notify the nearest Federal, State, or Tribal natural resource/land management agency and ask them to be on the alert for possible wolf activity during the normal course of their field activities. Once they locate areas of suspected wolf activity, we may ask experienced field biologists to search the area for wolf signs (tracks, howling, scats, ungulate kills). Depending on the type of activity confirmed, field crews may decide to capture and radio-collar the wolves. Radio-collared wolves are then relocated from the air 1 to 4 times per month dependent on a host of factors including funding, personnel, aircraft availability, weather, and other priorities. At the end of the year, we compile agency-confirmed wolf observations to estimate the number 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 overall population size, composition, and distribution. This level of wildlife monitoring is intensive and the results are relatively accurate estimates of wolf population distribution and structure (Service *et al.* 2009, Table 1–4, Figure 1–4). This monitoring strategy has been used to estimate the NRM wolf population for over 20 years.

Montana and Idaho, as well as Washington, Oregon and Utah, committed to continue monitoring wolf populations, according to their State wolf management plans (See State plans in Factor D) or in other cooperative agreements, using similar techniques as the Service and its cooperators (which has included the States, Tribes, and USDA–WS—the same agencies that will be managing and monitoring wolves post-delisting) have used. Montana and Idaho have committed to continue to conduct wolf population monitoring through the post-delisting monitoring period (Montana 2003, p. 63, 78; Idaho 2002, p. 35). Montana and Idaho also have committed to publish the results of their monitoring efforts in annual wolf reports as has been done since 1989 by the Service and its cooperators (Service *et al.* 1989–2009). The Service and the National Park Service will continue to monitor wolves in Wyoming. Other States and Tribes within the DPS adjacent to Montana, Idaho, and Wyoming also have participated in this interagency cooperative wolf monitoring system for at least the past decade, and their plans commit them to continue to report wolf activity in their State and coordinate those observations with other States. The annual reports also have documented all aspects of the wolf management program including staffing and funding, legal issues, population monitoring, control to reduce livestock and pet damage, research (predator-prey interactions, livestock/wolf conflict prevention, disease and health monitoring, publications, etc.) and public outreach.

Service Review of the Post-Delisting Status of the Wolf Population—To ascertain wolf population distribution and structure and to analyze if the wolf population might require a Service-led status review (to determine whether it should again be listed under the Act), we intend to review the State and any Tribal annual wolf reports for at least 5 years after delisting. The status of the NRM wolf population will be estimated by estimating the numbers of packs, breeding pairs, and total numbers of wolves in mid-winter by State and by recovery area throughout the post-delisting monitoring period (Service *et al.* 2009, Table 4, Figure 1). By evaluating the techniques used and the results of those wolf monitoring efforts, the Service can decide whether further action, including relisting is warranted. In addition, the States and Tribes are investigating other, perhaps more accurate and less expensive, ways to help estimate and describe wolf pack distribution and abundance (Service *et al.* 2009, Figure 1, Table 4; Kunkel *et al.* 2005; Mitchell *et al.* 2008).

Other survey methods and data can become the 'biological equivalents' of the breeding pair definition currently used to measure recovery (Mitchell *et al.* 2008). Those State and Tribal investigations also include alternative ways to estimate the status of the wolf population and the numbers of breeding pairs that are as accurate, but less expensive, than those that are currently used (Mitchell *et al.* 2008). Although not compelled by the Act, the State will likely continue to publish their annual wolf population estimates, in cooperation with National Parks and Tribes, after the mandatory wolf population monitoring required by the Act is over because of mandatory reporting requirements in Federal funding and grant programs and the high local and national public and scientific interest in NRM wolves.

We fully recognize and anticipate that State and Tribal laws regarding wolves and State and Tribal management will change through time as new knowledge becomes available as the State and Tribes gain additional experience at wolf management and conservation. We will base any analysis of whether a status review and relisting are warranted upon the best scientific and commercial data available regarding wolf distribution, abundance, and threats in the NRM DPS. For the post-delisting monitoring period, the best source of that information will be the State's annual or other wolf reports and publications. We intend to post those

annual State wolf reports and our annual review and comment on the status of the wolf population in the NRM DPS on our website (*http://westerngraywolf.fws.gov/*) by approximately April 1 of each following year. During our annual analysis of the State's annual reports (which will continue for at least 5 years), we also intend to comment on any threats that may have increased during the previous year, such as significant changes in a State regulatory framework, habitat, diseases, decreases in prey abundance, increases in wolf-livestock conflict, or other natural and man-caused factors.

Our analysis and response for post-delisting monitoring is to track changes in wolf abundance, distribution, and threats to the population. Three scenarios could 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 and 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. All such reviews would be made available for public review and comment, including peer review by select species experts. Additionally, if any of these scenarios occurred during the mandatory 5-year post-delisting monitoring period, the post-delisting monitoring period would be extended 5 additional years from that point in that State.

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) Whether the rule will create inconsistencies with other Federal agencies' actions; (c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; (d) Whether the rule raises novel legal or policy issues.

Paperwork Reduction Act

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. The Service 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 proposed under the Post-Delisting Monitoring section above, populations will be monitored by the States and Tribes in accordance with their Wolf Management Plans. 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 OMB.

National Environmental Policy Act

The Service has determined that Environmental Assessments and EIS, as defined under the authority of the NEPA, need not be prepared in connection with actions 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).

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this final 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 512 DM 2, we have coordinated the proposed rule and this final rule with the affected Tribes. Throughout several years of development of earlier related rules and the proposed rule, we have endeavored to consult with Native American tribes and Native American organizations in order to both (1) provide them with a complete understanding of the proposed changes, and (2) to understand their concerns with those changes. We have fully considered their comments during the development of this final rule. 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 gray wolves within the NRM DPS.

References Cited

A complete list of all references cited in this document is available upon request from the Western Gray Wolf Recovery Coordinator (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), the entry for ''Wolf, gray'' under MAMMALS in the List of Endangered and Threatened Wildlife is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A., conterminous (lower 48) States, except: (1) Where listed as an experimental population below; (2) Minnesota, Wisconsin, Michigan, eastern North Dakota (that portion north and east of the Missouri River upstream to Lake Sakakawea and east of the centerline of Highway 83 from Lake Sakakawea to the Canadian border), eastern South Dakota (that portion north and east of the Missouri River), northern Iowa, northern Illinois, and northern Indiana (those portions of IA, IL, and IN north of the centerline of Interstate Highway 80), and northwestern Ohio (that portion north of the centerline of Interstate Highway 80 and west of the Maumee River at Toledo); (3) MT, ID, WY (however, *see* experimental population designation below), eastern WA (that portion of WA east of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA east of the centerline of Highway 395 south of Mesa), eastern OR (portion of OR east of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR east of the centerline of Highway 95 south of Burns Junction), and north central UT (that portion of UT east of the centerline of Highway 84 and north of Highway 80). Mexico.	E	1, 6, 13, 15, 35	N/A	N/A
.....do	.....do	.....do	U.S.A. (portions of AZ, NM, and TX—see § 17.84(k)).	XN	631	N/A	17.84(k)
Wolf, gray [Northern Rocky Mountain DPS].	*Canis lupus*	U.S.A. (MT, ID, WY, eastern WA, eastern OR, and north central UT).	U.S.A. (WY—see § 17.84(i) and § 17.84(n)).	XN	561, 562	N/A	17.84(i). 17.84(n).
*	*	*	*	*	*		*

■ 3. Amend § 17.84 by:
■ a. Revising paragraphs (i)(7)(i) and (ii) and removing paragraph (i)(7)(iii);
■ b. Revising the first sentence of paragraph (n)(1); and
■ c. Revising paragraphs (n)(9)(i) and (ii) and removing paragraph (n)(9)(iii).

The revisions read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(i) * * *

(7) * * *

(i) The nonessential experimental population area includes all of Wyoming.

(ii) All wolves found in the wild within the boundaries of this paragraph (i)(7) will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would take on the status for wolves in the area in which it is found unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it may be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it may be returned to captivity or killed.

* * * * *

(n) * * *

(1) The gray wolves (wolf) identified in paragraph (n)(9)(i) of this section are a nonessential experimental population. * * *

* * * * *

(9) * * *

(i) The nonessential experimental population area includes all of Wyoming.

(ii) All wolves found in the wild within the boundaries of this experimental area are considered nonessential experimental animals.

* * * * *

Dated: March 10, 2009.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–5991 Filed 4–1–09; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
April 2, 2009

Part III

Securities and Exchange Commission

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Primary Market Disclosure Service and Trade Price Transparency Service of the Electronic Municipal Market Access System (EMMA®) and Amendments to MSRB Rules G–32 and G–36; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59636; File No. SR–MSRB–2009–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Primary Market Disclosure Service and Trade Price Transparency Service of the Electronic Municipal Market Access System (EMMA®) and Amendments to MSRB Rules G–32 and G–36

March 27, 2009.

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 March 23, 2009, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the MSRB. 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 MSRB has filed with the Commission a proposed rule change to implement an electronic system for free public access to primary market disclosure documents and transaction price information for the municipal securities market through the MSRB's Electronic Municipal Market Access system (''EMMA''). The proposed rule change would: (i) Establish EMMA's permanent primary market disclosure service (the ''primary market disclosure service'') for electronic submission and public availability on EMMA's Internet portal (the ''EMMA portal'') of official statements, advance refunding documents and related primary market documents and information (the ''EMMA primary market disclosure proposal''); (ii) establish EMMA's permanent transparency service (the ''trade price transparency service'') making municipal securities transaction price data publicly available on the EMMA portal (the ''EMMA trade price transparency proposal''); (iii) establish a real-time subscription to the primary market document collection (the ''primary market disclosure subscription proposal''); (iv) terminate the existing pilot EMMA facility of the Municipal Securities Information Library (MSIL) system (the ''primary market pilot'') and suspend submissions of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the MSIL system (the ''system transition proposal'') and (v) amend and consolidate current Rules G–32 and G–36 into new Rule G–32 on disclosures in connection with primary offerings, replace current Forms G–36(OS) and G–36(ARD) with new Form G–32, provide transitional submission requirements, and amend certain related recordkeeping requirements, to establish an ''access equals delivery'' standard for electronic official statement dissemination in the municipal securities market (the ''rule change proposal'').

The MSRB has requested approval to commence operation of EMMA's primary market disclosure service and trade price transparency service on a permanent basis, and to make the provisions of the rule change proposal effective, on the later of (i) May 11, 2009 or (ii) the date announced by the MSRB in a notice published on the MSRB Web site, which date shall be no earlier than ten business days after Commission approval of the proposed rule change and shall be announced no fewer than five business days prior to such date (the ''effective date'').

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB's principal office, 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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would implement an electronic system for free public access to primary market disclosure documents and transaction price information for the municipal securities market. The proposed rule change consists of: (i) The EMMA primary market disclosure proposal to provide for electronic submission and public availability on the EMMA portal of official statements, certain preliminary official statements, advance refunding documents and amendments thereto (''primary market disclosure documents''), together with related information; (ii) the EMMA trade price transparency proposal to make municipal securities transaction price data publicly available on the EMMA portal; (iii) the primary market disclosure subscription proposal to establish a real-time subscription to the primary market disclosure document collection; (iv) the system transition proposal to terminate the existing primary market pilot and suspend submissions to the MSIL system; and (v) the rule change proposal to amend and consolidate MSRB rules on official statement deliveries to establish an ''access equals delivery'' standard for electronic official statement dissemination in the municipal securities market.

Existing primary market disclosure document delivery requirements under MSRB rules are described briefly below, followed by a discussion of each of these proposals.

Current Delivery Requirements

Under current Rule G–32, a broker, dealer or municipal securities dealer (''dealer'') selling a new issue municipal security to a customer during the period ending 25 days after bond closing (the ''new issue disclosure period'') must, with certain limited exceptions, deliver the official statement to the customer on or prior to trade settlement. In cases where an official statement is not produced by the issuer, the dealer is required to instead provide a preliminary official statement, if available. The dealer also must provide certain additional information about the underwriting (including initial offering prices and information about underwriter compensation) if the issue was purchased by the underwriter in a negotiated sale. These additional items of information typically are disclosed in the official statement but must be provided separately by the selling dealer if not included in the official statement. Furthermore, selling dealers and the managing underwriter must send official statements to purchasing dealers promptly upon request, and dealer financial advisors that prepare the official statement must provide such official statement to the managing underwriter promptly.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Current Rule G–36 requires dealers acting as underwriters, placement agents or remarketing agents for primary offerings of municipal securities (''underwriters'') to submit official statements, accompanied by Form G–36(OS), for most primary offerings of municipal securities to the MSRB. For offerings subject to Exchange Act Rule 15c2–12, the official statement must be sent within one business day after receipt from the issuer but no later than ten business days after the bond sale. With limited exceptions, official statements prepared for any other offerings must be sent by the later of one business day after receipt from the issuer or one business day after bond closing. Amendments to the official statement during the new issue disclosure period also must be submitted to the MSRB. In addition, if the offering is an advance refunding and an advance refunding document has been prepared, the advance refunding document and Form G–36(ARD) must be sent by the underwriter to the MSRB within five business days after bond closing. Official statements and advance refunding documents may currently be submitted in either paper or electronic format. These submissions are collected by the Municipal Securities Information Library (MSIL) system into a comprehensive library. The MSRB makes these documents available to paid subscribers as portable document format (PDF) files on a compact disk sent daily to subscribers, and also makes them available to the public, subject to copying charges, at the MSRB's public access facility in Alexandria, Virginia.

Description of the EMMA Primary Market Disclosure Proposal

The EMMA primary market disclosure proposal would establish, as a component of EMMA, the EMMA primary market disclosure service for the receipt of, and for making available to the public of, official statements, preliminary official statements and advance refunding documents, including amendments thereto (collectively, ''primary market disclosure documents''), and related information, to be submitted by or on behalf of underwriters under revised Rule G–32, as proposed in the rule change proposal described below.[3] As proposed, all primary market disclosure documents would be submitted to the MSRB, free of charge, through an Internet-based electronic submitter interface or electronic computer-to-computer data connection, at the election of the submitter. Public access to the documents and information would be provided through the EMMA primary market disclosure service on the Internet through the EMMA portal at no charge as well as through a paid real-time data stream subscription service.[4] In connection with each primary offering for which information is required to be submitted to EMMA pursuant to revised Rule G–32, the submitter would provide, at the time of submission, information required to be included on new Form G–32. The items of information to be included on new Form G–32 and the timing requirements for providing such information are set forth in the description of the rule change proposal below.

The MSRB proposes that submissions of primary market disclosure documents to the EMMA primary market disclosure service be made as portable document format (PDF) files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. For any document submitted to the EMMA primary market disclosure service on or after January 1, 2010, such PDF file must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function available in most standard software packages), provided that diagrams, images and other non-textual elements would not be required to be word-searchable due to current technical hurdles to uniformly producing such elements in word-searchable form without incurring undue costs. Although the MSRB would strongly encourage submitters to immediately begin making submissions as word-searchable PDF files (preferably as native PDF or PDF normal files, which generally produce smaller and more easily downloadable files as compared to scanned PDF files), implementation of this requirement would be deferred as noted above to provide issuers, underwriters and other relevant market participants with sufficient time to adapt their processes and systems to provide for the routine creation or conversion of primary market disclosure documents as word-searchable PDF files.

All submissions to the EMMA primary market disclosure service pursuant to this proposal would be made through password protected accounts on EMMA by: (i) Underwriters, which may submit any documents with respect to municipal securities which they have underwritten; and (ii) designated agents, which may be designated by underwriters to make submissions on their behalf. Underwriters would be permitted under the proposal to designate agents to submit documents and information on their behalf, and would be able to revoke the designation of any such agents, through the EMMA on-line account management utility. Such designated agents would be required to register to obtain password-protected accounts on EMMA in order to make submissions on behalf of the designating underwriters.

As proposed, electronic submissions of primary market disclosure documents through the EMMA primary market disclosure service would be made by underwriters and their agents, at no charge, through secured, password-protected interfaces. Submitters would have a choice of making submissions to the proposed EMMA primary market disclosure service either through a Web-based electronic submission interface or through electronic computer-to-computer data connections with EMMA designed to receive submissions on a bulk or continuous basis.

All documents and information submitted through the EMMA primary market disclosure service pursuant to this proposal would be available to the public for free through the EMMA portal on the Internet, with documents made available for the life of the securities as

[3] EMMA was originally established, and began operation on March 31, 2008, as a complementary pilot facility of the MSRB's existing Official Statement and Advance Refunding Document (OS/ARD) system of the MSIL system. *See* Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR–MSRB–2007–06) (approving operation of the EMMA pilot to provide free public access to the MSIL system collection of official statements and advance refunding documents and to the MSRB's Real-Time Transaction Reporting System historical and real-time transaction price data) (the ''Pilot Filing''). The pilot EMMA facility would be replaced, and EMMA would become a permanent facility of the MSRB, by the establishment of the EMMA primary market disclosure service and EMMA trade price transparency service proposed in this filing, together with such other EMMA services established by the MSRB from time to time. *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009). *See also* Securities Exchange Act Release No.59212 (January 7, 2009), 74 FR 1741 (January 13, 2009) (File No. SR–MSRB–2008–07) (approving the establishment of the short-term obligation rate transparency service of EMMA). Although the MSIL system would no longer accept and process submissions by underwriters upon establishment of the EMMA primary market disclosure service as provided in the system transition proposal, it would continue to operate for a period of time primarily to serve certain internal MSRB functions.

[4] The pilot EMMA portal currently is accessible at *http://www.emma.msrb.org.*

PDF files for viewing, printing and downloading.[5] As proposed, the EMMA portal would provide on-line search functions to enable users to readily identify and access documents that relate to specific municipal securities based on a broad range of search parameters. The EMMA portal also would permit users to request to receive alerts, at no charge, if a primary market disclosure document has become available on the EMMA portal or has been updated or amended[6] and may also provide, at the election of the MSRB, summary data/statistical snapshots relating to documents and information submitted to the EMMA primary market disclosure service. In addition, the MSRB proposes that real-time data stream subscriptions to primary market disclosure documents submitted to EMMA would be made available for a fee as established under the primary market disclosure subscription proposal described below. The MSRB would not be responsible for the content of the information or documents submitted by submitters displayed on the EMMA portal or distributed to subscribers through the EMMA primary market disclosure subscription service.

The MSRB has designed EMMA, including the EMMA portal, as a scalable system with sufficient current capacity and the ability to add further capacity to meet foreseeable usage levels based on reasonable estimates of expected usage, and the MSRB would monitor usage levels in order to assure continued capacity in the future.

The MSRB may restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. Such usage may include, without limitation, usage intended to cause the EMMA portal to become inaccessible by other users, to cause the EMMA database or operational components to become corrupted or otherwise unusable, to alter the appearance or functionality of the EMMA portal, or to hyperlink to or otherwise use the EMMA portal or the information provided through the EMMA portal in furtherance of fraudulent or other illegal activities (such as, for example, creating any inference of MSRB complicity with or approval of such fraudulent or illegal activities or creating a false impression that information used to further such fraudulent or illegal activities has been obtained from the MSRB or EMMA). Measures taken by the MSRB in response to such unacceptable usage shall be designed to minimize any potentially negative impact on the ability to access the EMMA portal.

Description of the EMMA Trade Price Transparency Proposal

The EMMA trade price transparency proposal would establish, as a component of EMMA, the EMMA trade price transparency service to make available to the public historical and real-time transaction price information provided through the MSRB's Real-Time Transaction Reporting System (''RTRS''), together with related summary and statistical information. Free public access to the transaction price information would be provided through the EMMA trade price transparency service on the Internet through the EMMA portal.[7] The transaction price information provided through the EMMA trade price transparency service would consist of all data available through RTRS for public dissemination since the inception of RTRS on January 31, 2005. This information could be expanded to include historical price data available through earlier MSRB transaction reporting systems.

As proposed, the EMMA portal would provide on-line search functions to enable users to readily access transaction price information based on a broad range of search parameters. The MSRB may elect to expand its alert function on the EMMA portal to permit users to request to receive periodic alerts, at no charge, regarding whether trades have been reported in a specific security[8] and to provide on the EMMA portal summary data/statistical snapshots of price data available through RTRS. The MSRB would not be responsible for the information reported by dealers to RTRS that is displayed on the EMMA portal.

Description of the Primary Market Disclosure Subscription Proposal

The real-time data stream subscription to the EMMA primary market disclosure service to be provided through a Web service would be made available for an annual fee of $20,000.[9] The primary market disclosure subscription service would make available to subscribers all primary market disclosure documents and related information provided by submitters through the EMMA submission process that is posted on the EMMA portal. Such documents and information would be made available to subscribers simultaneously with the posting thereof on the EMMA portal.

Data with respect to the EMMA primary market disclosure service to be provided through the real-time data stream would consist of the following elements, among others and as applicable, as would be more specifically set forth in the EMMA Primary Market Subscriber Manual posted on the EMMA portal: (i) Submission data, including submission ID, submission type, submission status and submission transaction date/time; (ii) offering data, including offering type, underwriting spread/disclosure indicator, and official statement/preliminary official statement availability status; (iii) issue data, including issue type, security type, issuer name, issue description, state of issuer, six-digit CUSIP (for commercial paper issues), expected closing date, dated date and original dated date (for certain remarketings); (iv) security data, including nine-digit CUSIP, security-specific dated date (for certain securities not having CUSIP numbers), principal amount at maturity, initial offering price or yield, maturity date, interest rate, partial underwriting data and refunded security CUSIP numbers; (v) document data, including document ID, document type, document description, document posting date, document status indicators

[5] The MSRB understands that software currently is generally available for free that permits users to save, view and print PDF files, as well as to conduct word searches in word-searchable PDF documents. The MSRB would provide links for downloading such software on the EMMA portal.

[6] The timing and reliability of users receiving alerts issued by EMMA is subject to limitations inherent in any e-mail-based system and users should not rely exclusively on such alerts.

[7] In addition to being made available to the public for free through the EMMA portal on the Internet, transaction price information is made available through various subscription products offered by RTRS through existing RTRS mechanisms. *See http://www.msrb.org/msrb1/TRSweb/rtrssubscription.asp*. The EMMA trade price transparency service would be distinct from any such services or products provided directly by RTRS.

[8] For example, a user could receive an end-of-day e-mail alert on any day during which a particular security has been reported as having traded. Such alerts would not be available on a real-time basis and would not provide trade-by-trade alerts. The timing and reliability of users receiving alerts issued by EMMA is subject to limitations inherent in any e-mail-based system and users should not rely exclusively on such alerts.

[9] The proposed subscription price would cover a portion of the administrative, technical and operating costs of the EMMA primary market disclosure subscription service but would not cover all costs of such subscription service or of the EMMA primary market disclosure service. The MSRB has proposed establishing the subscription price at a fair and reasonable level consistent with the MSRB's objective that subscriptions be made available on terms that promote the broad dissemination of documents and data throughout the marketplace.

and refunding and refunded issue identifiers (for advance refunding documents); (vi) file data, including file ID, file posting date and file status indicators; and (vii) limited offering contact data, including contact name, address and phone number (for obtaining official statements not available on EMMA for certain primary offerings not subject to Rule 15c2–12 by virtue of paragraph (d)(1)(i) thereof).

The EMMA Primary Market Subscriber Manual would set forth a complete, up-to-date listing of all data elements made available through the primary market disclosure subscription service, including detailed definitions of each data element, specific data format information, and information about technical data elements to support transmission and data-integrity processes between EMMA and subscribers.

Subscriptions would be provided through computer-to-computer data streams utilizing XML files for data and files in a designated electronic format (consisting of PDF files) for documents. Appropriate schemas and other technical specifications for accessing the Web services through which the real-time data stream are to be provided would be set forth in the EMMA Primary Market Subscriber Manual.

The MSRB would make the primary market disclosure subscription service available on an equal and non-discriminatory basis. In addition, the MSRB would not impose any limitations on or additional charges for redistribution of such documents by subscribers to their customers, clients or other end-users. Subscribers would be subject to all of the terms of the subscription agreement to be entered into between the MSRB and each subscriber, including proprietary rights of third parties in information provided by such third parties that is made available through the subscription. The MSRB would not be responsible for the content of the information or documents submitted by submitters distributed to subscribers through the primary market disclosure subscription service.

Description of System Transition Proposal

The system transition proposal would terminate the existing primary market pilot [10] by deleting the pilot provisions from the MSIL facility and would suspend the MSIL system's functions of receiving submissions of official statements and advance refunding documents.

Description of the Rule Change Proposal

The rule change proposal would effect extensive revisions to the official statement submission and dissemination requirements set forth in current MSRB rules in order to implement an ''access equals delivery'' model based on rules for final prospectus delivery for registered securities offerings adopted by the Commission in 2005.[11] The rule change proposal would consolidate and amend existing provisions of current Rules G–32 and G–36 into revised Rule G–32, on disclosures in connection with primary offerings, and would make conforming changes to Rule G–8, on recordkeeping, and Rule G–9, on preservation of records. Rule G–36 would be rescinded by the proposal. In addition, the rule change proposal would establish a new electronic Form G–32 in connection with submissions made by underwriters to EMMA and would discontinue current Form G–36(OS) and Form G–36(ARD).

Underwriters would be required under revised Rule G–32 to submit all primary market disclosure documents and related information to EMMA in electronic format, replacing the current submission process through the MSIL system pursuant to existing Rule G–36. Dealers selling most municipal securities in a primary offering to customers would be required under revised Rule G–32 to notify customers of the availability of official statements through EMMA (and, at the election of the dealer, any qualified portals) and to provide written copies of official statements to any customers requesting such copies. Except in the case of sales of municipal fund securities, dealers would no longer be required to provide printed copies of official statements to customers in primary offerings.

Underwriters should be especially sensitive to the necessity of timely and accurate submissions to EMMA of official statements, preliminary official statements (when required), any amendments thereto, and all related information to be supplied through Form G–32. In particular, with the adoption of the ''access equals delivery'' standard, submissions to EMMA will become the lynchpin to the municipal securities primary market disclosure system that ensures that official statements are available to investors and the general public in a timely manner. Thus, any failure by the underwriter to make the required submission to EMMA within one business day after receipt from the issuer, but in no event later than the closing date,[12] would have significant repercussions to the ability of investors to access the document. The MSRB expects that the timing requirements of revised Rule G–32 will be strictly adhered to and enforced to promote the purposes of the rule and the protection of investors.

The MSRB's disclosure rules with respect to newly issued municipal securities are multifaceted and require diligence on the part of dealers to ensure that mandated disclosures are made at certain key points in the process of selling such securities to customers. Thus, dealers are reminded that, in addition to their obligations under Rule G–32, they are required under Rule G–17, on fair practice, to provide to the customer, at or prior to the time of trade, all material facts about the transaction known by the dealer as well as material facts about the security that are reasonably accessible to the market.[13] The time of trade is generally the time at which an enforceable agreement is reached to execute a municipal securities transaction (sometimes referred to as trade execution). Disclosures made at or prior to the time of trade are intended to provide the customer with material information that he or she may use in making an investment decision.

The proposed rule change does not alter the time of trade disclosure obligation under Rule G–17. Disclosures made after the time of trade, such as by delivery of the official statement or by customer access to the official statement on EMMA at or near trade settlement, do not substitute for the required material disclosures that must be made at or prior to the time of trade pursuant to Rule G–17. In the new issue market,

[10] In establishing the primary market pilot, the MSRB had requested that the Commission approve the primary market pilot for a period of one year from the date it became operational, which was March 31, 2008. The MSRB has requested in a separate filing that the Commission approve the extension of the primary market pilot to the earlier of July 1, 2009 or the effective date of the permanent primary market disclosure service. *See* File No. SR–MSRB–2009–01.

[11] *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005). The rule change proposal would incorporate (with modifications adapted to the specific characteristics of the municipal securities market) many of the key ''access equals delivery'' provisions in Securities Act Rule 172, on delivery of prospectus, Rule 173, on notice of registration, and Rule 174, on delivery of prospectus by dealers and exemptions under Section 4(3) of the Securities Act of 1933, as amended.

[12] The MSRB views it as critical that official statements be available to investors by no later than the new issue's closing date since such date represents the first time at which executed trades may be settled.

[13] *See* Rule G–17 Interpretation—Interpretive Notice Regarding Rule G–17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book.

the preliminary official statement, when available, often is used by dealers marketing new issues to customers and can serve as a primary vehicle for providing the required time-of-trade disclosures under Rule G–17, depending upon the accuracy and completeness of the preliminary official statement as of the time of trade. Dealers should note that additional or revised material information provided to the customer subsequent to the time of trade (such as in a revised preliminary official statement, the final official statement or through any other means) cannot cure a failure to provide the required material information at or prior to the time of trade.[14] However, a revised preliminary official statement or other supplemental information provided to customers after delivery of the original preliminary official statement, but at or prior to the time of trade, can be used to comply with the time-of-trade disclosure obligation under Rule G–17. The MSRB has previously emphasized the importance of making material disclosures available to customers in sufficient time to make use of the information in coming to an investment decision, such as through earlier delivery of the preliminary official statement.[15] The MSRB urges dealers to make preliminary official statements available to their potential customers in a timeframe that provides an adequate opportunity to make the appropriate assessments in coming to an investment decision.

The rule change proposal is described in more detail below.

Submissions to EMMA

Official Statement and Form G–32 Submission Requirement. Under revised Rule G–32(b)(i)(A), underwriters would be required to submit information through the electronic Form G–32 for all primary offerings of municipal securities, regardless of whether an official statement is produced for such offering.[16] The specific items of information to be submitted through Form G–32, and the manner and timing of such submission, are described below.

Under revised Rule G–32(b)(i)(B), except as described below, all submissions by underwriters of official statements would be required to be made within one business day after receipt from the issuer but by no later than the closing date[17] for the offering. Rule G–36 currently has separate submission timing for official statements based on whether the primary offering is subject to or exempt from Exchange Act Rule 15c2–12. For issues subject to such rule, current Rule G–36 establishes a final deadline of ten business days after the issuer agrees to sell the offering to the underwriter. This current timeframe does not ensure that official statements are always available by the closing date, particularly in those cases where an offering may be closed fewer than ten business days after the offering is sold. For issues exempt from Exchange Act Rule 15c2–12, current Rule G–36 requires submission of the official statement to the MSRB by the later of one business day after receipt from the issuer or one business day after the closing date. The revised provision is designed to ensure that the official statement is always available by the closing date, regardless of the type of offering.

If an official statement is being prepared for a primary offering but it is not submitted to EMMA by the closing date, the underwriter would be required under revised Rule G–32(b)(i)(B)(2) to provide notice of such failure to file and to submit the preliminary official statement, if any, by the closing date, along with notice that the official statement will be submitted to EMMA when it becomes available.[18] Once an official statement becomes available, the underwriter would be required to submit the official statement within one business day after receipt from the issuer. The submission of the preliminary official statement would not be a cure for a failure to submit the official statement in a timely manner but instead would be an additional obligation of the underwriter incurred upon failing to make timely submission of the official statement.

Exceptions from Official Statement Submission Requirement. If no official statement is prepared for an offering exempt from Exchange Act Rule 15c2–12, revised Rule G–32(b)(i)(C) would require the underwriter to provide notice of that fact to EMMA, together with the preliminary official statement, if any, by the closing date.[19] In the case of certain limited offerings,[20] revised Rule G–32(b)(i)(E) would permit the underwriter to elect not to submit the official statement to EMMA if it instead submits to EMMA, by no later than closing: (i) Notice that the offering is not subject to Exchange Act Rule 15c2–12 by virtue of paragraph (d)(1)(i) and that an official statement has been prepared but is not being submitted to EMMA, and (ii) specific contact information for underwriter personnel to whom requests for copies of the official statement should be made.[21] An underwriter withholding the official statement for a limited offering would be required to deliver the official statement to each customer purchasing the offered securities from the underwriter or from any other dealer, upon request, by the later of one business day after request or the settlement of the customer's transaction. In addition, submissions to EMMA in connection with roll-overs of commercial paper or remarketings of outstanding issues exempt from Rule 15c2–12 would not be required under revised Rule G–32(b)(i)(F) if no new official statement is prepared for the roll-over or remarketing or if an official statement has previously been submitted to EMMA in connection with such securities and no amendments or supplements to the official statement

[14] *See* Securities Act Rule 159(b) adopted under Section 17(a)(2) of the Securities Act of 1933. Rule 159(b) provides that, for purposes of determining whether a statement includes or represents any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading at the time of sale (including, without limitation, a contract of sale), any information conveyed to the purchaser only after such time of sale (including such contract of sale) will not be taken into account.

[15] *See, e.g.*, MSRB Notice 2006–07 (March 31, 2006); MSRB Discussion Paper on Disclosure in the Municipal Securities Market (December 21, 2000), *published in* MSRB Reports, Vol. 21, No. 1 (May 2001); and Official Statement Deliveries Under Rules G–32 and G–36 and Exchange Act Rule 15c2–12 (July 15, 1999), *published in* MSRB Reports, Vol. 19, No. 3 (Sept. 1999).

[16] In contrast, submissions are required under current Rule G–36 only for primary offerings for which an official statement is produced.

[17] ''Closing date'' would be defined in revised Rule G–32(d)(ix) as the date of first delivery of the securities to the underwriter. For bond or note offerings, this would generally correspond to the traditional concept of the bond closing date. In the case of continuous offerings, such as for municipal fund securities, the closing date would be considered to occur when the first securities are delivered.

[18] Current Rule G–36 does not require submission of the preliminary official statement. If no preliminary official statement exists, the underwriter would be required to provide notice of that fact to EMMA under revised Rule G–32(b)(i)(D).

[19] Neither such notice nor the preliminary official statement is required to be submitted under current Rule G–36. If no preliminary official statement exists, the underwriter would be required to provide notice of that fact to EMMA under revised Rule G–32(b)(i)(D).

[20] Limited offerings consist of primary offerings under Exchange Act Rule 15c2–12(d)(1)(i) in which the securities have authorized denominations of $100,000 or more and are sold to no more than 35 persons who the underwriter reasonably believes: (a) have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment, and (b) are not purchasing for more than one account or with a view to distributing the securities.

[21] Under current Rule G–36, underwriters may withhold submission to the MSRB of the official statement for a limited offering without precondition.

have been made since such submission.[22]

Advance Refunding Submissions Requirement. As under current Rule G–36, revised Rule G–32(b)(ii) would require that underwriters submit advance refunding documents by no later than five business days after the closing date for primary offerings that advance refund an outstanding issue and for which an advance refunding document has been prepared. This proposed requirement would apply whenever an advance refunding document has been prepared in connection with a primary offering, not just for those offerings in which an official statement also has been prepared as under current Rule G–36.

Amendments and Cancellations. Underwriters would be required by revised Rule G–32(b)(iii) to submit amendments to official statements and advance refunding documents during the primary offering disclosure period[23] within one business day of receipt. In addition, underwriters would be required under revised Rule G–32(b)(iv) to submit prompt notice of any cancellation of an offering for which a submission of a document or information relating to the offering has previously been made to EMMA. If only a portion of an offering is cancelled, the underwriter's submission in connection with the remaining portion of the offering would be required to be corrected by no later than the closing date to reflect the partial cancellation of the offering. If the entire offering is cancelled, notice of such cancellation would be deemed under paragraph (vi)(C) of Rule G–32 to have been submitted to EMMA promptly under paragraph (vi)(C) of Rule G–32 if submitted by no later than five business days after the underwriter cancels its trades with customers and other dealers.[24]

Transitional Submissions. Revised Rule G–32(e) establishes transitional provisions for submitting official statements during the five business days preceding the effective date of revised Rule G–32 and the primary market disclosure service. In general, any submission to the MSRB of an official statement, advance refunding document or amendment thereto under current Rule G–36 becoming due during the five business days prior to the effective date may be held by the underwriter for submission to EMMA on the first two business days on which the primary market disclosure service is effective. The MSRB would reserve the right to require an underwriter that has sent a document in paper form to the MSRB during the five business days prior to the effective date that is received by the MSRB after the effective date to resubmit such document in a designated electronic format through EMMA and the MSRB would require such resubmission through EMMA for any documents sent in paper form to the MSRB on or after the effective date.

Designated Electronic Format of Submitted Documents

Revised Rule G–32(b)(vi)(A) would prescribe the format in which documents would be required to be submitted to EMMA as a designated electronic format. Revised Rule G–32(d)(iii) would establish PDF files as the initial sole designated electronic format, with files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. In addition, starting on January 1, 2010, such PDF files must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function available in most standard software packages), provided that diagrams, images and other non-textual elements would not be required to be word-searchable due to current technical hurdles to uniformly producing such elements in word-searchable form without incurring undue costs. Although, the MSRB would strongly encourage submitters to immediately begin making submissions as word-searchable PDF files (preferably as native PDF or PDF normal files, which generally produce smaller and more easily downloadable files as compared to scanned PDF files), implementation of this requirement would be deferred as noted above to provide issuers, obligated persons and their agents with sufficient time to adapt their processes and systems to provide for the routine creation or conversion of continuing disclosure documents as word-searchable PDF files.

The MSRB may in the future designate additional computerized formats as acceptable electronic formats for submission or preparation of documents under Revised Rule G–32 by means of a filing with the Commission. As noted in the discussion below of comments received in connection with this proposal, the MSRB supports the Commission's Interactive Data and XBRL Initiatives for registered offerings and would consider designating XBRL as a designated electronic format for purposes of submissions to the EMMA primary market disclosure service at such time in the future as appropriate taxonomies for the municipal marketplace have been developed and as issuers begin the process of producing primary market disclosure documents using XBRL.

Submission of Documents as Multiple Files

Underwriters would be permitted to submit official statements and other required documents in the form of one or more electronic files. EMMA permits such submissions as multiple files as an accommodation for those situations where technical or other difficulties preclude or substantially impair the production and submission of the official statement or other document as a single electronic file. Barring such circumstances, underwriters, issuers and investors would be best served if all submissions of documents are made as a single electronic file rather than multiple files. In particular, underwriters should consider the risk of potentially disseminating to the public incomplete disclosure should they, inadvertently or otherwise, fail to submit on a simultaneous or immediately sequential basis all of the required files of a multi-file official statement submission.[25]

Form G–32

General. New Form G–32, which would replace current Form G–36(OS) and Form G–36(ARD), would include all information required to be submitted by underwriters under revised Rule G–

[22] Revised Rule G–32 provides for the same treatment of commercial paper official statements as under current Rule G–36 but extends that treatment to remarketings exempt from Exchange Act Rule 15c2–12, to the extent that no new official statement is produced in connection with such remarketing.

[23] The term ''new issue disclosure period'' under current Rule G–32 is renamed as ''primary offering disclosure period'' under revised Rule G–32(d)(ix) to emphasize that the rule applies to municipal securities remarketed in a primary offering, not just to new issues of municipal securities.

[24] *See* revised Rule G–32(b)(vi)(C).

[25] Underwriters should note that they are required to submit to EMMA, along with a document, the date such document is received from the issuer. In the case of the official statement, the MSRB would not consider the underwriter to have received the official statement until it has received the complete document. Thus, if the issuer were to provide the official statement to the underwriter in the form of multiple files, the underwriter should not consider the official statement to have been received from the issuer until the final file of such document necessary to complete the official statement has been received. In that case, the underwriter would report the date on which such final file was received as the date on which the official statement (including each file thereof, regardless of any earlier receipt of some such files) was received for purposes of the required information submission.

32(b)(i)(A) and (b)(vi).[26] Form G–32 would consist of a collection of data elements provided to EMMA in connection with a primary offering of municipal securities. When making primary market submissions using the Web-based interface, related indexing information would be entered into an on-line form or uploaded through an extensible markup language (XML) file, and documents would be uploaded in a designated electronic format. Computer-to-computer submissions would utilize XML files for data and PDF files for documents. The proposal would permit Form G–32 to be completed in a single session or in multiple sessions, with the initiation of the Form G–32 submission process generally occurring earlier than the current Form G–36 submission process.[27] Appropriate procedures and schemas for on-line and computer-to-computer submissions would be published on the EMMA portal and MSRB Web site and would be described in detail in the EMMA Dataport Manual.

As proposed, underwriters would be required to make a submission through Form G–32 in connection with each official statement (or preliminary official statement, where no official statement exists), as well as in connection with each offering for which no official statement or preliminary official statement is to be made available through EMMA.[28] Information relating to advance refunding documents executed in connection with a primary offering also would be submitted under the proposal through the Form G–32 submission process. Submissions during the primary offering disclosure period of amendments to previously submitted documents would be made through the same Form G–32 submission initiated in connection with the original documents.

Designated Agents. Underwriters would be permitted under revised Rule G–32(b)(vi)(C) to designate agents to make submissions on their behalf through the MSRB's user account management and authentication system known as MSRB Gateway.[29] All submissions made on behalf of an underwriter by a designated agent would be the responsibility of the designating underwriter, and any failure by the designated agent to provide documents or information in a complete, timely and conforming manner would be deemed to be a failure by the designating underwriter.

The MSRB notes that Rule G–34(a)(ii)(C)(1) requires underwriters for most new issues of municipal securities to provide certain information regarding the new issue to an automated electronic new issue information dissemination system (''NIIDS'') within two hours of the time of formal award of the issue. The MSRB may consider in the future permitting an underwriter to designate to the MSRB that information it has submitted to NIIDS under revised Rule G–34 should also be used for purposes of completing new Form G–32, although it would not be anticipated that NIIDS would provide documents to EMMA and such submissions would be the responsibility of the underwriter or another designated agent. The MSRB would publish a notice advising if such functionality becomes available.

Standard of Care With Respect to Information Submitted by Underwriters. Much of the information to be provided by underwriters and their agents on new Form G–32 normally would be made available to the public through the EMMA portal on a real-time basis under the rule change proposal. The underwriter must exercise due care with respect to the accuracy of the items of information provided on Form G–32, although it is understood that much of this information would be subject to change until an issue has reached closing. Until closing, the underwriter would be expected to update promptly any information previously provided by it on Form G–32 which may have changed or to correct promptly any inaccuracies in such information, and would be responsible for ensuring that such information provided by it is accurate as of the closing date. Except with regard to the submission of advance refunding documents or amendments to the official statement as described below, the underwriter would not be obligated to update information provided by it on Form G–32 due to changes in such information occurring after the closing date, although the underwriter would remain responsible for correcting any information it provided that was erroneous as of the later of the time the information was submitted or the closing date. Information would be deemed to be provided by the underwriter if it has been supplied by the underwriter or a designated agent of the underwriter directly to EMMA or it has been pre-populated by the EMMA Web-based interface to the extent that such information is editable on the EMMA Web-based interface by the underwriter or its designated agent.[30]

As noted above, the MSRB expects that the requirement that all information to be supplied through Form G–32 be accurately and completely submitted by the applicable deadlines, and particularly by the closing date, will be strictly enforced to promote the purposes of the revised Rule G–32 and the protection of investors.

Use of Form G–32 in Connection With Offerings and Issues. For purposes of submitting Form G–32 under the proposal, an offering would consist of all securities described in the official statement, and the offering could consist of one or more issues.[31] An issue

[26] New Form G–32 is included in Exhibit 3 to the proposed rule change.

[27] Under current Rule G–36, Form G–36 is submitted simultaneously with the official statement. The rule change proposal would no longer require that the submission of information and the dissemination of such information on EMMA be delayed until the related official statement has become available.

[28] Where no official statement or preliminary official statement is being submitted to EMMA, the underwriter would be required to provide notice thereof to EMMA. Such information would be designed in part to provide through the EMMA portal notice to customers and others that no official statement or preliminary official statement will be available. The proposal would provide for limited exceptions for commercial paper roll-overs and remarketings exempt from Rule 15c2–12 where no new disclosure document is prepared.

[29] Current Rule G–36 does not permit submissions to the MSRB by agents on behalf of underwriters.

[30] The underwriter would be obligated to review and make any necessary corrections to such editable data. The underwriter would not be responsible for any items of information pre-populated by EMMA which are not editable by the underwriter or its designated agent. With respect to the CUSIP numbers assigned by the CUSIP Service Bureau and other information that is presented during the submission process on EMMA as non-editable information, the underwriter would not be obligated to make corrections to such information. However, the underwriter would be obligated to ensure that each security in a primary offering is correctly associated with the submission the underwriter is making. Thus, pursuant to instructions to be included in the EMMA Dataport Manual, the underwriter would be required to review the collection of security-specific information pre-populated by EMMA during the submission process to ensure that all such securities have properly been associated with the submission, and the underwriter would be obligated to add additional information (including but not limited to any relevant CUSIP numbers) not pre-populated by EMMA to the extent necessary to fully associate all applicable securities with the submission and to indicate that information for a security that has been pre-populated by EMMA should be removed because such security is not in fact associated with the submission.

[31] As used in this context, an offering generally would correspond to the definition of a primary offering under revised Rule G–32 and Exchange Act Rule 15c2–12. Multiple issues (including but not limited to separately designated series of an offering) on a single official statement would be treated as part of the same offering for purposes of Form G–32 submissions even if issued by different issuers and/or underwritten by different underwriters. However, to the extent that a primary offering is offered through more than one official statement (*e.g.*, separate official statements for separate issues within a single primary offering), offering-level information to be provided through a Form G–32 submission would relate solely to the portion of the primary offering described in the official statement that is the subject of the specific submission, and the remainder of the information related to such primary offering would be provided

generally would consist of all securities in an offering having the same issuer, the same issue description (including same series designation or named obligor, if applicable) and the same dated date. In cases where no official statement is produced, each issue not described in an official statement would be considered a separate offering for purposes of Form G–32.

Basic Submission Process for Form G–32. The basic information to be provided through Form G–32 and the timing of the submission of such information for a typical submission to EMMA under revised Rule G–32 would be as set forth below. An underwriter would be responsible for providing all information described below to the extent so required for all maturities of any issue underwritten in whole or in part by such underwriter.[32] In the case in which an underwriter does not underwrite any portion of one or more issues in an offering, the underwriter would be responsible for providing only the nine-digit CUSIP number for the latest maturity of any such non-underwritten issue.[33]

Information on date of first execution of transaction. The underwriter would be required under revised Rule G–32(b)(i)(A) and (b)(vi)(C)(1)(a) to initiate the Form G–32 submission process by no later than the date of first execution of transactions in securities sold in the offering, at which time the underwriter would provide the following items of information with respect to each issue it underwrites:

- Issue-specific information consisting of the full issuer name and issue description, as such items are expected to appear in the official statement,[34] and the expected closing date of the issue;[35] and
- Security-specific information consisting of the nine-digit CUSIP number, the principal amount at maturity of each security, and the initial offering price or yield for each security in the issue (including initial offering price or yield of any securities otherwise considered not-reoffered).[36]

Document and information at time of submission of official statement. The official statement would be required under revised Rule G–32(b)(i)(B)(1) to be submitted to EMMA, along with related Form G–32 information, within one business day after receipt from the issuer or its designated agent, but by no later than the closing date. The underwriter would be required to submit, along with or prior to the submission of the official statement, the following items with respect to each issue:

- Official statement document as a PDF file, as well as information on the date the official statement was received from the issuer and confirmation of the full issuer name and issue description, as such items actually appear in the official statement;[37] and
- Underwriting spread or agency fee paid by the issuer to the underwriter for a negotiated offering, if not disclosed within the official statement.[38]

In the typical offering, the submission of the document to EMMA within one business day of receipt from the issuer would be preceded by the required initial submission of information on or prior to the date of first execution of a transaction in the securities. However, in those cases where the official statement submission deadline precedes the date of first execution (for example, if the underwriter has received the official statement in advance of the date of first execution), the underwriter would be required to submit, along with or prior to the submission of the official statement and the items of information identified above, the following additional items with respect to each issue (which otherwise would be required to be submitted by no later than the date of first execution):[39]

- Issue-specific information consisting of the full issuer name and issue description, as such items appear in the official statement, and the expected closing date of the issue;[40] and
- Security-specific information consisting of the nine-digit CUSIP number for each security in the issue, if then available.[41]

Summary of Basic Information Requirements. The items of information to be submitted and the timing of such submissions through Form G–32 under revised Rule G–32 for submissions not

through a separate Form G–32 submission for the other official statement.

[32] For example, if an underwriter only underwrites two maturities of an issue consisting of ten maturities, the underwriter would be responsible for reporting information regarding all ten maturities in the issue. *See also* footnote 31 *supra*.

[33] For example, if an offering consists of three issues, only two of which were underwritten in any part by a particular underwriter, such underwriter would be responsible for providing the full information required under Form G–32 for the two issues it underwrites but would only be responsible for providing the nine-digit CUSIP number for the latest maturity of the issue it does not underwrite. *See also* footnotes 31 and 32 *supra*.

[34] For an issue that is ineligible for CUSIP number assignment, the state of the issuer and dated date also would be provided. For an issue of municipal fund securities, the state of the issuer also would be provided. For an issue of commercial paper, the six-digit CUSIP number assigned to the issue also would be provided in connection with the initiation of the commercial paper program (but not in connection with subsequent roll-overs, unless such information has changed). For a remarketed issue, the original dated date of the issue when originally issued also would be provided if a new dated date has been assigned to the remarketed issue.

[35] If the closing date has not yet been firmly established on the date of first execution, the underwriter would provide a reasonable estimate of such closing date at that time and would be obligated to update such estimated closing date when such date is determined. Thus, if the actual closing date differs from the expected closing date supplied on the date of first execution, the underwriter would be responsible to provide the correct closing date by no later than the actual closing date. For an issue of municipal fund securities, the expected closing date would be the date on which the first deliveries of securities in the issue are expected to be made.

[36] The initial offering price could be expressed either in terms of dollar price or yield. For an issue that is ineligible for CUSIP number assignment, the nine-digit CUSIP number would be omitted but the maturity date and interest rate would be provided. For issues of municipal fund securities and commercial paper, no security-specific information would be required. If the underwriter did not underwrite any portion of an issue in the offering, the underwriter would only be required to provide the nine-digit CUSIP number for the latest maturity of such non-underwritten issue.

[37] For an issue of commercial paper, the official statement would be submitted in connection with the initiation of the commercial paper program but, pursuant to revised Rule G–32(b)(i)(F), would not be required in connection with subsequent roll-overs, unless the official statement has been modified. For a remarketed issue, the underwriter/remarketing agent would be required to indicate whether the submitted document is the complete disclosure document or supplements the original official statement produced in connection with the initial offering of the remarketed issue. Pursuant to revised Rule G–32(b)(i)(F), no official statement is required in connection with a remarketing if no such document or supplement was created. The underwriter would also be required to make any corrections to the full issuer name and issue description provided at the time of first execution to the extent necessary to reflect the information as it actually appears on the official statement.

[38] Thus, if such information is provided in the official statement as is currently the custom, the underwriter would not be required to enter it into Form G–32.

[39] Other items normally required to be submitted by no later than the time of first execution would continue to be required by such deadline.

[40] For an issue of commercial paper, the six-digit CUSIP number assigned to the issue also would be provided unless such CUSIP number has not yet been assigned, in which case such number would be required to be submitted promptly after assignment but by no later than the time of first execution.

[41] If CUSIP numbers have not yet been assigned, then such numbers would be required to be submitted promptly after assignment but by no later than the date of first execution, unless the issue is ineligible for CUSIP number assignment or the issue consists of municipal fund securities or commercial paper.

requiring additional information (as described below) is summarized in the following table:

Item	Timing
Full issuer name/issue description	Earlier of (i) date of first execution and (ii) date of official statement submission.
9-digit CUSIP number	Earlier of (i) date of first execution and (ii) later of (a) official statement submission or (b) assignment of CUSIP number.
Principal amount	Date of first execution.
Initial offering price/yield	Date of first execution.
Expected closing date	Date of first execution.
Official statement document	Date of official statement submission.
Date official statement received	Date of official statement submission.
Underwriting spread/agency fee	Date of official statement submission.

Additional Items in Connection With Special Cases. No additional information would be required beyond the information described above unless (i) the official statement is not available for submission by closing, (ii) the offering consists solely of one or more limited offerings for which the official statement will not be made available by the underwriter through EMMA, (iii) any issue in the offering advance refunds outstanding securities, (iv) the underwriter underwrote only a portion of an issue, (v) the offering qualifies for an exemption from the MSRB's underwriting assessment under Rule A–13(a) or a reduced underwriting assessment rate under Rule A–13(b), (vi) the official statement is amended, or (vii) corrections are necessary to information previously provided. Additional information that the underwriter would be required to submit through Form G–32 and the timing of the submission of such information for these special cases are as set forth below:

Information and/or document by closing for special cases. Additional information, as applicable, would be required to be submitted by no later than closing as follows:

- If an official statement will be produced but is not yet available, the preliminary official statement document as a PDF file, if available, or a notice that no preliminary official statement has been prepared, as required under revised Rule G–32(b)(i)(B)(2)(c) and (b)(i)(D)(1), and notice that the official statement document will be submitted when it becomes available, as required under revised Rule G–32(b)(i)(B)(2)(a);
- If an official statement will not be produced, the preliminary official statement document as a PDF file, if available, or a notice that no preliminary official statement has been prepared, as required under revised Rule G–32(b)(i)(C)(2) and (b)(i)(D)(1), notice that no official statement has been prepared, as required under revised Rule G–32(b)(i)(C)(1), and an indication of which exception under Rule 15c2–12 applies with regard to the official statement;
- If an underwriter elects to withhold an official statement from EMMA for a limited offering under Exchange Act Rule 15c2–12(d)(1)(i), notice that the offering is a limited offering and that the official statement will not be made available through EMMA, as required under revised Rule G–32(b)(i)(E)(2)(a), and contact information for requests for copies of the official statement, as required under revised Rule G–32(b)(i)(E)(2)(b);
- If an issue advance refunds outstanding securities, notice to that effect; or
- If an underwriter believes that it is entitled to an exemption from the underwriting assessment or a reduced assessment rate, information as to the basis for such modified assessment.[42]

Document and information at time of submission of advance refunding document. If an issue advance refunds outstanding securities, the advance refunding document would be required under revised Rule G–32(b)(ii) to be submitted to EMMA, along with related Form G–32 information, by no later than five business days after the closing on the refunding issue. The underwriter would be required to submit, along with or prior to the submission of the advance refunding document, the following items:

- Advance refunding document as a PDF file, as well as information on the date the advance refunding document was received from the issuer;
- Information identifying the refunding issues relating to the advance refunding document; and
- Security-specific information for the refunded securities, consisting of the original nine-digit CUSIP number for each security refunded and, if any new CUSIP numbers are assigned in connection with any refunded or unrefunded portions of the security, the maturity date of such security and any such newly issued CUSIP numbers.[43]

Document and information at time of submission of amendment to official statement or preliminary official statement. Amendments to the official statement or preliminary official statement occurring during the primary offering disclosure period would be required under revised Rule G–32(b)(iii) to be submitted by the underwriter to EMMA within one business day of receipt from the issuer.[44] The underwriter would be required to submit, along with or prior to the submission of the amendment to the official statement, the following items:

- The amendment document as a PDF file, as well as information on the date the amendment was received from the issuer;[45] and
- Information on whether the submitted document supplements the original official statement or preliminary official statement and should be displayed by EMMA along

[42] Such information would include an indication (i) that the underwriter underwrote less than the full principal amount of an issue and the amount underwritten by the underwriter, (ii) as to which category of underwriting assessment exemption under Rule A–13(a) would apply to the entire offering, or (iii) as to which category of reduced underwriting assessment under Rule A–13(b) would apply to the entire offering.

[43] New CUSIP numbers are required to be obtained with respect to securities advance refunded in part pursuant to Rule G–34(a)(i)(D). For a refunded security that does not have a nine-digit CUSIP number, the issuer name, state of issuer, issue description and maturity date would be required to be provided.

[44] Revisions made to the preliminary official statement in order to convert such document into the final official statement would not be considered an amendment to the preliminary official statement requiring submission to EMMA. Instead, the underwriter would submit the final official statement itself as required under Rule G–32.

[45] A single submission of the PDF file of the amendment would meet the document submission requirement with respect to the original official statement.

with the original, or the submitted document is the complete disclosure document and should replace the original official statement or preliminary official statement as the document to be displayed by EMMA.[46]

Disclosures to Customers

Subsection (a)(i) of revised Rule G–32 would retain the basic official statement dissemination requirements for dealers selling offered municipal securities[47] to customers as set forth in current Rule G–32. However, under subsection (a)(ii), dealers selling offered municipal securities, other than municipal fund securities, would be deemed to have satisfied this basic requirement for delivering official statements to customers by trade settlement since such official statements would be publicly available for free through the EMMA portal. In the case of a dealer that is the underwriter for the primary offering, such satisfaction would be conditioned on the underwriter having submitted the official statement to EMMA. Dealers selling municipal fund securities would remain subject to the existing official statement delivery requirement.

Under subsection (a)(iii) of revised Rule G–32, a dealer selling offered municipal securities with respect to which the official statement delivery obligation is deemed satisfied as described above would be required to provide or send to the customer, by no later than trade settlement, either a copy of the official statement or a written notice[48] advising how to obtain the official statement from the EMMA portal and that a copy of the official statement would be provided upon request.[49] Dealers may include in such notice additional information about obtaining the official statement from a qualified portal.[50] Dealers may, but are not required to, provide such notice on or with the trade confirmation. Under Rule G–15(a)(i), confirmations are required to be given or sent to customers at or prior to trade settlement. If the customer requests a copy of the official statement, the dealer would be required to send it within one business day of the request by first class mail or by such other equally prompt means. Dealers would be required to honor any customer's explicit standing request for copies of official statements for all of his or her transactions with the dealer.

The MSRB would view the obligation to provide the first portion of the customer notice regarding the availability of the official statement as having been presumptively fulfilled if the notice provides the uniform resource locator (URL) for the specific EMMA portal page from which the official statement may be viewed and downloaded[51] or the 9-digit CUSIP number for the security and the URL for the EMMA portal search page through which a search based on such CUSIP number may be undertaken.

Revised Rule G–32(a)(iv) would not substantially change the delivery obligation with respect to sales of municipal fund securities from those that exist under current Rule G–32(a).[52] The selling dealer would be required to deliver the official statement (*e.g.*, program disclosure document, information statement, etc.) to the customer by trade settlement, provided that the dealer could satisfy this delivery obligation for its repeat customers (*i.e.*, customers participating in periodic municipal fund security plans or non-periodic municipal fund security programs) by promptly sending any updated disclosure material to the customer as it becomes available, as set forth in paragraph (a)(iv)(A).[53] In addition, the dealer would continue to be required under revised paragraph (a)(iv)(B) to disclose any distribution-related fee received as agent for the issuer.[54]

Recordkeeping

Subsections (a)(xiii) and (a)(xv) of Rule G–8 currently require that records be maintained in connection with deliveries of official statements to customers and submissions of official statements, advance refunding documents and Forms G–36(OS) and (ARD) to the MSRB. The rule change proposal would modify certain of these requirements to reflect the changes to Rule G–32 and consolidate the requirements of revised Rule G–32 into subsection (a)(xiii). Subsection (b)(x) of

[46] In general, an official statement submitted for an issue in which a preliminary official statement was previously submitted to EMMA would replace the preliminary official statement as the ''active'' disclosure document on EMMA, although the preliminary official statement would continue to be accessible through the archive for the particular issue. Issues of municipal fund securities remain continuously in the primary offering disclosure period for so long as securities continue to be sold in connection with such issue and therefore numerous amendments may occur over the course of many years. Such amendments may initially supplement the original official statement until such time as the issuer produces an entirely new official statement, which new official statement would be treated as an amendment that replaces the original document and all preceding supplements. Thereafter, this new official statement may itself be supplemented by one or more amendments and, after a period of time, the new official statement and supplements may again be replaced by a new official statement. This sequence generally would continue for so long as the issuer continues selling securities in such issue.

[47] The term ''new issue municipal securities'' under current Rule G–32 is renamed as ''offered municipal securities'' under revised Rule G–32(d)(vi) to emphasize that the rule applies to municipal securities remarketed in a primary offering, not just to new issues of municipal securities.

[48] Dealers wishing to provide such notice in electronic form should consider guidance previously published by the MSRB concerning the use of electronic communications where standards for notice, access and evidence to show delivery are met. *See* Rule G–32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, *reprinted in* MSRB Rule Book (the ''1998 Electronic Delivery Notice'').

[49] Current Rule G–32 requires that the official statement be delivered to customers by settlement, whereas revised Rule G–32 would require the official statement or notice of availability of the official statement to be provided or sent by settlement. The official statement itself would continue to be available by settlement through EMMA but the timing of the notice is designed to permit such information to be included on or with the transaction confirmation.

[50] Revised Rule G–32(d)(x) would define qualified portal to mean an Internet-based utility providing access by any purchaser or potential purchaser of offered municipal securities to the official statement for such offered municipal securities in a designated electronic format, and allowing such purchaser or potential purchaser to search for (using the nine-digit CUSIP number and other appropriate search parameters), view, print and save the official statement, at no charge, for a period beginning on the first business day after such official statement becomes available from EMMA and ending no earlier than 30 calendar days after the end of the primary offering disclosure period for such offered municipal securities; provided that any such utility shall not be a qualified portal unless notice to users that official statements are also available from EMMA is posted and a hyperlink to EMMA are posted on the page on which searches on such utility for official statements may be conducted.

[51] Currently, the page for such viewing and downloading on EMMA for a particular security to which a 9-digit CUSIP number has been assigned will have an URL of the format ''*http://emma.msrb.org/SecurityView/SecurityDetails.aspx?cusip*= [ENTER 9-DIGIT CUSIP NUMBER]''. The MSRB will provide advance notice if the format of such URL is changed in the future.

[52] Although the ''access equals delivery'' model would not be available for municipal fund securities, underwriters (*i.e.*, primary distributors) of such securities would be required to submit the official statements to EMMA electronically. Dealers wishing to fulfill their official statement delivery requirements using electronic official statements should consider guidance previously published by the MSRB concerning the use of electronic communications where standards for notice, access and evidence to show delivery are met. *See* the 1998 Electronic Delivery Notice, *supra* footnote 48.

[53] This provision is substantially identical to the provisions of current Rule G–32(a)(i)(A).

[54] This is the same disclosure that currently is required in connection with sales of municipal fund securities under current Rule G–32(a)(ii)(B). With respect to municipal securities other than municipal fund securities sold on a negotiated basis, the underwriting spread, agency fee and initial offering prices required to be disclosed by dealers selling new issue municipal securities under current Rule G–32(a)(ii) would be disclosed on EMMA under revised Rule G–32 by means of the underwriter submitting such information through Form G–32.

Rule G–9 relating to preservation of such records would also be modified to conform to the changes to Rule G–8. In general, underwriters would be required to retain electronic copies of documents and XML data files they submit to EMMA, and EMMA would provide underwriters with the ability to save for their records copies of data entered into EMMA's Web-based electronic submission interface.[55]

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[56] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The EMMA primary market disclosure service and EMMA trade price transparency service would serve as additional mechanisms by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The services would help make information useful for making investment decisions more easily available to all participants in the municipal securities market on an equal basis throughout the life of the securities without charge through a centralized, searchable Internet-based repository, thereby removing potential barriers to obtaining such information. Broad access to primary market disclosure documents and price transparency information through the EMMA portal should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers, their securities and the prices at which such securities trade.

Furthermore, a single centralized and searchable venue for free public access to disclosure and transaction price information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities, the potential investment risks, and trade pricing activity in the marketplace. The electronic dissemination of primary market disclosure documents should allow issuers to reduce their issuance costs by eliminating the need to print and to distribute in paper official statements in connection with their primary offerings, thereby resulting in lower costs to issuers and savings to their citizens. Lower printing and dissemination costs also may result in lower expenses for underwriters and potentially lower prices for investors. Free access to such documents—previously available in most cases only through paid subscription services or on a per-document fee basis—should reduce transaction costs for dealers and investors.

All of these factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would apply equally to all dealers selling offered municipal securities to customers, as well as to all underwriters underwriting primary offerings of municipal securities. Documents and information provided through the EMMA portal would be available to all persons simultaneously. In addition to making the documents and information available for free on the EMMA portal to all members of the public, the MSRB would make primary market disclosure documents and information available by subscription on an equal and non-discriminatory basis without imposing restrictions on subscribers from, or imposing additional charges on subscribers for, re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber.

The MSRB has considered carefully a commentator's concern regarding the MSRB's plans to develop EMMA,[57] as well as expressions of interest from private enterprises in entering this market.[58] One commentator on the Pilot Filing[59] stated that the MSRB's intention to combine primary market and other disclosures with trade price data ''breaks new ground among regulatory bodies in terms of value-added content available to the public at no charge,'' arguing that the MSRB would ''effectively take over the business of providing value-added content.''[60] This commentator had previously stated that providing official statements for free to the public would impose a cost to the dealer community to subsidize the system's development and operation, which it argued would ''appear[] to be more biased and unfair than recovering the costs from the users of the system based on usage,'' and noted that providing official statements for free through public access portals would ''impair the economic interests of information vendors that currently make OSs available on a commercial basis.''[61]

Another commentator on the Pilot Filing argued in favor of the creation of a ''publicly accessible storage and dissemination system'' for all filings in

[55] Underwriters would continue to maintain historical records under Rule G–36 pursuant to Rule G–8(a)(xv), as revised to reflect the rescission of Rule G–36, for so long as required under Rule G–9(b)(xi).

[56] 15 U.S.C. 78o–4(b)(2)(C).

[57] *See* comments from Peter J. Schmitt, CEO, DPC DATA Inc. (''DPC''), dated January 23, 2008. DPC's comments are discussed in greater detail in section 5 of this filing under the heading ''Discussion of Comments—Structure of the Centralized Electronic System.''

[58] *See* letter from Philip C. Moyer, CEO, EDGAR Online, Inc. (''EDGAR Online''), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated December 17, 2007. EDGAR Online's comments are discussed in greater detail in section 5 of this filing under the heading ''Discussion of Comments—Structure of the Centralized Electronic System.'' In addition, the MSRB has received several inquiries through the pilot EMMA portal's feedback (*http://www.emma.msrb.org/AboutEMMA/Feedback.aspx*) and contact (*http://www.emma.msrb.org/AboutEMMA/ContactUs.aspx*) Web forms from members of the public seeking information on using EMMA documents and data, through the EMMA portal or subscription services, for the purposes of redissemination to their customers.

[59] *See* footnote 2 *supra*.

[60] *See* comments of DPC on the Pilot Filing. DPC further stated, ''There is precedent of other Self-Regulatory Organizations (SROs) offering such sophisticated value-added information to the market, but only on a fee basis.'' DPC also stated that ''the MSRB's sample pilot portal at *http://www.msrb.org/msrb1/accessportal/SampleComprehensiveDisclosureDisplay.htm* provides a glimpse of specific value-added features the MSRB intends to offer the public free of charge. Among these are nine-digit CUSIP searches, hyperlinks to bond issuers Web sites, an 'alerts' service to users of the portal, sophisticated document viewing options, links to other related documents in the portals disclosure archive, and subsequent event notifications that equate to custom research. These features and capabilities are well in excess of the system that the MSRB has pointed to as its model, the SEC's own EDGAR.''

[61] *See* comments of DPC on MSRB Notice 2007–5 (January 25, 2007). DPC further stated that the MSRB's proposal to require dealers to provide notices to customers with a URL at a public access portal where the official statement could be obtained would be ''prejudicial to the economic interests of existing vendors whose delivery services required that the definitive PDF file be archived on their Web sites for public access.''

the municipal securities market, stating that the current municipal securities disclosure model ''severely limits innovation and access'' to disclosures and ''locks up public documents in private hands while the proposed portal run by a public entity will encourage transparency in the municipal securities market and create a healthy ecosystem of information that will ultimately benefit both the investment community and the municipalities that seek access to public markets.'' [62]

The MSRB observes that free access to official statements by the public through the EMMA portal and other qualified portals is a fundamental characteristic necessary for establishment of an ''access equals delivery'' standard for official statement dissemination to customers purchasing offered municipal securities, as proposed under the rule change proposal, and would be similar in many respects to the free access to prospectuses provided through the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). Access through EDGAR serves as an important element in the treatment of final prospectus delivery for registered offerings under Commission rules adopted in 2005.[63] The costs of development and operation would be paid from MSRB revenues which are derived from assessments on dealers that are imposed under MSRB Rules A–12 (initial fee), A–13 (underwriting and transaction assessments) and A–14 (annual fee), as well as from subscription fees to be charged for the real-time subscriptions. The fees charged under MSRB rules are fairly apportioned and apply equally to all equally-situated dealers and therefore would have no impact on competition among dealers active in the municipal securities market. The MSRB does not believe that investors in municipal securities should be charged for disclosure information produced by issuers with the intention that it be used for making informed investment decisions and for understanding the terms of the securities they own, although the MSRB acknowledges that direct or indirect costs of providing disclosure may impact on the fees paid by investors in effecting transactions. However, the MSRB believes that potential savings on transaction costs due to reduced costs of printing and distributing paper official statements under the ''access equals delivery'' model, as described in section 3(b) of this filing, together with the other benefits provided by the EMMA primary market disclosure service and EMMA trade price transparency service identified herein, would justify the costs of development and operation of the EMMA primary market disclosure service.

The MSRB believes that the availability of primary market disclosure documents through the EMMA portal and the primary market subscription service, without the imposition of limitations on or additional charges for redistribution of such documents to customers, clients or other end-users of the subscriber,[64] as well as the availability of price transparency information through the EMMA portal,[65] would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB further believes that the operation by the MSRB of the EMMA primary market disclosure service and the EMMA trade price transparency service would not result in the MSRB taking over the business of providing value-added content but instead serve as a basis on which private enterprises could themselves concentrate more of their resources on developing and marketing value-added services. The MSRB believes that much of the impact of the proposed rule change on commercial enterprises would result from the increased competition in the marketplace resulting from the entry of additional commercial enterprises in competition with such existing market participants with respect to value-added services, rather than from the operation of the EMMA primary market disclosure service and EMMA trade price transparency service as sources of raw documents and information to the public. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of disclosure and price transparency information in connection with municipal securities that would be provided through the EMMA primary market disclosure service and EMMA trade price transparency service would justify any potentially negative impact on existing enterprises from the operation of EMMA.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB has published a series of notices seeking comment on the establishment of an ''access equals delivery'' standard for official statement dissemination. These notices, the comments received, and the MSRB's responses are discussed below.

Concept Release

In a concept release published on July 27, 2006, the MSRB sought comment on whether the establishment of an ''access equals delivery'' model in the municipal securities market would be appropriate and on the general parameters relating to such a model (the ''Concept Release'').[66] With regard to public access to official statements under an ''access equals delivery'' standard for municipal securities, the Concept Release stated that electronic official statements would need to be made readily available to the investing public, at no cost, throughout the new issue disclosure period, at a minimum. The MSRB expressed the belief that investors would be best served if such official statements were made available at a centralized Internet Web site but sought comment on a possible alternative using a central directory of official statements with hosting of electronic official statements undertaken by issuers, financial advisors, underwriters, information vendors, printers and others maintaining free ready access to such documents. The MSRB also sought comment on whether it should undertake the central access function, or whether other market participants or vendors could undertake such function subject to appropriate supervision.

The Concept Release had originally proposed that Rule G–32 be revised to permit a dealer selling new issue municipal securities to a customer to provide notice to the customer that the official statement is available electronically as an alternative to physical delivery of the official statement to the customer. The selling dealer would be required to provide a

[62] *See* letter from EDGAR Online. EDGAR Online further stated, ''In spite of a great deal of work by the Municipal Issuers on their disclosures—a small group of companies control access for the entire market to the documents that are supposed to be public.* * * The rigid control of public information dissuades other information providers from trying to enter or innovate for this market. This means that there are few people working on improving ease of use, depth of analysis, thoroughness of information or more effective means of delivery.* * * The process of managing these documents consumes most of the resources of these few information providers and the time of investors. As a result, the information contained in these documents—risks and opportunities—are usually lost because there are few sources of good comparability and data.''

[63] *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005).

[64] The MSRB notes that subscribers may be subject to proprietary rights of third parties in information provided by such third parties that is made available through the subscription.

[65] Price transparency information is already available by subscription through existing RTRS products.

[66] MSRB Notice 2006–19 (July 27, 2006).

printed version of the official statement upon request. The requirements in current Rule G–32 with respect to inter-dealer distribution of official statements would be deleted as the official statements would be readily available electronically. Finally, dealer financial advisors that prepare official statements on behalf of issuers would be required to provide electronic versions to the underwriters.

The Concept Release also proposed that Rule G–36 be revised to require underwriters of all primary offerings of municipal securities for which official statements are prepared to submit the official statements to the MSRB solely in electronic form. The timeframe for submission of official statements could be simplified to require the underwriter to submit the official statement for any offering (regardless of its status under Exchange Act Rule 15c2–12) by no later than the business day following receipt from the issuer, but in no event later than the bond closing date.

Rule G–36 would continue to require underwriters to submit much of the information currently included on Form G–36(OS) but would no longer require that such information be provided simultaneously with the official statement or in a single submission. Such information submission would be accepted solely in electronic form, either through a Web-based interface or by upload or data stream using XML or other appropriate format. In addition, underwriters would be permitted to designate submission agents for the official statement and required information submissions, although the underwriters would remain responsible for accurate and timely submissions. The underwriter would be required to make an initial submission of information, consisting of CUSIP numbers and list offering prices of all maturities in the issue, on or prior to the first execution of a transaction in such issue.[67] The underwriter would thereafter submit further required information and the electronic official statement as they become available. Information submissions under Rule G–36 would be required for all new issues, even if no official statement is being produced. If an official statement is not being produced, the underwriter would be required to report that fact.

The Concept Release sought comment on whether the ''access equals delivery'' model should be available on all new issues or whether certain classes of new issues should continue to be subject to a physical delivery requirement, such as issues of municipal fund securities or issues exempt from Exchange Act Rule 15c2–12. The Concept Release also asked whether notice to the customer should be provided by trade settlement, matching the current timing of official statement delivery under Rule G–32, or two business days after trade settlement, as is required under Securities Act Rule 173 with respect to registered offerings.

January 2007 Notice

In a subsequent notice published on January 25, 2007, the MSRB sought comment on draft amendments to Rules G–32 and G–36 to implement the ''access equals delivery'' standard (the ''January 2007 Notice'').[68] The January 2007 Notice sought comment on extensive proposed revisions to the official statement submission and dissemination requirements under MSRB rules. Current Rules G–32 and G–36 would be consolidated into a single substantially revised Rule G–32 and Rule G–36 would be rescinded.

Revised Rule G–32 would retain the official statement dissemination requirements for dealers selling new issue municipal securities to customers but dealers selling new issue municipal securities would be deemed to have satisfied this requirement.[69] A dealer selling new issue municipal securities would be required to provide to the customer, within two business days following trade settlement, either a copy of the official statement or a written notice stating that the official statement is available from the centralized electronic system, providing a Web address where such official statement may be obtained, and stating that a copy of the official statement would be provided upon request. In addition, if the customer requests a copy of the official statement, the dealer would be required to send it promptly and to honor any customer's explicit standing request for copies of official statements for all of his or her transactions with the dealer. The January 2007 Notice noted that the notice to customers must include the URL assigned to the specific official statement referred to in the notice and sought comment on whether the notice to customers must refer specifically to the centralized electronic system or may identify a different source.

The January 2007 Notice sought comment on whether offerings described under Exchange Act Rule 15c2–12(d)(1)(i) (''limited offerings'') should be excluded from the ''access equals delivery'' model or, in the alternative, whether an exclusion should be provided at the election of the underwriter with a required information submission to the centralized electronic system to provide public notice of such election.

All submissions by underwriters of official statements to the centralized electronic system would be required to be made within one business day after receipt from the issuer but by no later than the closing date.[70] If no official statement is prepared or if an official statement is being prepared but is not yet available from the issuer by the closing date, the underwriter would be required to submit the preliminary official statement, if any, to the centralized electronic system by the closing date. Once an official statement becomes available, the underwriter would be required to submit the official statement within one business day after receipt from the issuer. If no official statement is prepared for an offering, the underwriter also would be required to provide notice of that fact.

Underwriters would continue to be required to submit advance refunding documents by no later than five business days after the closing date. The requirement would apply whenever an advance refunding document has been prepared in connection with a primary offering, not just for those offerings in which an official statement also has been prepared as under current Rule G–36. Amendments to official statements and advance refunding documents would be required to be submitted within one business day of receipt throughout the new issue disclosure period. In addition, underwriters would be required to provide notice of any cancellation of an issue for which a submission has previously been made.

Under revised Rule G–32, all official statements, preliminary official statements and advance refunding documents, as well as any amendments thereto, would be submitted to the centralized electronic system by electronic means in a designated electronic format. Paper submissions would no longer be accepted, with all

[67] The Concept Release noted that underwriters are already required to disseminate CUSIP information within this same timeframe under current Rule G–34 for virtually all new issues. The list offering price information disclosure under revised Rule G–36 would take the place of such disclosure to customers under current Rule G–32.

[68] MSRB Notice 2007–5 (January 25, 2007).

[69] Dealers selling municipal fund securities would remain subject to the existing physical delivery requirements. In the case of a dealer that is the underwriter for the new issue, such satisfaction would be conditioned on the underwriter having submitted the official statement to the centralized electronic system.

[70] The revised rule would not provide an exception from the electronic submission requirement for official statements relating to municipal fund securities.

submissions limited at the outset to PDF files. The centralized electronic system would be designed to accept such electronic submissions either through an upgraded version of the existing MSIL Web-based interface known as the e-OS system or by upload or data stream initially using XML.

Current Form G–36(OS) and Form G–36(ARD), which can be completed either on paper or electronically, would be replaced by a single Form G–32 that would be completed electronically. Underwriters would be required to submit a Form G–32 in connection with each official statement (or preliminary official statement, where no official statement exists), as well as in connection with each offering for which no official statement or preliminary official statement is available. The January 2007 Notice anticipated that the Form G–32 submission process would be initiated by the submission of the CUSIP number information and initial offering prices for each maturity shortly after the bond sale (*e.g.*, by the time of the first execution of a transaction within the meaning of Rule G–34). Other items of information to be submitted through the Form G–32 submission process, including the underwriting spread, if any, and the amount of any fee received by the underwriter as agent for the issuer in the distribution of the securities (to the extent such information is not included in the official statement), as well as many of the items currently required on Form G–36(OS) in connection with the MSRB's underwriting assessment under Rule A–13, would be provided by the underwriter as they become available. Form G–32 would be completed by the closing date, although for certain items that may not become available until after the closing date (*e.g.*, advance refunding documents, amendments to official statements, etc.), submissions could continue to be made as necessary up to the end of the new issue disclosure period. All submissions of advance refunding documents, amendments and notices of issue cancellation would be made by means of a Form G–32 previously initiated in connection with the related official statement or offering.

Underwriters would be permitted to designate one or more submission agents to submit documents and information required under the rule. The rule would not limit who may act as such submission agent on behalf of the underwriter but, as an agent, the underwriter would be bound by the actions of such agent.

Revised Rule G–32 would require any dealer acting as financial advisor that prepares the official statement for the issuer in any offering of municipal securities to make the official statement available to the managing or sole underwriter in a designated electronic format promptly after it has been approved by the issuer for distribution.

Existing definitions in Rules G–32 and G–36 would be consolidated into revised Rule G–32, with the definition of ''new issue municipal securities'' no longer excluding commercial paper and the definition of ''new issue disclosure period'' modified to emphasize that the period ends 25 days after the final delivery by the issuer of any securities of the issue. New definitions for ''designated electronic format'' and ''closing date'' would be added.

Rules G–8 and G–9 also would be modified to reflect recordkeeping changes as they relate to revised Rule G–32.

The January 2007 Notice also described certain basic features of the planned centralized electronic system, noting that, in addition to the public access portal that the MSRB anticipated operating, other portals using the document collection from the MSRB obtained through real-time subscriptions could be established by other entities as parallel sources for official statements and other documents and information. These separate portals could provide these services on such commercial terms as they deem appropriate. The January 2007 Notice stated that the MSRB's goal in promoting the establishment of parallel public access portals would be to provide all market participants with a realistic opportunity to access official statements and other documents and information throughout the life of the securities in a non-cost prohibitive manner while encouraging market-based approaches to meeting the needs of investors and other market participants.

November 2007 Notice

On November 15, 2007, the MSRB sought comment on certain revisions to the draft amendments to Rules G–32 and G–36 (the ''November 2007 Notice'').[71] In particular, the MSRB sought further comment on the nature of the notice to be provided to customers regarding the availability of electronic official statements, underwriter submission requirements to EMMA for limited offerings, and the timing of initiation of the submission process to EMMA.

The November 2007 Notice sought comment on a revised provision to Rule G–32 that would require a dealer selling a new issue security to advise the customer as to how to obtain the official statement from the centralized electronic system. The November 2007 Notice stated that the MSRB would view this obligation as having been presumptively fulfilled if the notice provides the URL for the specific official statement or for the search page of an access portal at which the official statement may be found pursuant to a search.

The November 2007 Notice sought comment on a provision that would make submission of official statements for limited offerings optional. For those limited offerings in which the underwriter submits the official statement to the centralized electronic system, the ''access equals delivery'' standard would apply and the official statement would be available through the public access portal. However, the underwriter could elect to withhold submission of the official statement for a limited offering if it provides the following items to the dissemination system for posting on the public access portals: (i) A certification affirming that the issue meets all of the requirements of Exchange Act Rule 15c2–12(d)(1)(i) as a limited offering; (ii) notice that the official statement is not available on-line but that the underwriter would provide a copy to any customer purchasing such limited offering; and (iii) specific contact information for underwriter personnel to whom requests for copies of the official statement should be made.

The November 2007 Notice also sought comment on a revised definition of designated electronic format, which was modified to consist of an electronic format acceptable to the MSRB that is word-searchable and must permit the document to be saved, viewed, printed and retransmitted by electronic means using software generally available for free or on a commercial basis to non-business computer users. Documents in portable document format that are word-searchable and may be saved, viewed, printed and retransmitted by electronic means would be deemed to be in a designated electronic format.

Finally, the November 2007 Notice sought comment on a revised provision that would explicitly require underwriters to initiate the submission process by no later than the Time of First Execution, as defined in proposed amendments to Rule G–34 then pending.

[71] MSRB Notice 2007–33 (November 15, 2007). The November 2007 Notice also announced the filing with the Commission of a proposed rule change to establish the pilot EMMA portal, which became operational on March 31, 2008 after Commission approval. *See* Pilot Filing at footnote 2 *supra*.

September 2008 Notice

On September 24, 2008, the MSRB sought comment on preliminary specifications for computer-to-computer processes for submissions to the EMMA primary market disclosure service and subscriptions under the EMMA primary market disclosure subscription service (the ''September 2008 Notice'').[72] The September 2008 Notice set forth the expected processes, data elements and file formats for computer-to-computer submissions and subscriptions.

Discussion of Comments

The MSRB received comments on the Concept Release from 29 commentators,[73] on the January 2007 Notice from 12 commentators,[74] and on the November 2007 Notice from four commentators.[75] The MSRB received no comments on the September 2008 Notice. In addition, two commentators submitted comment letters on the MSRB's Pilot Filing with the Commission.[76] After reviewing these comments, the MSRB approved the proposed rule change for filing with the Commission. The principal comments are discussed below.

Support for ''Access Equals Delivery'' and Centralized Internet Access to Official Statements. Commentators were nearly unanimous in their support of adoption of an ''access equals delivery'' standard and the establishment of a centralized Internet-based system for dissemination of municipal securities disclosure.[77] Many commentators state that official statements are increasingly available in electronic form and that the potential burden on dealers of having to produce an electronic version from a paper official statement supplied by an issuer from time to time is out-weighed by the benefits.[78] Commentators generally agreed that an ''access equals delivery'' would decrease overall costs[79] and should make disclosure information available more quickly and more broadly.[80] GFOA ''compliment[ed] the MSRB on its work to date on this project and support[ed] its efforts to create a system that works well for all participants in the marketplace.'' NABL ''strongly supports the concept of 'access equals delivery' that is embodied in the proposed draft amendments.'' SIFMA observed that:

> the key to success for implementation of a comparable system (to the SEC's [access equals delivery] system) for MSRB rules is that the proposal must meet the readily available, free of charge standard, that it promotes efficiency in the market and that it meets criteria for ''flow through'' processing of information. The Association believes the Notice promotes these objectives and that the MSRB should continue the process of eventually achieving these goals.

The MSRB believes that there is widespread support throughout the municipal securities industry for the MSRB's plan to implement an ''access equals delivery'' standard for official statement dissemination.

Physical Delivery. AGFS and ADP noted that there are more elderly individual investors who may be less technologically savvy in the municipal securities market than in other markets. Mr. Stone expressed a desire not to be required to request delivery of a printed

[72] MSRB Notice 2008–40 (September 24, 2008).

[73] *See* letters from Edward J. Sullivan, Chair, American Bar Association, Section of State and Local Government, to Mr. Lanza, dated October 9, 2006; Robert W. Doty, President, American Government Financial Services Company (''AGFS''), to Mr. Lanza, dated September 15, 2006; Gerard F. Scavelli, Senior Vice President and General Manager, Automated Data Process, Inc., to Mr. Lanza, dated September 15, 2006; Eric Bederman, Chief Compliance Officer, Bernardi Securities, Inc. (''Bernardi''), to Mr. Lanza, dated August 7, 2006; Leslie M. Norwood, Vice President and Assistant General Counsel, Bond Market Association (''BMA''), to Mr. Lanza, dated September 15, 2006; Blaine Schwartz, President and COO, brokersXpress, LLC (''brokersXpress''), to Mr. Lanza, dated September 15, 2006; Jackie T. Williams, Chair, College Savings Plans Network (''CSPN''), to Mr. Lanza, dated September 22, 2006; Michael A. Dardis, Manager of Trust and Investment Products Compliance, Commerce Bancshares, Inc. (''Commerce''), to Mr. Lanza, dated September 13, 2006; Paula Stuart, Chief Executive Officer, Digital Assurance Certification LLC, to Mr. Lanza, dated September 29, 2006; Mr. Schmitt, DPC, to Mr. Lanza, dated September 13, 2006; Robert Beck, Prinicipal, Municipal Bonds, Edward D. Jones & Co., LP (''Edward Jones''), to Mr. Lanza, dated September 13, 2006; Richard A. DeLong, Senior Vice President, Municipal Trading and Underwriting, First Southwest Company (''First Southwest''), to Mr. Lanza, dated September 15, 2006; Robert J. Stracks, Counsel, Griffin, Kubik, Stephens & Thompson, Inc. (''Griffin Kubik''), to Mr. Lanza, dated September 14, 2006; Elizabeth R. Krentzman, General Counsel, Investment Company Institute (''ICI''), to Mr. Lanza, dated September 14, 2006; Ronald J. Dieckman, Senior Vice President, Director of Public Finance/Municipals, J.J.B. Hilliard, W.L. Lyons, Inc. (''Hilliard Lyons''), to Mr. Lanza, dated August 4, 2006; Jerry L. Chapman, Managing Director, Municipal Product Manager, Morgan Keegan & Company, Inc. (''Morgan Keegan''), to Mr. Lanza, dated August 31, 2006; Gary P. Machak, Chairman, Municipal Advisory Council of Texas (''Texas MAC''), to Mr. Lanza, dated September 14, 2006; Walter J. St. Onge III, President, National Association of Bond Lawyers (''NABL''), to Mr. Lanza, dated September 14, 2006; Eric Friedland, Chairman, National Federation of Municipal Analysts (''NFMA''), to Mr. Lanza, dated September 15, 2006; Thomas Sargant, President, Regional Municipal Operations Association (''RMOA''), to Mr. Lanza, dated September 27, 2006; Elizabeth Varley, Vice-President and Director of Retirement Policy, and Michael D. Udoff, Vice-President, Associate General Counsel and Secretary, Securities Industry Association (''SIA''), to Mr. Lanza, dated September 20, 2006; Gerard Faulkner, Director—CUSIP Operations, Standard & Poor's CUSIP Service Bureau (''S&P CUSIP''), to Mr. Lanza, dated September 15, 2006; Daniel E. Stone to Mr. Lanza, dated September 2, 2006; Ruth D. Brod, Consultant, TRB Associates, to Mr. Lanza, dated September 14, 2006; Terry L. Atkinson, Managing Director, UBS Securities LLC (''UBS''), to Mr. Lanza, dated September 15, 2006; James C. Thompson, Divisional Executive Vice President, UMB Bank, N.A. (''UMB''), to Mr. Lanza, dated September 14, 2006; Eileen M. Smiley, Vice President and Assistant Secretary, USAA Investment Management Company (''USAA''), to Mr. Lanza, dated September 15, 2006; John McCune, President, Wells Fargo Institutional Brokerage & Sales (''Wells Fargo''), to Mr. Lanza, September 14, 2006; and Eric Pehrson, Vice President, Zions Bank Public Finance (''Zions''), to Mr. Lanza, dated September 8, 2006.

[74] *See* letters from J. Cooper Petagna, Jr., President, American Municipal Securities, Inc. (''AMS''), to Mr. Lanza, dated March 12, 2007; Vincent A. Mazzaro, Senior Managing Director and Controller of Municipals, Bear, Stearns & Co., Inc. (''Bear Stearns''), to Mr. Lanza, dated March 19, 2007; Mr. Bederman, Bernardi, to Mr. Lanza, dated March 5, 2007; Ms. Williams, CSPN, to Mr. Lanza, dated September 20, 2007; Mr. Schmitt, DPC, to Mr. Lanza, dated March 9, 2007; Mr. Stracks, Griffin Kubik, to Mr. Lanza, dated March 14, 2007; Kevin Colleran, Vice President, Ipreo Holdings LLC (''Ipreo''), to Mr. Lanza, dated March 9, 2007; Carol L. Lew, President, NABL, to Mr. Lanza, dated March 12, 2007; Ms. Norwood, Securities Industry and Financial Markets Association (''SIFMA''), to Mr. Lanza, dated March 16, 2007; Merry Jane Tissier to Mr. Lanza, dated March 8, 2007; Mr. Thompson, UMB, to Mr. Lanza, dated February 25, 2007; and Chris Charles, President, Wulff, Hansen & Co. (''Wulff''), to Mr. Lanza, dated March 7, 2007.

[75] *See* letters from Frank R. Hoadley, Chairman, Governmental Debt Committee, Government Finance Officers Association (''GFOA''), to Mr. Lanza, dated December 20, 2007; J. Foster Clark, President, NABL, to Mr. Lanza, dated December 17, 2007; S. Lauren Heyne, Chief Compliance Officer, R.W. Smith & Associates, Inc. (''RW Smith''), to Mr. Lanza, dated December 17, 2007; and Ms. Norwood, Managing Director and Associate General Counsel, SIFMA, to Mr. Lanza, dated December 14, 2007.

[76] *See* Pilot Filing at footnote 2 *supra*. The MSRB received a comment letter from EDGAR Online, *see* footnote 57 *supra*, and the Commission received a comment letter from DPC, *see* footnote 56 *supra*.

[77] AGFS, AMS, Bear Stearns, Bernardi, BMA, brokersXpress, CSPN, Commerce, DPC, EDGAR Online, Edward Jones, First Southwest, GFOA, Griffin Kubik, Hilliard Lyons, ICI, Ipreo, Morgan Keegan, Texas MAC, NABL, NFMA, RMOA, RW Smith, SIA, SIFMA, S&P CUSIP, UBS, UMB, USAA, Wells Fargo, Wulff, Zions. Although DPC supported the concept of electronic access to official statements, it expressed concerns regarding several basic concepts, as discussed below. While supporting a central dissemination system for official statements, TRB stated that it was unclear whether the proposal would make any improvement on what it viewed as most important—the availability of current information on all municipal bonds on an ongoing basis.

[78] BMA, Commerce, DPC, ICI, NABL, Wells Fargo. Griffin Kubik and SIA stated that they agreed with the positions set forth in BMA's comment letter. UBS withheld judgment pending more details on implementation. RMOA and S&P CUSIP note that the Depository Trust and Clearing Corporation charges a ''disincentive fee'' for underwriter submissions of paper official statements.

[79] AGFS, Bernardi, Hilliard Lyons, Morgan Keegan, UBS, UMB, USAA, Zions. However, ADP argued that this standard would shift printing costs to investors. Hilliard Lyons stated that, although issuer costs may be reduced in negotiated offerings, it is typical that the underwriter incurs the printing and shipping costs for official statements in competitive offerings.

[80] AGFS, ADP, Bernardi, DPC, Morgan Keegan, NFMA, TRB, UBS, USAA.

official statement every time he makes a purchase. Ms. Tissier stated that the burden should not be on investors to request a paper copy and expressed concern regarding spam and fraudulent materials on the computer and the need for a paper trail for recordkeeping purposes. RMOA also noted that certain segments of the municipal securities investment community may not have at-home access to the Internet and expected that dealers would honor requests for physical deliveries, although it believed that regulations requiring this would be excessive. Hilliard Lyons believed that there should be a requirement to provide a physical copy if requested.

The MSRB has proposed in revised Rule G–32 that physical delivery of the official statement would be required for any customer requesting a copy of the official statement. Thus, if the customer requests a copy of the official statement, the dealer would be required to send it within one business day of request by first class mail or other equally prompt means. Dealers would be required to honor standing requests for paper official statements from customers—thus, customers would not be required to request physical delivery each time they purchase offered municipal securities if they have informed their dealer of a desire to always receive physical delivery.

ADP believed that electronic delivery of official statements would offer an opportunity for enhancing information access in municipal securities offerings.[81] However, ADP opposed shifting the disclosure dissemination system to an ''access equals delivery'' model and instead advocated a system of ''dual distribution'' in which customers would receive delivery of official statements in both printed and electronic (via e-mail) forms. ADP argued that a significant proportion of investors still do not have ready access to electronic information, that many investors are unwilling to access their investment information on-line, that investors are more likely to view electronic information if it is pushed to them rather than requiring that they actively seek it out, and that electronic delivery would shift printing costs to investors.

AGFS suggested that the ''access equals delivery'' concept only be available in transactions in which investors have had actual access to the preliminary official statement, either through physical delivery or by providing consent to electronic delivery. In addition, AGFS suggested that dealers be required to circulate the official statement if there have been material changes made from the preliminary official statement. AGFS also warned that, once the cost savings from not preparing a printed official statement become apparent, some situations may arise where further cost savings are sought by foregoing the preparation of printed preliminary official statements as well.

As noted above, the MSRB agrees that there is considerable value in ensuring access to the preliminary official statements, particularly in connection with ensuring that customers receive material disclosures at or prior to the time of trade and in sufficient time to make use of the information in coming to an investment decision.[82] The MSRB expects to provide the opportunity for voluntary submissions of and access to preliminary official statements through EMMA, consistent with the MSRB's statutory authority, pursuant to a future filing with the Commission. However, the MSRB believes that the ''access equals delivery'' standard to be effectuated for the municipal securities market should not create a dual distribution paradigm and should not be preconditioned on deliveries of preliminary official statements.

Offerings to Which ''Access Equals Delivery'' Standard Should Apply. Many commentators believed that ''access equals delivery'' should apply to all issues of municipal securities.[83] However, some commentators argued that the ''access equals delivery'' standard should not apply to certain categories of offerings, as discussed below:

Limited offerings under Exchange Act Rule 15c2–12(d)(1)(i). AMS and DPC believed that underwriters should be required to submit all limited offering official statements to the centralized electronic system for public dissemination. DPC stated that removing the exemption for limited offerings would better serve the interests of the market as a whole and would favor transparency. SIFMA and NABL believed that limited offerings should not be required to participate in the centralized electronic system, although SIFMA acknowledged that there were differing opinions on this issue.[84] SIFMA and NABL were concerned about limited offerings that represent ''private placements'' where the issuer and underwriter did not intend on making a public offering and sought not to have the official statement broadly disseminated. SIFMA suggested that a submission requirement also could serve as a disincentive to producing official statements for such offerings. SIFMA recognized that dealers selling securities issued in a limited offering would not be able to rely on the access equals delivery standard but would instead be required to provide physical delivery of official statements to customers. SIFMA recognized that including limited offerings in the centralized electronic system would make information about the securities more widely available in connection with secondary market trading and therefore suggested permitting voluntary submissions of official statements for limited offerings for this purpose. NABL also believed that voluntary submissions should be allowed. NABL suggested that, if the MSRB were to require submission of official statements for limited offerings, the MSRB could provide for access to the official statement with password restriction if requested by the underwriter.

NABL and SIFMA supported the modified provisions for handling limited offerings, as described in the November 2007 Notice, where an underwriter submitting the official statement to the dissemination system would trigger the ''access equals delivery'' standard but an underwriter election to withhold submission of the official statement for a limited offering would trigger a requirement that the underwriter submit a certification affirming that the issue meets all of the requirements of Rule 15c2–12(d)(1)(i) as a limited offering; a notice that the official statement is not available on-line but that the underwriter would provide a copy to any purchasing

[81] ADP stated that the nature of the information flowing to investors throughout the offering process is more significant in registered offerings as compared to municipal securities offerings and noted potential areas in which the disclosure information currently produced by municipal issuers could be qualitatively improved. ADP did not suggest that such differences precluded the adoption of an ''access equals delivery'' standard but stated that significant changes to current municipal market practices would be needed to put the information flow in the two markets on an equal footing.

[82] *See* footnote 15 *supra*.

[83] Bernardi, brokersXpress, Commerce, DPC, First Southwest, Hilliard Lyons, NABL, UMB, Wells Fargo, Zions.

[84] BMA (now SIFMA) had originally stated in response to the Concept Release that the ''access equals delivery'' model should not apply to limited offerings exempt under Rule 15c2–12(d)(1)(i) because there is no reason for public access to disclosures for such offerings. SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter. Griffin Kubik, which supported BMA's comments on all other issues, explicitly disagreed with BMA on this point. Griffin Kubik suggested, however, that if such an exception is provided, underwriters should be able to use the ''access equals delivery'' model for limited offerings on a voluntary basis.

customer; and contact information for requesting copies of the official statement.

The MSRB has determined to include such modified provisions in the proposed rule change. Thus, revised Rule G–32(b)(i)(E) would permit the underwriter of a limited offering to elect to withhold submission of the official statement to EMMA if it submits the following to EMMA: (i) A notice that the offering is exempt from Exchange Act Rule 15c2–12(d)(1)(i) as a limited offering; (ii) notice that the official statement has been prepared but is not being submitted to EMMA by the underwriter; and (iii) specific contact information for underwriter personnel to whom requests for copies of the official statement should be made. The underwriter would be required to deliver the official statement to each customer purchasing such securities upon request by the later of one business day after the request or the settlement of the customer's transaction.

Commercial paper. Revised Rule G–32 would eliminate an existing exemption for commercial paper from the requirement that dealers provide an official statement to customers since such official statements would now be available through the centralized electronic system. DPC supported eliminating the commercial paper exemption. SIFMA recommended excluding commercial paper from the definition of ''new issue municipal securities'' because it believed that the rule language would require the underwriter to file a notice that no official statement is being prepared for each rollover where no new disclosure is produced. NABL opposed elimination of the commercial paper exemption but supported voluntary submission of commercial paper official statements to the centralized electronic system. The MSRB has determined to eliminate the exemption for commercial paper that currently exists under the new issue disclosure requirement of Rule G–32 but to retain a limitation on the requirement to submit the official statement to the MSRB for commercial paper roll-overs where there is no new disclosure document produced under revised Rule G–32(b)(i)(D).

Municipal fund securities. BMA and SIA stated that the ''access equals delivery'' model should not apply to 529 college savings plans and other municipal fund securities because mutual funds were excluded by the Commission from the ''access equals delivery'' standard for registered offerings. SIA stated that the MSRB would benefit by deferring any action with respect to municipal fund securities until further information is available regarding how the Commission would approach extending the ''access equals delivery'' standard to mutual funds.[85] ICI stated that it supported increased reliance on electronic disclosure for mutual funds and 529 college savings plans, recommending that the MSRB consider the Commission's ongoing initiative with respect to mutual fund disclosure rules in moving forward on the ''access equals delivery'' model.

In contrast, USAA stated that 529 college savings plan disclosure materials should not be excluded from the ''access equals delivery'' standard, stating that this model is particularly appropriate for such offerings because Internet access and usage by investors in 529 college savings plans is significantly higher than the percentages noted by the Commission in justifying adoption of the ''access equals delivery'' standard for the registered market. USAA stated that paper delivery of disclosure materials for 529 college savings plans could actually hamper the efficient and timely delivery of information to the sources on which 529 college savings plan investors rely. CSPN noted several issues unique to the 529 college savings plan market that the ''access equals delivery'' model would raise, including the Commission's stance toward prospectus dissemination for mutual funds. In view of these factors, CSPN suggested that the MSRB retain a presumption that 529 college savings plan disclosure documents would be physically delivered to customers but that customers may opt-in to an ''access equals delivery'' model for 529 college savings plans. CSPN added that, because 529 college savings plan disclosure documents are already available as PDF files on the issuers' Web sites, implementation of the ''access equals delivery'' for 529 college savings plans would not be difficult.

The MSRB has determined to require that the underwriter or primary distributor for 529 college savings plans and other municipal fund securities submit the official statement electronically for display on the EMMA portal. However, dealers selling such securities to customers would not be permitted to rely on the ''access equals delivery'' standard, thereby generally requiring physical delivery of the official statement.[86]

Notice to Customers. The January 2007 Notice sought comment on a provision that would require dealers to provide to customers, within two business days following trade settlement, either a copy of the official statement or a written notice advising as to how to obtain the official statement from the central dissemination system and that a copy of the official statement would be provided upon request. Some commentators stated that the timing for providing such notice should match the requirement for such notice for registered offerings (*i.e.*, within two business days of trade settlement).[87] Edward Jones and UMB suggested that the MSRB should permit such disclosure to be made on the trade confirmation,[88] and UMB asked if there are specific requirements as to how such notice should be given. Other commentators stated that the timing should remain unchanged from the current official statement delivery timeframe set forth in Rule G–32 (*i.e.*, by trade settlement).[89]

The MSRB has determined that the timing of the notice for customers should permit a process for providing such notices that is similar to the processes currently used in connection with certain types of registered offerings under the Securities Act. Therefore, the MSRB has provided in the rule change proposal that the notice must be provided or sent by trade settlement. The MSRB notes that this notice timing is independent of the timing for official statements to be made available to investors and the general public for free on EMMA, where official statements will become available within one business day of receipt from the issuer but no later than the first settlements of trades in the securities upon closing of the underwriting.

The January 2007 Notice proposed that the specific URL for an official statement be included in the notice to be delivered to a new issue customer

[85] SIA stated that if the Commission extends ''access equals delivery'' to mutual funds, it might include municipal fund securities within its scope and, if not, the Commission approach as designed for mutual funds could serve as a template for the MSRB extending ''access equals delivery'' to municipal fund securities.

[86] Although the ''access equals delivery'' model would not be available for municipal fund securities, electronic official statements could still be used to fulfill the official statement delivery requirement under prior guidance concerning the use of electronic communications where standards for notice, access and evidence to show delivery are met. *See* the 1998 Electronic Delivery Notice, *supra* footnote 48.

[87] BMA, brokersXpress, Texas MAC, Zions. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[88] BMA noted that notice generally would be given by confirmation disclosure comparable to the ''access equals delivery'' practice in the registered market.

[89] NABL, Wells Fargo.

with respect to the availability of the official statement through the centralized electronic system. SIFMA, AMS and Bernardi opposed the use of document-specific URLs, instead suggesting a more general referral in the customer notice to the centralized electronic portal where investors would use a search function to locate the specific official statement.[90] Bernardi stated that, if unique URLs are ultimately required, such URLs should be as short as possible and be based on characteristics, such as CUSIP number, that would allow an automated method for notifying customers of such URLs. NABL stated that, if used, the system should be designed to ensure that unique URLs do not inhibit the ability of the public to undertake searches to find official statements. SIFMA provided several examples of difficulties that would arise if document-specific URLs were required. In addition to eliminating the requirement of identifying such URL on the customer notice, SIFMA recommended that ''a short, generic, plain English statement comparable to the corporate reference to a 'registration statement''' be used. SIFMA also suggested that the MSRB confer with the industry on operations issues regarding the formatting of such customer notice.

The November 2007 Notice proposed a revised version of this provision under which the notice obligation would be presumptively fulfilled if the dealer's notice to its customer provides the URL for the specific official statement or for the search page of an access portal at which such official statement may be found using the search function. SIFMA noted that dealers would expect to include the notice to customers on the confirmation as in the corporate market. SIFMA suggested that the following language be viewed as satisfying the notice requirement: ''Official statement can be accessed at *http://www.MSIL-Access.com* at or before the date of settlement. Printed copies will be provided upon request.'' NABL suggested that if a notice provides the URL for a search page rather than for the official statement itself, ''such notice also include the appropriate data entry, if any is needed, to navigate from the search page to the OS sought.''

Under subsection (a)(iii) of revised Rule G–32 as proposed by the MSRB, a dealer would be required to provide or send to the customer, by settlement, either a copy of the official statement or a written notice advising the customer how to obtain the official statement from the EMMA portal and that a copy of the official statement would be provided upon request.[91] This obligation to provide the first portion of the customer notice regarding how to obtain the official statement would be presumptively fulfilled if the notice provides (i) the URL for the specific EMMA portal page from which the official statement may be viewed and downloaded[92] or (ii) the 9-digit CUSIP number for the security and the URL for the EMMA portal search page through which a search based on such CUSIP number may be undertaken.[93] Revised Rule G–32(d)(x) would define qualified portal to mean an Internet-based utility providing access by any purchaser or potential purchaser of offered municipal securities to the official statement for such offered municipal securities in a designated electronic format, and allowing such purchaser or potential purchaser to search for (using the nine-digit CUSIP number and other appropriate search parameters), view, print and save the official statement, at no charge, for a period beginning on the first business day after such official statement becomes available from EMMA and ending no earlier than 30 calendar days after the end of the primary market disclosure period for such offered municipal securities; provided that any such utility shall not be a qualified portal unless notice to users that official statements are also available from EMMA and a hyperlink to EMMA are posted on the page on which searches on such utility for official statements may be conducted.

Submissions of Preliminary Official Statements and Other Items. SIFMA,[94] along with AMS, DPC, Ipreo, NABL, TRB, UMB and Zions, supported the concept of voluntary submissions of preliminary official statements. DPC suggested that the MSRB explore making the submission of all preliminary official statements mandatory, while SIFMA, AMS and NABL emphasized that preliminary official statement submissions should not be made mandatory. SIFMA and DPC noted the importance of ensuring version control where both preliminary official statements and official statements are made available (as well as in handling ''stickers'' to official statements), suggesting that the MSRB include a mechanism for notification to the public when the final official statement is posted in cases where a preliminary official statement has previously been submitted. DPC suggested that preliminary official statements be deleted when final official statements are submitted, while NABL suggested that underwriters be permitted to request that the preliminary official statement be removed from the centralized electronic system once the ''timeliness of a POS has ended,'' noting that its continued availability may confuse investors. However, SIFMA opposed the removal of the preliminary official statement.

The MSRB is precluded from mandating pre-sale submission of preliminary official statement pursuant to Exchange Act Section 15B(d)(1). Under the rule change proposal, preliminary official statements, if available, would be required to be submitted by the underwriter by closing solely in the circumstance where an official statement is not being prepared by the issuer or if the official statement is not available for submission to EMMA by the closing. Once the official statement is provided by the underwriter, the preliminary official statement generally would be moved to a document archive that would be accessible through the EMMA portal directly from the page where the link to the official statement is provided. Users of the EMMA portal would be able to request to receive e-mail notifications for updates to the disclosure document for a specific security, which would apply to the situation where an official statement is submitted to EMMA following an initial submission of the preliminary official statement. The MSRB expects to consider expanding the EMMA primary market disclosure service to accept voluntary submissions of preliminary official statements in the future.

Several commentators stated that amendments to official statements should be included in the ''access equals delivery'' framework,[95] and that

[90] Other commentators, although not directly addressing this issue, appeared by inference also to oppose or to be uncomfortable with the concept of requiring that official statements be identified by a unique URL.

[91] Dealers may, but are not required to, provide the notice on or with the trade confirmation provided to customers under Rule G–15(a)(i), so long as the timing requirement is met. Dealers also would be permitted to include in the notice information regarding the availability of the official statement from a qualified portal.

[92] Customers should be directed to the appropriate ''Issue Details'' or ''Security Details'' page, rather than directly to the PDF file of the official statement, as such detail pages provide users with the opportunity to view whether the original official statement has been supplemented or amended.

[93] The search page on the current pilot EMMA portal is at *http://www.emma.msrb.org/Search/Search.aspx*. Dealers providing links to the appropriate search page must ensure that they provide the then current URL.

[94] Bear Stearns and Griffin Kubik stated that they participated in the formulation of SIFMA's comments and fully supported SIFMA's positions.

[95] BMA, CSPN, DPC, Texas MAC, NFMA.

advance refunding documents also should be included within the framework.[96] BMA noted that investors should be informed of any amendments to a submitted official statement, and BMA and AGFS suggested the possibility of highlighting changes made in updated submissions from an earlier submission. BMA and DPC emphasized the importance of tracking and properly linking amendments and the original official statements to which they relate.

The rule change proposal would require underwriters to submit to EMMA any amendments to the official statement occurring during the primary offering disclosure period, which ends 25 days after closing. The amendment would be displayed, along with the original official statement, on the EMMA portal and would be made available for download by EMMA portal users in a single compacted folder. Users of the EMMA portal would be able to request to receive e-mail notifications for updates to the disclosure document for a specific security, which would apply to the situation where an official statement is subsequently amended.

Format of Official Statements. PDF was the preferred official statement format of most commentators.[97] Some commentators suggested that other official statement formats also should be accepted,[98] with Wells Fargo emphasizing that PDF is the licensed product of a single software vendor and, although popular, the municipal securities industry should not encourage a situation that may require firms to purchase essential technology from only one vendor. Other commentators stated that the system should have the flexibility to allow new formats that may in the future meet or exceed the current parameters for PDF.[99] RMOA believed a single format should be prescribed, and other commentators believed that allowing multiple formats could prove problematic.[100] Zions stated that other electronic formats that may require specific formatting, such as hypertext markup language (html) or ASCII (American Standard Code for Information Interchange), would be unacceptable. However, ADP stated that the Concept Release does not discuss the benefits to market participants of Extensible Business Reporting Language (XBRL) and TRB suggested that PDF does not permit analysis and comparison between different investments. UBS observed that submissions using files that originate electronically yield smaller, better quality files than do scanned files, and that larger scanned files can sometimes cause technological difficulties, particularly for smaller retail customers. UBS suggested that the MSRB and industry remain cognizant of any emerging, widely utilized, non-proprietary, freely available format that would retain the desirable characteristics of PDF documents but create smaller scanned files.

SIFMA, AMS, DPC, Ipreo and NABL generally agreed with the approach of initially requiring that all documents be provided as PDF files, although flexibility should be retained to permit other appropriate file formats as they are developed and become available for general public use. With regard to formats other than PDF that may be developed in the future, NABL suggested the following as basic parameters before permitting such format to be used for official statements: (i) Software to read files should be free, user-friendly and readily available; (ii) software should protect the integrity of files; and (iii) consumers should be familiar with the format before adoption.

In the November 2007 Notice, the MSRB proposed that all documents be submitted in a designated electronic format, meaning that the document must be in an electronic format acceptable to the MSRB, word-searchable, and must permit the document to be saved, viewed, printed and retransmitted by electronic means using software generally available for free or on a commercial basis to non-business computer users. PDF files that are word-searchable and may be saved, viewed, printed and retransmitted by electronic means would be deemed to be in a designated electronic format. GFOA ''strongly encourage[s] standardization on the PDF format.'' GFOA believed that readily available technology currently exists to make all PDF files word searchable, including scanned PDF files. GFOA stated, ''Future success of this system requires that it start with the best technology available and its ongoing challenge will be to keep up with changing technology while allowing backwards compatibility and conversion.'' SIFMA supported the revised definition but observed that neither the MSRB nor the Commission has the authority to mandate that issuers produce documents in a specific format. SIFMA also noted that not all portions of an official statement may be word-searchable, particularly if they include images. NABL recommended against including the requirement that PDF files be word-searchable since many documents that pre-date the new rule would still have to be submitted to the new system but would not be in such format.

The MSRB has determined to initially limit submissions of documents to the EMMA primary market disclosure service to PDF files, configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. In addition, starting on January 1, 2010, such PDF files must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function available in most standard software packages), provided that diagrams, images and other non-textual elements would not be required to be word-searchable. Implementation of this requirement would be deferred to provide issuers, underwriters and other relevant market participants with sufficient time to adapt their processes and systems to provide for the routine creation or conversion of primary market disclosure documents as word-searchable PDF files. The MSRB understands that software currently is generally available for free that permits users to save, view and print PDF files, as well as to conduct word searches in word-searchable PDF documents. The MSRB has provided links for downloading such software on the pilot EMMA portal and would continue to do so in the future.

The MSRB notes that documents converted into PDF files from other electronic formats can generally be made word-searchable through such conversion process, although this may not be the case where the PDF file is created by scanning paper versions of original documents. Documents originally authored as PDF files or converted into PDF files from other electronic formats (sometimes referred to as ''native PDF'' or ''PDF normal'') generally are made word-searchable through such conversion process. On the other hand, PDF files created by scanning paper versions of original documents generally can be made word-searchable only through an optical character recognition or other comparable process (''OCR'').

[96] BMA, Texas MAC.

[97] Bernardi, BMA, brokersXpress, CSPN, Commerce, DPC, Edward Jones, Hilliard Lyons, Morgan Keegan, Texas MAC, NABL, UBS, UMB, Wells Fargo, Zions. Griffin Kubik and SIA stated that they agree with the positions set forth in BMA's comment letter.

[98] Bernardi, Wells Fargo.

[99] BMA, Edward Jones, Texas MAC, UBS, Zions. Griffin Kubik and SIA stated that they agreed with the positions set forth in BMA's comment letter.

[100] DPC, NABL, UBS, Zions.

Documents submitted to EMMA that have been made word-searchable through an OCR process must maintain the graphical and textual integrity of the original document. This would typically be achieved by creating a single document that includes both a scanned image of the original document and a transparent layer consisting of the word-searchable OCR output (sometimes referred to as a ''PDF searchable image'' file). Submitters should not submit documents consisting of a visible word-searchable OCR output (sometimes referred to as ''formatted text and graphics'') as such output generally does not maintain with sufficient accuracy the graphical and textual integrity of the original document without significant post-scanning manual processing by the producer of the document. The MSRB would strongly encourage submitters to submit all documents to EMMA as native PDF or PDF normal files, which by their nature are word-searchable and also would provide benefits to the submitter in that such files generally are more easily created and result in substantially smaller file size (thereby speeding the submission process) than scanned PDF searchable image files. Native PDF or PDF normal files also would provide benefits to EMMA users because of their smaller, more easily downloadable file size.

The MSRB may in the future determine to designate additional computerized formats as acceptable electronic formats for submission or preparation of documents under Revised Rule G–32 by means of a filing with the Commission. The MSRB anticipates that any such additional designated electronic formats would permit documents to be saved, viewed, printed and retransmitted by electronic means, using software generally available at the time such document is provided under this rule for free or on a commercial basis to non-business computer users, and such documents are substantially word-searchable (without regard to diagrams, images and other non-textual elements).

In addition, the MSRB supports the Commission's Interactive Data and XBRL Initiatives for registered offerings. Although the MSRB would initially accept documents solely as PDF files and would not be in a position to accept documents or data in XBRL format upon launch of the primary market disclosure service, the MSRB would seek to explore with other industry participants the possibility of incorporating into the permanent system at a later date an option to make submissions using XBRL once appropriate taxonomies for the municipal marketplace have been developed and as issuers begin the process of producing primary market disclosure documents using XBRL.

Accessibility of Official Statements. Most commentators stated that official statements should remain publicly available for the life of the securities.[101] Some commentators noted that, although financial and operating information in official statements quickly becomes stale, many portions of the official statement remain useful throughout the life of a bond issue.[102] BMA stated that the financial and operating information included in the official statement serve as valuable points of reference when reviewing secondary market financial and operating information provided to nationally recognized municipal securities information repositories pursuant to Exchange Act Rule 15c2–12.[103] UBS suggested that appropriate disclaimers be used with respect to the potential staleness of information beyond the current new issue disclosure period. RMOA stated that official statements could be made available for free during the 25-day new issue disclosure period and a fee could be charged for access after that period. Other commentators stated that making the official statements available solely for the current 25-day new issue disclosure period would be sufficient,[104] with DPC stating that maintaining public access beyond this 25-day period would impair the economic interests of information vendors that currently make official statements available on a commercial basis and would ultimately negatively impact the marketplace.

The MSRB agrees that there is significant value to maintaining official statements available for the life of the securities and therefore would make official statements available through the EMMA portal for the life of the securities. The MSRB also agrees with the approach taken by the Commission in the registered securities market of providing such access to disclosure at no charge to the public. The MSRB believes that a free flow of basic disclosure information to all market participants on an equal basis is essential to pursuing one of the MSRB's congressionally mandated core functions of removing impediments to and perfecting a free and open market in municipal securities. By making these basic disclosure documents—most of which exist and are available to commercial enterprises solely by virtue of the mandates set forth by the Commission in its Rule 15c2–12—also available to the general public for free, the MSRB does not in any way inhibit the free market in value-added services based on such documents.[105]

Data Elements and Search Function. Some commentators suggested that the information submitted on Form G–36(OS) should be made available to the public.[106] UBS noted that Form G–36 data should be used to develop a flexible indexing system, perhaps using XML, to allow for searches on a broad range of fields. NFMA also emphasized the importance of the search function. TRB stated that a cover sheet including primary information such as issuer, CUSIP numbers, security, maturity dates, ratings, callability, etc. is needed. TRB believed that the task of creating a data base from such information that is available to investors would be the most significant contribution that could be made by the MSRB to the municipal marketplace. EDGAR Online suggested that the following items of information be captured in connection with each OS submission: CUSIP number, date of issue, issuer, issuer state, original par amount, type of bond, type of security, description of issuer (1–2 paragraphs), description of use of proceeds (1–2 paragraphs) and description of bond security (1–2 paragraphs). In addition, EDGAR Online suggested the following search criteria: CUSIP number, date of issue, issuer, issuer state, original par amount, type of bond and full text search. DPC suggested that the required data be captured in formatted fields and that such data be parsed automatically into XML for distribution.

New Form G–32 would request a number of key items of information from underwriters making submissions to EMMA, as described in section 3(a) of this filing above, in order to properly identify the document being submitted, to ensure that such document is associated with the appropriate securities, and to provide for an effective search function on the EMMA portal. The EMMA portal would initially permit users to search for documents based on CUSIP number, issuer name, issue description, state, maturity date, issuance date and interest rate, and such search capabilities might be expanded in the future. The MSRB would use data submitted by underwriters to EMMA and other data

[101] Bernardi, BMA, Griffin Kubik, Morgan Keegan, NABL, NFMA, RMOA, SIA, Texas MAC, UBS, UMB, Wells Fargo, Zions.

[102] BMA, Griffin Kubik, NFMA, RMOA, SIA, Texas MAC, UBS.

[103] Griffin Kubik, SIA and UBS agreed.

[104] brokersXpress, Commerce, DPC, First Southwest.

[105] *See also* section 4 of this filing.

[106] BMA, RMOA, TRB.

sources for purposes of the search function but does not intend on itself extracting information from submitted documents for this purpose.

With regard to the MSRB's request for comment in the January 2007 Notice regarding a potential requirement that underwriters submit on Form G–32 the names of syndicate members as a means by which to pre-populate a portion of each syndicate member's Form G–37 under Rule G–37, AMS supported such a process, but SIFMA, on balance, suggested that the MSRB not include a Form G–37 process at this time. The MSRB has determined not to seek such information.

Submission Process. Some commentators suggested that the current timeframes under Rule G–36 for submission of official statements to the MSRB—no later than 10 business days after the bond sale for issues subject to Exchange Act Rule 15c2–12 and the later of one business day after receipt or one business day after closing for issues exempt from Rule 15c2–12—be retained.[107] BMA suggested expanding certain exceptions to the 10 business day timeframe. However, other commentators supported a single deadline for all issues of the bond closing date.[108] Bernardi suggested that, in those instances where the official statement is not available by the bond closing, the preliminary official statement should be submitted.[109]

The January 2007 Notice stated that the new Form G–32 submission process would be initiated by the submission of CUSIP number information and initial offering prices for each maturity shortly after the bond sale. This timing was designed to coincide with the timing under Rule G–34 relating to CUSIP numbers and other new issue information requirements, with the intention that this submission timing would coincide with the timing of information submissions to NIIDS. SIFMA agreed that the MSRB should coordinate the finalization of the timeframe for information submissions on Form G–32 with information submission requirements that would be established with respect to NIIDS but that the requirement should be timed to coordinate with successful testing of NIIDS. SIFMA recommended that this part of the proposed rule be delayed until NIIDS has been tested and dealers are able to use the system. DPC supported the proposed timeframe, although it points out that the system would need to be able to initiate a filing without CUSIP numbers if it were to accept preliminary official statement submissions. AMS would prefer maintaining the current timing for information submissions.

BMA and UBS noted that the submission process should be made to conform to the straight through processing ideal that each document or item of information needed by multiple parties should only be required to be submitted by the underwriter once, and also seeks a more user-friendly format for submissions. However, BMA believed that underwriters should remain primarily responsible for submission and that the responsibility for submission should not be shifted to dealer financial advisors in those issues where such a financial advisor is involved. Wells Fargo and Zions disagreed, stating that if the financial advisor prepares the official statement, it should have primary responsibility for submitting the official statement. Some commentators noted difficulties with independent financial advisors,[110] with Hilliard Lyons suggesting that a solution would be to petition the Commission to bring them under the regulatory control of the Commission or MSRB. BMA and RMOA believed that e-mail attachments should be an acceptable method of submission. Several commentators mentioned the importance of return receipts for official statement submissions and/or the ability of submitters to review their submissions.[111]

The MSRB has determined to establish a single timeframe for submissions of official statements to EMMA for all types of primary offerings, being one business day after receipt but no later than the closing date. Underwriters would be required to initiate the Form G–32 submission process by the date of first execution, which would be defined under revised Rule G–32(d)(xi) as the date on which the underwriter executes its first transactions with a customer or another dealer in any issue security offered in a primary offering. In the case of new issues where the underwriter is required under Rule G–34(a)(ii)(C) to provide new issue information to NIIDS, such date of first execution would mean the date corresponding to the Time of First Execution (being no less than two hours after all such information has been transmitted to NIIDS), as defined in Rule G–34(a)(ii)(C)(1)(b). For purposes of the timing for initiating the Form G–32 submission process under Rule G–32(b)(i)(A) and (b)(vi)(C)(1)(a), the date of first execution would be deemed to occur by no later than the closing date, even if the date of first execution would be a later date under Rule G–34. In most cases, the submission process would be initiated by submission of the CUSIP numbers, initial offering prices and certain other basic identifying information, although the Form G–32 submission requirements would provide alternative information submission requirements for cases where the securities are not eligible for CUSIP number assignment or for other types of offerings, such as commercial paper issues, issues of municipal fund securities, and remarketings, as described in section 3(a) of this filing above.

The MSRB is proposing to permit underwriters to designate agents to submit documents and related information to EMMA, thereby permitting underwriters to structure their submission process in the manner that is most efficient for their purposes. Although underwriters would not be able to fulfill their information submission requirements under revised Rule G–32 and Rule G–34 with a single submission of such information to NIIDS upon initial launch of the EMMA primary market disclosure service, the MSRB anticipates providing such functionality at a future date. Underwriters would be responsible for the accuracy, completeness and timeliness of information they or their agents provide to EMMA.

Structure of the Centralized Electronic System. The Concept Release sought comment on whether the central access utility should host all official statement documents or should serve as a central directory of official statements with hyperlinks to documents hosted by other entities that have undertaken to maintain access to such documents. The Concept Release also sought comment on whether the MSRB should undertake the central access function, or whether other market participants or vendors could undertake such function subject to appropriate supervision.

Nearly all commentators responding to the Concept Release stated that the central access facility should post official statements directly on a central Web site, rather than serving as a directory of links to official statements posted by underwriters, issuers, financial advisors, printers or others at

[107] BMA, First Southwest. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[108] Bernardi, brokersXpress, Morgan Keegan, NABL, Wells Fargo, Zions.

[109] AGFS would require the submission of the preliminary official statement as a precondition to applying the ''access equals delivery'' standard to official statement deliveries.

[110] Hilliard Lyons, Morgan Keegan.

[111] NFMA, Texas MAC, UBS.

other sites.[112] Some commentators noted that a decentralized system with a central hyperlinked directory could be problematic with regard to ensuring continuous access, uniformity of handling and ease of use.[113] Morgan Keegan stated that a decentralized model could be acceptable if access and data input requirements are uniformly applied to all vendors, but that long-term free access would be problematic. TRB stated that it would be more effective to link the MSRB Web site to the appropriate posting site for each official statement, with the MSRB monitoring and/or restricting these posting sites. UMB asked whether it would be able to direct its customers to its own Web site, from which it would link to the central access facility.

Most commentators felt that the MSRB could operate the central access facility,[114] with several indicating that the MSRB was their first choice to do so.[115] Many commentators suggested that the central access facility also could be operated by an outside contractor with oversight by the MSRB pursuant to contract.[116] Wells Fargo stated that the MSRB should investigate a centralization function that would not unequally empower a single data vendor. NABL stated that proposed approaches by market participants and others would need careful consideration to determine the optimal choice for the municipal securities market, and RMOA stated that vendors offering their services would need to insure the industry that they would accept oversight by established regulatory authorities and would be subject to penalties for non-performance. UBS stated that, if an entity other than the MSRB operates the central access facility, the MSIL system's existing OS/ARD library and full database would need to be made available to such entity. ADP, DPC, S&P CUSIP and Texas MAC expressed a willingness to explore participation in the operation of the central access facility, with DPC and Texas MAC noting that the Commission operates EDGAR through contracts with commercial vendors. CSPN stated that a centralized Web-based disclosure utility for the 529 college savings plan market that it was developing would be the appropriate central access facility for the 529 college savings plan market. If 529 college savings plan disclosure documents were to be hosted on a Web site other than the CSPN utility or the 529 college savings plan's own Web site, CSPN stated that the issuers would need assurances that the offering materials delivered to such centralized Web site would become publicly available exactly as transmitted by the issuer or the primary distributor for the 529 college savings plan.

Several commentators emphasized that, in deciding which entity should operate the central access facility, cost should be an important factor, including which parties should bear such costs, before additional build-out costs or ongoing filing fees are imposed.[117] UBS stated that the ''access equals delivery'' processes needed to be further developed to enable an informed projection of benefits and costs. BMA emphasized the importance of how quickly and how cost-effectively the central access facility could be made operational in deciding which entity launches the facility.[118] Commerce noted that adequate lead-time should be allowed for dealers to upgrade their system and implement the proposal.

The January 2007 Notice provided additional details of a proposed structure for the centralized electronic system that would build on the MSIL system to provide through an Internet-based central access facility an assured source for free access to official statements and other related documents and information in connection with all new issues. The MSRB noted in the January 2007 Notice that it would operate a public access portal that would post official statements and other documents and information directly on its centralized Web site and would make posted information available for free for the life of the securities to investors, other market participants and the general public. The January 2007 Notice stated that additional public access portals using the document collections from the MSIL system obtained through real-time subscriptions could be established by other entities as parallel sources to the public.

AMS and UMB generally supported a single central electronic portal, while SIFMA, DPC, Ipreo, and NABL stated a preference that official statements be made available from multiple sources. NABL would not limit accessibility just through the centralized electronic portal but also to any source that (i) is either free or approved by the customer and (ii) maintains a record of posting. DPC expressed reservations that the MSRB's proposal would provide for official statements to be posted solely on the MSRB's centralized electronic portal, raising concerns regarding the reliability of a single source.

With regard to the January 2007 Notice, DPC observed that, although official statements may be made available for free to those accessing them through the access portals, there would be a cost to the broker-dealer community to subsidize the system's development and operation. DPC stated that having the industry subsidize the cost ''appears to be more biased and unfair than recovering the costs from the users of the system based on usage.'' DPC further stated that the EDGAR system, which ''is subsidized by American taxpayers,'' operates through vendors under contract with the Commission. DPC also stated that some aspects of the centralized electronic system's operations ''could be construed as interfering with standard commercial processes of private businesses.'' DPC viewed the MSRB's proposal that the customer notice provide an official statement's URL at an access portal as ''prejudicial to the economic interests of existing vendors whose delivery services required that the definitive PDF file be archived on their Web sites for public access.'' DPC stated that providing official statements for free through access portals would ''impair the economic interests of information vendors that currently make OSs available on a commercial basis.''

In response to the Pilot Filing submitted by the MSRB to the Commission, DPC noted that it is a Nationally Recognized Municipal Securities Information Repository (NRMSIR) that has made its municipal disclosure archive fully accessible on the Internet since 1999. DPC supported the broad concept of access equals delivery as a matter of general market efficiency. DPC stated:

> It is our opinion, however, that the MSRB's plans for its proposed [MSIL]-based Web portal go well beyond its organizational mandate as stated in section 15B(b)(2)(C) of

[112] Bernardi, BMA, brokersXpress, Commerce, DPC, First Southwest, Hilliard Lyons, ICI, Morgan Keegan, NABL, NFMA, RMOA, Texas MAC, UBS, Wells Fargo, Zions. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[113] BMA, brokersXpress, DPC, ICI, NFMA, UBS, Zions. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[114] Bernardi, BMA, Commerce, First Southwest, Hilliard Lyons, Morgan Keegan, NFMA, RMOA, UBS, Zions. Griffin Kubik and SIA stated that they agreed with the positions set forth in BMA's comment letter.

[115] Bernardi, Commerce, Hilliard Lyons, Morgan Keegan, RMOA, UBS, Zions. Morgan Keegan noted that the industry has already paid to establish the MSIL system and that the additional expense could be covered at the MSRB's discretion.

[116] BMA, First Southwest, NFMA, RMOA, Texas MAC. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[117] BMA, UBS. Griffin Kubik and SIA stated that they agreed with the positions set forth in BMA's comment letter.

[118] Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

the 1934 Act. If the existing prototype and stated plans are an indication, the MSRB will not only be assuming the role of the Access Equals Delivery venue for the municipal marketplace, but will go much further, breaking new ground in providing enhanced services to the market by a capital markets regulatory body. This also would be an apparent violation of the SEC's long-held public policy that the MSRB should not compete with vendors in offering value-added features and services related to handling of disclosure documents.

DPC compared certain functionalities illustrated on a sample pilot portal posted on the MSRB Web site to the functionalities offered by EDGAR and concluded that such ''features and capabilities are well in excess of the system that the MSRB has pointed to as its model, the SEC's own EDGAR.'' DPC asked why certain features on the sample pilot portal that it viewed as value-added—such as ''nine-digit CUSIP searches, hyperlinks to bond issuer[']s Web sites, an 'alert' service to users of the portal, sophisticated document viewing options, links to other related documents in the portal[']s disclosure archive, and subsequent event notifications that equate to custom research''—are not being left to the competitive forces of the market. It viewed the MSRB's stated plans to provide free on-line access to an integrated display of primary market and other disclosure with transaction price data as breaking new ground as compared to the offerings of other self-regulatory organizations. DPC noted the investments made by that firm and others to offer value-added services to the municipal securities market ''largely in reliance on the SEC's public statements that it is not in favor of the MSRB competing directly with vendors.'' DPC disagreed with the MSRB's view that EMMA would not create an unequal burden on competition. DPC also noted that at least one NRMSIR would be willing, under regulatory oversight, to make its disclosure archive available to the public for free for a modest annual subsidy to such NRMSIR. DPC concluded by urging ''the Commission to support the MSRB's proposed rule change that will promote Access Equals Delivery in the municipal securities market, but restrain the MSRB from offering value-added content and features that will necessarily inflict economic harm on existing data vendors, and inflict the harm unevenly.''

EDGAR Online stated:

> We believe that the current model of four Nationally Recognized Municipal Securities Information Repositories (NRMSIRs) severely limits innovation and access to these important disclosures. The current model locks up public documents in private hands while the proposed portal run by a public entity will encourage transparency in the municipal securities market and create a healthy ecosystem of information that will ultimately benefit both the investment community and the municipalities that seek access to public markets.

EDGAR Online detailed its views regarding the limitations on public access to existing disclosures and on the ability of other information providers to re-disseminate such disclosures, stating:

> Ultimately, investors and the municipalities pay the price for this lack of a viable information ecosystem. The rigid control of public information dissuades other information providers from trying to enter or innovate for this market. This means that there are few people working on improving ease of use, depth of analysis, thoroughness of information or more effective means of delivery.

EDGAR Online recommended that the Commission create a publicly accessible storage and dissemination system for all municipal securities disclosure filings.

The MSRB has carefully reviewed the statements made by these commentators and, as noted in section 3(b) of this filing as well as in the Pilot Filing, continues to believe that EMMA is consistent with its statutory mandate under the Act. The EMMA portal would provide free and timely public access to official statements and advance refunding documents, with such access to official statements being a fundamental element of the MSRB's planned ''access equals delivery'' standard for official statement dissemination to customers under the rule change proposal. Further, EMMA would remove impediments to and help perfect the mechanisms of a free and open market in municipal securities, assist in preventing fraudulent and manipulative acts and practices, and would in general promote investor protection and the public interest by ensuring equal access for all market participants to the disclosure information needed by investors in the municipal securities market.

As described in greater detail in section 4 of this filing as well as in the Pilot Filing, the MSRB believes that EMMA would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In weighing the potential alternative approaches to implementing EMMA, the MSRB concluded that developing EMMA through the adaptation and upgrading of existing internal MSRB systems—including but not limited to the MSIL system, RTRS and the MSRB's in-house access control systems—combined with the creation of a custom user interface designed for use by retail investors, would be the most prudent and efficient manner of achieving the MSRB's goals for EMMA. Although the MSRB has determined to establish the EMMA portal, the EMMA portal need not operate as the sole source of official statements and other documents and information in the municipal securities market. Rather, private enterprises could establish separate services, whether as qualified portals or otherwise, to make available publicly the basic documents and information they obtain from EMMA, together with such other documents, information and utilities (*e.g.*, indicative data, transaction pricing data, secondary market information, analytic tools, etc.) as each operator determines, provided on such commercial terms as may be appropriate for their own business model. The MSRB's goal in promoting broad dissemination of the documents and information made available through EMMA is to provide market participants with an effective opportunity to access official statements throughout the life of the securities in a non-cost prohibitive manner while encouraging market-based approaches to meeting the needs of investors and other participants in the municipal securities market.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2009–02 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–MSRB–2009–02. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2009–02 and should be submitted on or before May 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[119]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7340 Filed 4–1–09; 8:45 am]

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[119] 17 CFR 200.30–3(a)(12).

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